

which is allocable to the dwelling covered by such individual mortgage. Until all of the individual dwellings in the property covered by the principal mortgage have been sold, the mortgagor shall hold and operate the dwellings remaining unsold at any given time as though they constituted rental units in a project covered by a mortgage which is insured under subsection (d)(3) (and which receives the benefits of the interest rate provided for in the proviso in subsection (d)(5)).

(E) Upon the sale under this paragraph of all of the individual dwellings in the property covered by the principal mortgage, and the release of all individual dwellings from the lien of the principal mortgage, the insurance of the principal mortgage shall be terminated and no adjusted premium charge shall be charged by the Secretary upon such termination.

(F) Any mortgage insured under this paragraph shall contain a provision that if the low-income mortgagor does not continue to occupy the property the interest rate shall increase to the highest rate permissible under this section and the regulations of the Secretary effective at the time of commitment for insurance of the principal mortgage; except that the increase in interest rate shall not be applicable if the property is sold and the purchaser is (i) the nonprofit organization which executed the principal mortgage, (ii) a public housing agency having jurisdiction under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] over the area where the dwelling is located, or (iii) a low-income purchaser approved for the purposes of this paragraph by the Secretary.

(6) In addition to the mortgages that may be insured under paragraphs (1) and (5), the Secretary is authorized to insure under this subsection at any time within one year after August 1, 1968, upon such terms and conditions as he may prescribe, mortgages which are executed by individuals or families that meet the income criteria prescribed in paragraph (5)(A) and are executed for the purpose of financing the rehabilitation or improvement of single-family dwellings of detached, semidetached, or row construction that are owned in each instance by a mortgagor who has purchased the dwelling from a nonprofit organization of the type described in this subsection. To be eligible for such insurance, a mortgage shall—

(A) be in a principal amount not exceeding the lesser of \$18,000 or the sum of the estimated cost of repair and rehabilitation and the Secretary's estimate of the value of the property before repair and rehabilitation, except that in no case involving refinancing shall such mortgage exceed such estimated cost of repair and rehabilitation and the amount (as determined by the Secretary) required to refinance existing indebtedness secured by the property;

(B) bear interest (exclusive of premium charges for insurance and service charge, if any) at 3 per centum per annum or such lower rate, not less than 1 per centum, as the Secretary may prescribe if in his judgment the mortgagor's income is sufficiently low to justify the lower rate: *Provided*, That, if the rate of interest initially prescribed is less than 3 per centum per annum and the mortgagor's income (as determined on the basis of periodic review) subsequently rises, the rate shall be increased (but not above 3 per centum), under regulations of the Secretary, to the extent appropriate to reflect the increase in such income, and the mortgage shall so provide;

(C) involve a mortgagor that shall have paid on account of the property at the time of the rehabilitation such amount (which shall not be less than \$200 in cash or its equivalent, but which may be applied in whole or in part toward closing costs) as the Secretary may determine to be reasonable and appropriate under the circumstances; and

(D) contain a provision that, if the low-income mortgagor does not continue to occupy the property, the interest rate shall increase to the highest rate permissible under this section and the regulations of the Secretary effective at the time the commitment was issued for insurance of the mortgage; except that the increase in interest rate shall not be applicable if the property is sold and the purchaser is (i) a nonprofit organization which has been engaged in purchasing and rehabilitating deteriorating and substandard housing with financing under a mortgage insured under paragraph (1) of this subsection, (ii) a public housing agency having jurisdiction under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] over the area where the dwelling is located, or (iii) a low-income purchaser approved for the purposes of this paragraph by the Secretary.

(7) Where the Secretary has approved a plan of family unit ownership, the terms "single-family

dwelling", "single-family dwellings", "individual dwelling", and "individual dwellings" shall mean a family unit or family units, together with the undivided interest (or interests) in the common areas and facilities.

(8) For purposes of this subsection, the terms "single-family dwelling" and "single-family dwellings" (except for purposes of paragraph (7)) shall include a two-family dwelling which has been approved by the Secretary.

(i) Conversion of insured project to plan of family unit ownership; sale of units; agreements for maintenance; release from lien of project mortgage; insurance of mortgages financing purchase of individual family units; eligibility for insurance; definitions

(1) The Secretary is authorized, with respect to any project involving a mortgage insured under subsection (d)(3) which bears interest at the below-market interest rate prescribed in the proviso of subsection (d)(5), to permit a conversion of the ownership of such project to a plan of family unit ownership. Under such plan, each family unit shall be eligible for individual ownership and provision shall be included for the sale of the family units, together with an undivided interest in the common areas and facilities which serve the project, to low or moderate income purchasers. The Secretary shall obtain such agreements as he determines to be necessary to assure continued maintenance of the common areas and facilities. Upon such sale, the family unit and the undivided interest in the common areas shall be released from the lien of the project mortgage.

(2)(A) The Secretary is authorized, upon application by the mortgagee, to insure under this subsection mortgages financing the purchase of individual family units under the plan prescribed in paragraph (1). Commitments may be issued by the Secretary for the insurance of such mortgages prior to the date of their execution or disbursement thereon, upon such terms and conditions as the Secretary may prescribe. To be eligible for such insurance, the mortgage shall—

(i) be executed by a mortgagor having an income within the limits prescribed by the Secretary for occupants of projects financed with a mortgage insured under subsection (d)(3) which bears interest at the below-market rate prescribed in the proviso of subsection (d)(5);

(ii) involve a principal obligation (including such initial service charges, and such appraisal, inspection, and other fees, as the Secretary shall approve) in an amount not to exceed the Secretary's estimate of the appraised value of the family unit, including the mortgagor's interest in the common areas and facilities, as of the date the mortgage is accepted for insurance;

(iii) bear interest at a rate determined by the Secretary (which may vary in accordance with the regulations of the Secretary promulgated pursuant to the last sentence of paragraph (4) of this subsection) but not less than the below-market rate in effect under the proviso of subsection (d)(5) at the date of the commitment for insurance; and

(iv) provide for complete amortization by periodic payments within such term as the Secretary may prescribe, but not to exceed forty years from the beginning of amortization of the mortgage.

(B) The price for which the individual family unit is sold to the low or moderate income purchaser shall not exceed the appraised value of the property, as determined under subparagraph (A)(ii), except that the purchaser shall be required to pay on account of the property at the time of purchase at least such amount, in cash or its equivalent (which shall be not less than 3 per centum of such price, but which may be applied in whole or in part toward closing costs), as the Secretary may determine to be reasonable and appropriate.

(3) Upon the sale of all of the family units covered by the project mortgage, and the release of all of the family units (including the undivided interest allocable to each unit in the common areas and facilities) from the lien of the project mortgage, the insurance of the project mortgage shall be terminated and no adjusted premium charge shall be collected by the Secretary upon such termination.

(4) Any mortgage covering an individual family unit insured under this subsection shall contain a provision that, if the original mortgagor does not continue to occupy the property, the interest rate shall increase to the highest rate permissible under this section and the regulations of the Secretary effective at the time the commitment was issued for the insurance of the project mortgage; except that the requirement for an increase in interest rate shall not be applicable if the property is sold and

the purchaser is (i) a nonprofit purchaser approved by the Secretary, or (ii) a low or moderate income purchaser who has an income within the limits prescribed by the Secretary for occupants of projects financed with a mortgage insured under subsection (d)(3) which bears interest at the below-market rate prescribed in the proviso of subsection (d)(5). The mortgage shall also contain a provision that, if the Secretary determines that the annual income of the original mortgagor (or a purchaser described in clause (ii) of the preceding sentence) has increased to an amount enabling payment of a greater rate of interest, the interest rate of the individual mortgage may be increased up to the highest rate permissible under the regulations of the Secretary for mortgages insured under this section, effective at the time the commitment was issued for the insurance of the mortgage.

(5) For the purpose of this subsection—

(i) the term "mortgage", when used in relation to a mortgage insured under paragraph (2) of this subsection, includes a first mortgage given to secure the unpaid purchase price of a fee interest in, or a long-term lease-hold interest in, a one-family unit in a multifamily project and an undivided interest in the common areas and facilities which serve the project; and

(ii) the term "common areas and facilities" includes the land and such commercial, community, and other facilities as are approved by the Secretary.

(j) Conversion of insured rental projects to cooperatives; eligibility for membership; insurance of cooperative mortgages financing purchase of projects; eligibility for insurance

(1) The Secretary is authorized, with respect to any rental project involving a mortgage insured under subsection (d)(3) which bears interest at the below-market interest rate prescribed in the proviso of subsection (d)(5), to permit a conversion of the ownership of such project to a cooperative approved by the Secretary. Membership in such cooperative shall be made available only to those families having an income within the limits prescribed by the Secretary for occupants of projects financed with a mortgage insured under subsection (d)(3) which bears interest at such below-market rate: *Provided*, That families residing in the rental project at the time of its conversion to a cooperative who do not meet such income limits may be permitted to become members in the cooperative under such special terms and conditions as the Secretary may prescribe.

(2) The Secretary is authorized, upon application by the mortgagee, to insure under this subsection cooperative mortgages financing the purchase of projects meeting the requirements of paragraph (1). Commitments may be issued by the Secretary for the insurance of such mortgages prior to the date of their execution or disbursement thereon, upon such terms and conditions as the Secretary may prescribe. To be eligible for such insurance, the mortgage shall—

(i) involve a principal obligation (including such initial service charges and appraisal, inspection, and other fees as the Secretary shall approve) in an amount not exceeding the appraised value of the property for continued use as a cooperative, which value shall be based upon a mortgage amount on which the debt service can be met from the income of the property when operated on a nonprofit basis, after the payment of all operating expenses, taxes, and required reserves;

(ii) bear interest at the below-market rate prescribed in the proviso of subsection (d)(5); and

(iii) provide for complete amortization within such term as the Secretary may prescribe.

(k) Increase in maximum insurance amounts for costs incurred from solar energy systems and energy conservation measures

With respect to any project insured under subsection (d)(3) or (d)(4), the Secretary may further increase the dollar amount limitations which would otherwise apply for the purpose of those subsections by up to 20 per centum if such increase is necessary to account for the increased cost of the project due to the installation therein of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42) ² in cases where the Secretary determines that such measures are in addition to those required under the minimum property standards and will be cost-effective over the life of the measure.

(l) Rental charges; "eligible multifamily housing" defined

(1) Notwithstanding any other provision of law, tenants residing in eligible multifamily housing whose incomes exceed 80 percent of area median income shall pay as rent not more than the lower of the following amounts: (A) 30 percent of the family's adjusted monthly income; or (B) the relevant fair market rental established under section 8(b) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)] for the jurisdiction in which the housing is located. An owner shall phase in any increase in rents for current tenants resulting from this subsection.

(2) For purposes of this subsection, the term "eligible multifamily housing" means any housing financed by a loan or mortgage that is (A) insured or held by the Secretary under subsection (d)(3) and assisted under section 1701s of this title or section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f]; or (B) insured or held by the Secretary and bears interest at a rate determined under the proviso of subsection (d)(5).

(June 27, 1934, ch. 847, title II, §221, as added Aug. 2, 1954, ch. 649, title I, §123, 68 Stat. 599; amended Aug. 11, 1955, ch. 783, title I, §102(c), (j), 69 Stat. 635; Aug. 7, 1956, ch. 1029, title I, §108, title III, §307(c), 70 Stat. 1094, 1102; Pub. L. 85-104, title I, §112, July 12, 1957, 71 Stat. 297; Pub. L. 86-372, title I, §§110(a)(1), (2), (b)-(e), 116(b), Sept. 23, 1959, 73 Stat. 658-661, 664; Pub. L. 87-70, title I, §101(a), June 30, 1961, 75 Stat. 149; Pub. L. 88-54, June 29, 1963, 77 Stat. 73; Pub. L. 88-560, title I, §§105(c)(2), 107(d), 114, title II, §§202, 203(b), Sept. 2, 1964, 78 Stat. 772, 775, 778, 783, 784; Pub. L. 89-117, title I, §102(a), (b), title II, §207(d), title XI, §1108(i), Aug. 10, 1965, 79 Stat. 454, 467, 505; Pub. L. 89-754, title III, §§307-310(c), Nov. 3, 1966, 80 Stat. 1268-1270; Pub. L. 89-769, §4, Nov. 6, 1966, 80 Stat. 1317; Pub. L. 90-19, §1(a)(3), (4), May 25, 1967, 81 Stat. 17; Pub. L. 90-448, title I, §§101(b), (c), 105, title III, §§305, 306, 311(b), 316, Aug. 1, 1968, 82 Stat. 483, 488, 508, 510, 512; Pub. L. 91-78, §2(c), Sept. 30, 1969, 83 Stat. 125; Pub. L. 91-152, title I, §§101(c), 113(e), Dec. 24, 1969, 83 Stat. 379, 384; Pub. L. 91-432, §1(c), Oct. 2, 1970, 84 Stat. 887; Pub. L. 91-473, §1(c), Oct. 21, 1970, 84 Stat. 1064; Pub. L. 91-525, §1(c), Dec. 1, 1970, 84 Stat. 1384; Pub. L. 91-606, title III, §301(d), Dec. 31, 1970, 84 Stat. 1758; Pub. L. 91-609, title I, §§101(c), 114(a), 114[115](a), Dec. 31, 1970, 84 Stat. 1770, 1773; Pub. L. 92-503, §1(c), Oct. 18, 1972, 86 Stat. 906; Pub. L. 93-85, §1(c), Aug. 10, 1973, 87 Stat. 220; Pub. L. 93-117, §1(c), Oct. 2, 1973, 87 Stat. 421; Pub. L. 93-288, title VII, §702(d), formerly title VI, §602(d), May 22, 1974, 88 Stat. 163, renumbered title VII, §702(d), Pub. L. 103-337, div. C, title XXXIV, §3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100; Pub. L. 93-383, title III, §§302(c), 303(d), (e), 304(e), 316(c), 319(a), Aug. 22, 1974, 88 Stat. 676-678, 685, 686; Pub. L. 94-173, §§3, 4(a), Dec. 23, 1975, 89 Stat. 1027; Pub. L. 94-375, §§3(d), 8(a), (b)(4), (5), Aug. 3, 1976, 90 Stat. 1069, 1071, 1072; Pub. L. 95-24, title I, §106, Apr. 30, 1977, 91 Stat. 56; Pub. L. 95-60, §1(c), June 30, 1977, 91 Stat. 257; Pub. L. 95-80, §1(c), July 31, 1977, 91 Stat. 339; Pub. L. 95-128, title III, §§301(c), 303(c), Oct. 12, 1977, 91 Stat. 1131, 1132; Pub. L. 95-406, §1(c), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95-557, title III, §§301(c), 325, Oct. 31, 1978, 92 Stat. 2096, 2104; Pub. L. 96-71, §1(c), Sept. 28, 1979, 93 Stat. 501; Pub. L. 96-105, §1(c), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96-153, title III, §§301(c), 314, Dec. 21, 1979, 93 Stat. 1111, 1117; Pub. L. 96-372, §1(c), Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96-399, title III, §§301(c), 310(d), 333(c), (d), Oct. 8, 1980, 94 Stat. 1638, 1642, 1653; Pub. L. 97-35, title III, §§331(c), 339B(a), Aug. 13, 1981, 95 Stat. 412, 417; Pub. L. 97-253, title II, §201(d), Sept. 8, 1982, 96 Stat. 789; Pub. L. 97-289, §1(c), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 97-377, title I, §101(g), Dec. 21, 1982, 96 Stat. 1908; Pub. L. 98-35, §1(c), May 26, 1983, 97 Stat. 197; Pub. L. 98-109, §1(c), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98-181, title I [title IV, §§401(c), 404(b)(8), 408, 409, 423(b)(3), 432(b), (c), 446(d)], Nov. 30, 1983, 97 Stat. 1207, 1209, 1211, 1217, 1220, 1228; Pub. L. 98-479, title II, §204(a)(6), Oct. 17, 1984, 98 Stat. 2232; Pub. L. 99-120, §1(c), Oct. 8, 1985, 99 Stat. 502; Pub. L. 99-156, §1(c), Nov. 15, 1985, 99 Stat. 815; Pub. L. 99-219, §1(c), Dec. 26, 1985, 99 Stat. 1730; Pub. L. 99-267, §1(c), Mar. 27, 1986, 100 Stat. 73; Pub. L. 99-272, title III, §3007(c), Apr. 7, 1986, 100 Stat. 104; Pub. L. 99-289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99-345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99-430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100-122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100-154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100-170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100-179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100-200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100-242, title IV, §§401(a)(2), 406(b)(10)-(13), 426(d), (e), (h), Feb. 5, 1988, 101 Stat. 1898, 1901, 1916; Pub. L. 100-707, title I,

§109(e)(3), Nov. 23, 1988, 102 Stat. 4708; Pub. L. 101–508, title II, §2201, Nov. 5, 1990, 104 Stat. 1388–21; Pub. L. 101–625, title VI, §§611(b)(2), 612(b), Nov. 28, 1990, 104 Stat. 4278, 4279; Pub. L. 102–550, title V, §§509(d), (e), 516(d), title X, §1012(l), Oct. 28, 1992, 106 Stat. 3783, 3791, 3907; Pub. L. 104–134, title I, §101(e) [title II, §219], Apr. 26, 1996, 110 Stat. 1321–257, 1321–290; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–276, title II, §222, Oct. 21, 1998, 112 Stat. 2489; Pub. L. 106–377, §1(a)(1) [title II, §209(b)], Oct. 27, 2000, 114 Stat. 1441, 1441A–25; Pub. L. 107–73, title II, §213(d), (e), Nov. 26, 2001, 115 Stat. 676, 677; Pub. L. 107–326, §5(b)(4), (5), Dec. 4, 2002, 116 Stat. 2795; Pub. L. 108–186, title III, §302(b), Dec. 16, 2003, 117 Stat. 2692; Pub. L. 110–161, div. K, title II, §221(1), Dec. 26, 2007, 121 Stat. 2436.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

Section 1720 of this title, referred to in subsec. (d)(3)(ii)(II), (4)(ii)(II) was repealed by Pub. L. 98–181, title I [title IV, §483(a)], Nov. 30, 1983, 97 Stat. 1240.

The United States Housing Act of 1937, and "such act", referred to in subsecs. (d)(3), (h)(5)(F), (6)(D), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

Section 110 of the Housing Act of 1949 [42 U.S.C. 1460], referred to in subsec. (d)(3)(iii), was omitted from the Code pursuant to section 5316 of Title 42, which terminated authority to make grants or loans under title I of that Act [42 U.S.C. 1450 et seq.] after Jan. 1, 1975.

This chapter, referred to in subsec. (f), was in the original "this Act", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

Section 1701q of this title, referred to in subsec. (f), was amended generally by Pub. L. 101–625, title VIII, §801(a), Nov. 28, 1990, 104 Stat. 4297, and, as so amended, no longer contains provisions related to handicapped persons.

The Disaster Relief and Emergency Assistance Act, referred to in subsec. (f), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

Section 201 of the Housing and Community Development Amendments of 1978, referred to in subsec. (f), 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.

Subsection (h) of section 1710 of this title, referred to in subsec. (g)(1), was redesignated subsec. (i) by Pub. L. 105–276, title VI, §602(1), Oct. 21, 1998, 112 Stat. 2674.

Subsection (k) of section 1710 of this title, referred to in subsec. (g)(1), was repealed by Pub. L. 105–276, title VI, §601(c), Oct. 21, 1998, 112 Stat. 2673.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (g)(4)(C), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, which, as amended by Pub. L. 101–625, is known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990. Subtitles A and B of title II, which were formerly set out as a note under this section and which amended section 1715z–6 of this title, were amended generally by Pub. L. 101–625 and are classified to subchapter I (§4101 et seq.) of chapter 42 of this title. Subtitles C and D of title II amended section 1715z–15 of this title and sections 1437f, 1472, 1485, and 1487 of Title 42, The Public Health and Welfare. Another subtitle C of title II of Pub. L. 100–242, as added by Pub. L. 102–550, is classified generally to subchapter II (§4141 et seq.) of chapter 42 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

Section 8211 of title 42, referred to in subsec. (k), was omitted from the Code pursuant to section 8229 of Title 42, which terminated authority under that section on June 30, 1989.

CODIFICATION

In subsec. (g)(4)(A), "November 30, 1983," was substituted for "the effective date of this clause", meaning the date of enactment of Pub. L. 98–181.

AMENDMENTS

2007—Subsec. (d)(3)(ii)(II), (4)(ii)(II). Pub. L. 110–161 substituted "170 percent" for "140 percent" after "not to exceed" in two places and "215 percent in high cost areas" for "170 percent in high cost areas".

2003—Subsec. (d)(3)(ii)(II), (4)(ii)(II). Pub. L. 108–186 substituted "140 percent in" for "110 percent in" and inserted ", or 170 percent in high cost areas," after "and by not to exceed 140 percent".

2002—Subsec. (d)(3)(ii). Pub. L. 107–326, §5(b)(4), inserted "(I)" after "(ii)" and substituted "; (II) the Secretary may, by regulation, increase any of the dollar amount limitations in subclause (I) (as such limitations may have been adjusted in accordance with section 1712a of this title)" for "; and except that the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this clause".

Subsec. (d)(4)(ii). Pub. L. 107–326, §5(b)(5), inserted "(I)" after "(ii)" and substituted "; (II) the Secretary may, by regulation, increase any of the dollar limitations in subclause (I) (as such limitations may have been adjusted in accordance with section 1712a of this title)" for "; and except that the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this clause".

2001—Subsec. (d)(3)(ii). Pub. L. 107–73, §213(d), substituted "\$42,048", "\$48,481", "58,469", "\$74,840", and "\$83,375" for "\$33,638", "\$38,785", "\$46,775", "\$59,872", and "\$66,700", respectively, and "\$44,250", "\$50,724", "\$61,680", "\$79,793", and "\$87,588" for "\$35,400", "\$40,579", "\$49,344", "\$63,834", and "\$70,070", respectively.

Subsec. (d)(4)(ii). Pub. L. 107–73, §213(e), substituted "\$37,843", "\$42,954", "\$51,920", "\$65,169", and "\$73,846" for "\$30,274", "\$34,363", "\$41,536", "\$52,135", and "\$59,077", respectively, and "\$40,876", "\$46,859", "\$56,979", "\$73,710", and "\$80,913" for "\$32,701", "\$37,487", "\$45,583", "\$58,968", and "\$64,730", respectively.

2000—Subsec. (g)(4)(C)(viii). Pub. L. 106–377 inserted ", except that this subparagraph shall continue to apply if the Secretary receives a mortgagee's written notice of intent to assign its mortgage to the Secretary on or before such date" after "December 31, 2002".

1998—Subsec. (g)(4)(C)(viii). Pub. L. 105–276, §222(1), substituted "December 31, 2002" for "September 30, 1996" in first sentence.

Subsec. (g)(4)(C)(ix). Pub. L. 105–276, §222(2), added cl. (ix).

1996—Subsec. (g)(4)(C)(viii). Pub. L. 104–134 substituted "1996" for "1995" in first sentence.

1992—Subsec. (d)(3)(ii). Pub. L. 102–550, §509(d), substituted "\$33,638", "\$38,785", "\$46,775", "\$59,872", "\$66,700", "\$35,400", "\$40,579", "\$49,344", "\$63,834", and "\$70,070" for "\$28,032", "\$32,321", "\$38,979", "\$49,893", "\$55,583", "\$29,500", "\$33,816", "\$41,120", "\$53,195", and "\$58,392", respectively.

Subsec. (d)(4)(ii). Pub. L. 102–550, §509(e), substituted "\$30,274", "\$34,363", "\$41,536", "\$52,135", "\$59,077", "\$32,701", "\$37,487", "\$45,583", "\$58,968", and "\$64,730" for "\$25,228", "\$28,636", "\$34,613", "\$43,446", "\$49,231", "\$27,251", "\$31,239", "\$37,986", "\$49,140", and "\$53,942", respectively.

Subsec. (d)(4)(iv). Pub. L. 102–550, §1012(l), inserted "(including the cost of evaluating and reducing lead-based paint hazards, as such terms are defined in section 4851b of title 42)" after "cost of repair and rehabilitation".

Subsec. (g)(4)(A). Pub. L. 102–550, §516(d), which directed substitution of "issue to the mortgagee debentures having a par value" for ", subject to the cash adjustment provided herein, issue to the mortgagee debentures having total face value", was executed to text which read "having a total face value" instead of "having total face value", to reflect the probable intent of Congress.

1990—Subsec. (f). Pub. L. 101–625, §611(b)(2), added fourth undesignated paragraph relating to authority of Secretary in establishing rental charges for project covered by mortgage bearing below market interest rate prescribed in proviso to subsec. (d)(3) of this section to include an amount that would permit return of advances to owner.

Subsec. (g)(4)(C). Pub. L. 101–508 added subpar. (C).

Subsec. (l). Pub. L. 101–625, §612(b), added subsec. (l).

1988—Subsec. (d)(2). Pub. L. 100–242, §406(b)(10)(A), substituted "residence, except that the Secretary" for "residence: *Provided*, That a mortgage secured by property upon which there is located a dwelling designed principally for a two-, three-, or four-family residence shall not be insured under this section except in the case of a dwelling for occupancy by the mortgagor: *Provided further*, That the Secretary".

Pub. L. 100–242, §406(b)(10)(B), which directed that par. (2) be amended by striking out "*Provided*, That (i)" and all that follows through "(1) in" and inserting "*Provided*, That (i)(1) in", was executed by substituting "*Provided*, That (i)(1) in the case of a displaced family" for "*Provided further*, That (i) if the mortgagor is the owner and an occupant of the property at the time of insurance, (1) in the case of a displaced family", to reflect the probable intent of Congress and the fact that the provision being struck out began with "*Provided further*" rather than "*Provided*".

Pub. L. 100-242, §406(b)(10)(C), struck out "*Provided further*, That nothing contained herein shall preclude the Secretary from issuing a commitment to insure, and insuring a mortgage pursuant thereto, where the mortgagor is not the owner and an occupant of the property, if the property is to be built or acquired and repaired or rehabilitated for sale, and the insured mortgage financing is required to facilitate the construction, or the repair or rehabilitation, of the dwelling and to provide financing pending the subsequent sale thereof to a qualified owner who is also an occupant thereof, but in such instances the mortgage shall not exceed 85 per centum of the appraised value:".

Pub. L. 100-242, §406(b)(10)(D), which directed that par. (2) be amended in last proviso by substituting "That the mortgagor shall" for "That, if the mortgagor is the owner and an occupant of the property such mortgagor shall", was executed by substituting "That the mortgagor shall" for "That, if the mortgagor is the owner and an occupant of the property, such mortgagor shall", to reflect the probable intent of Congress and the fact that a comma appears before "such" in provisions being struck out.

Subsec. (d)(3)(ii). Pub. L. 100-242, §426(d), substituted "\$28,032", "\$38,979", "\$49,893", "\$55,583", "\$29,500", "\$33,816", "\$41,120", "\$53,195", and "\$58,392" for "\$21,563", "\$29,984", "\$38,379", "\$42,756", "\$22,692", "\$26,012", "\$31,631", "\$40,919", and "\$44,917", respectively.

Pub. L. 100-242, §426(d), which directed that cl. (ii) be amended by substituting "\$32,321" for "\$24,862", was executed by substituting "\$32,321" for "\$24,662" to reflect the probable intent of Congress.

Pub. L. 100-242, §426(h), substituted "not to exceed 110 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 140 percent where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720 of this title (as such section existed immediately before November 30, 1983) is involved" for "not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum (by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved) in such an area".

Subsec. (d)(4)(ii). Pub. L. 100-242, §426(e), (h), substituted "\$25,228", "\$28,636", "\$34,613", "\$43,446", "\$49,231", "\$27,251", "\$31,239", "\$37,986", "\$49,140", and "\$53,942" for "\$19,406", "\$22,028", "\$26,625", "\$33,420", "\$37,870", "\$20,962", "\$24,030", "\$29,220", "\$37,800", and "\$41,494", respectively, and substituted "not to exceed 110 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 140 percent where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720 of this title (as such section existed immediately before November 30, 1983) is involved" for "not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum (by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved) in such an area".

Subsec. (d)(6)(ii). Pub. L. 100-242, §406(b)(11), struck out "is an owner-occupant of the property and" after "where the mortgagor".

Subsec. (f). Pub. L. 100-707 substituted "and Emergency Assistance Act" for "Act of 1974".

Pub. L. 100-242, §401(a)(2), struck out "No mortgage shall be insured under this section after March 15, 1988, except pursuant to a commitment to insure before that date, or except a mortgage covering property which the Secretary finds will assist in the provision of housing for displaced families."

Pub. L. 100-200 substituted "March 15, 1988" for "December 16, 1987".

Pub. L. 100-179 substituted "December 16, 1987" for "December 2, 1987".

Pub. L. 100-170 substituted "December 2, 1987" for "November 15, 1987".

Pub. L. 100-154 substituted "November 15, 1987" for "October 31, 1987".

Pub. L. 100-122 substituted "October 31, 1987" for "September 30, 1987".

Subsec. (h)(6). Pub. L. 100-242, §406(b)(12), struck out "and occupied" after "or row construction that are owned" in introductory provisions.

Subsec. (h)(8). Pub. L. 100-242, §406(b)(13), struck out "if one of the units is to be occupied by the owner" after "approved by the Secretary".

1986—Subsec. (f). Pub. L. 99-430 substituted "September 30, 1987" for "September 30, 1986".

Pub. L. 99-345 substituted "September 30, 1986" for "June 6, 1986".

Pub. L. 99-289 substituted "June 6, 1986" for "April 30, 1986".

Pub. L. 99-272 made amendment identical to Pub. L. 99-219. See 1985 Amendment note below.

Pub. L. 99-267 substituted "April 30, 1986" for "March 17, 1986".

1985—Subsec. (f). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1984—Subsec. (d)(3)(iii). Pub. L. 98-479 substituted "rehabilitated" for "rehabilitated" before "by a local public agency".

1983—Subsec. (d)(2)(A). Pub. L. 98-181, §423(b)(3), struck out ": *Provided further*, That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured" before "; and (B)".

Subsec. (d)(3)(iii). Pub. L. 98-181, §432(b), struck out proviso that in no case involving refinancing would the mortgage exceed the estimated cost of repair and rehabilitation and the amount, as determined by the Secretary, required to refinance existing indebtedness secured by the property or project, and substituted " *Provided, That*" for " *Provided further, That*".

Subsec. (d)(4)(iv). Pub. L. 98-181, §432(c), struck out proviso that in no case involving refinancing would the mortgage exceed the estimated cost of repair and rehabilitation and the amount, as determined by the Secretary, required to refinance existing indebtedness secured by the property or project, and substituted " *Provided, That*" for " *Provided further, That*".

Subsec. (d)(5). Pub. L. 98-181, §404(b)(8), substituted "at such rate as may be agreed upon by the mortgagor and the mortgagee" for "(exclusive of premium charges for insurance and service charge, if any) at not to exceed 5 per centum per annum on the amount of the principal obligation outstanding at any time, or not to exceed such per centum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market".

Subsec. (d)(6). Pub. L. 98-181, §446(d), inserted "(unless otherwise approved by the Secretary)" after "periodic payments".

Subsec. (f). Pub. L. 98-181, §401(c), substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

Subsec. (g)(4)(A). Pub. L. 98-181, §§408, 409, designated existing provision as subpar. (A) and inserted "pursuant to a commitment to insure entered into before November 30, 1983," after "this section".

Subsec. (g)(4)(B). Pub. L. 98-181, §408, added subpar. (B).

1982—Subsec. (d)(2)(A). Pub. L. 97-253, §201(d)(1), inserted provision that the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured.

Subsec. (d)(2)(B)(i)(2). Pub. L. 97-253, §201(d)(2), (3), inserted "(excluding the mortgage insurance premium paid at the time the mortgage is insured)" after "of its acquisition cost" and struck out "mortgage insurance premium," after "hazard insurance,".

Subsec. (d)(3)(ii). Pub. L. 97-377 inserted "(by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved)" after "90 per centum".

Subsec. (d)(4)(ii). Pub. L. 97-377 inserted "(by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved)" after "90 per centum".

Subsec. (f). Pub. L. 97-289 substituted "May 20, 1983" for "September 30, 1982".

1981—Subsec. (f). Pub. L. 97-35, §331(c), substituted "1982" for "1981".

Subsec. (k). Pub. L. 97-35, §339B(a), inserted "therein" after "installation" and struck out "therein" after "measure".

1980—Subsec. (d)(6). Pub. L. 96-399, §333(c), struck out proviso relating to maturity of a mortgage insured under subsection (d)(2) of this section.

Subsec. (f). Pub. L. 96-399, §301(c), substituted "September 30, 1981" for "October 15, 1980".

Pub. L. 96-372 substituted "October 15, 1980" for "September 30, 1980".

Subsec. (i)(2)(A)(iv). Pub. L. 96-399, §333(d), struck out applicability to determinations of lesser amount, if so determined, of three-quarters of the Secretary's estimate of the remaining economic life of the building

improvements.

Subsec. (k). Pub. L. 96-399, §310(d), added subsec. (k).

1979—Subsec. (d)(3)(ii). Pub. L. 96-153, §314, substituted "75 per centum" for "50 per centum" and inserted exception that the dollar amount limitations may be exceeded not to exceed 90 per centum where the Secretary determines it to be necessary.

Subsec. (d)(4)(ii). Pub. L. 96-153, §314, substituted "75 per centum" for "50 per centum" and inserted exception that the dollar amount limitations may be exceeded by not to exceed 90 per centum where the Secretary determines it to be necessary.

Subsec. (f). Pub. L. 96-153 substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96-105 substituted "November 30, 1979" for "October 31, 1979".

Pub. L. 96-71 substituted "October 31, 1979" for "September 30, 1979".

1978—Subsec. (d)(3)(ii). Pub. L. 95-557, §325(a), substituted "\$21,563", "\$24,662", "\$29,984", "\$38,379", and "\$42,756" for "\$16,860", "\$18,648", "\$22,356", "\$28,152" and "\$31,884", respectively, and "\$22,692", "\$26,012", "\$31,631", "\$40,919", and "\$44,917" for "\$19,680", "\$22,356", "\$26,496", "\$33,120", and "\$38,400", respectively.

Subsec. (d)(4)(ii). Pub. L. 95-557, §325(b), substituted "\$19,406", "\$22,028", "\$26,625", "\$33,420", and "\$37,870" for "\$18,450", "\$20,625", "\$24,630", "\$29,640" and "\$34,846", respectively.

Subsec. (f). Pub. L. 95-557, §301(c), substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Subsec. (d)(2)(A). Pub. L. 95-128, §303(c), substituted "\$31,000" for "\$25,000", "\$36,000" for "\$29,000" in two places, "\$42,000" for "\$33,000", "\$35,000" for "\$28,000", "\$48,600" for "\$38,880", "\$59,400" for "\$47,520", "\$45,000" for "\$36,000", "\$57,600" for "\$46,080" and "\$68,400" for "\$54,720".

Subsec. (d)(4). Pub. L. 95-24 struck out "other than a mortgagor referred to in subsection (d)(3) of this section," after "if executed by a mortgagor".

Subsec. (f). Pub. L. 95-128, §301(c), substituted "September 30, 1978" for "September 30, 1977".

Pub. L. 95-80 substituted "September 30, 1977" for "July 31, 1977".

Pub. L. 95-60 substituted "July 31, 1977" for "June 30, 1977".

1976—Subsec. (d)(2)(A). Pub. L. 94-375, §3(d), substituted "\$25,000" for "\$21,600", "\$29,000" for "\$25,200" in two places, and "\$33,000" for "\$28,800".

Subsec. (d)(3)(ii). Pub. L. 94-375, §8(b)(4), substituted "50 per centum in any geographical area" for "75 per centum in any geographical area", "\$16,860" for "\$11,240", "\$18,648" for "\$15,540", "\$22,356" for "\$18,630", "\$28,152" for "\$23,460", "\$31,884" for "\$26,570", "\$19,680" for "\$13,120", "\$22,356" for "\$18,630", "\$26,496" for "\$22,080", "\$33,120" for "\$27,600", and "\$38,400" for "\$32,000".

Subsec. (d)(4)(ii). Pub. L. 94-375, §8(b)(5), substituted "50 per centum in any geographical area" for "75 per centum in any geographical area", "\$18,450" for "\$12,300", "\$20,625" for "\$17,188", "\$24,630" for "\$20,525", "\$29,640" for "\$24,700", "\$34,846" for "\$29,038", "\$20,962" for "\$13,975", "\$24,030" for "\$20,025", "\$29,220" for "\$24,350", "\$37,800" for "\$31,500", and "\$41,494" for "\$34,578".

1975—Subsec. (d)(3)(ii). Pub. L. 94-173, §3, raised from 45 per centum to 75 per centum the amount by which any dollar limitation may, by regulation, be increased.

Subsec. (d)(4)(ii). Pub. L. 94-173, §3, raised from 45 per centum to 75 per centum the amount by which any dollar limitation may, by regulation, be increased.

Subsec. (f). Pub. L. 94-173, §4(a), struck out a provision limiting to 10 per centum the number of dwelling units available to low and moderate income persons under the age of 62 in a project financed with a mortgage issued under subsection (d)(3) of this section.

1974—Subsec. (d)(2)(A). Pub. L. 93-383, §302(c), substituted "\$21,600" for "\$18,000", "\$25,200" for "\$21,000" wherever appearing, "\$28,000" for "\$24,000", "\$28,800" for "\$24,000", "\$36,000" for "\$30,000", "\$38,880" for "\$32,400", "\$46,080" for "\$38,400", "\$47,520" for "\$39,600", and "\$54,720" for "\$45,600".

Subsec. (d)(3). Pub. L. 93-383, §319(a), inserted exception for certification of projects assisted or to be assisted pursuant to section 8 of the United States Housing Act of 1937.

Subsec. (d)(3)(i). Pub. L. 93-383, §304(e)(1), struck out cl. (i) which set forth mortgage ceiling of \$12,500,000.

Subsec. (d)(3)(ii). Pub. L. 93-383, §303(d), substituted "\$11,240" for "\$9,200", "\$13,120" for "\$10,925", "\$15,540" for "\$12,937.50", "\$16,200" for "\$13,500", "\$18,630" for "\$15,525", "\$22,080" for "\$18,400", "\$23,460" for "\$19,550", "\$26,570" for "\$22,137.50", "\$27,600" for "\$23,000", and "\$32,000" for "\$26,162.50".

Subsec. (d)(4)(i). Pub. L. 93-383, §304(e)(2), struck out cl. (i) which set forth mortgage ceiling of \$12,500,000.

Subsec. (d)(4)(ii). Pub. L. 93-383, §303(e), substituted "\$12,300" for "\$9,200", "\$13,975" for "\$10,525",

"\$17,188" for "\$12,937.50", "\$20,025" for "\$15,525", "\$20,525" for "\$15,525", "\$24,350" for "\$18,400", "\$24,700" for "\$19,550", "\$29,038" for "\$22,137.50", "\$31,500" for "\$23,000", and "\$34,578" for "\$26,162.50".

Subsec. (f). Pub. L. 93-383, §316(c), substituted "June 30, 1977" for "October 1, 1974".

Pub. L. 93-288 substituted "the Disaster Relief Act of 1974" for "the Disaster Relief Act of 1970".

1973—Subsec. (f). Pub. L. 93-117 extended the mortgage insurance authority under this section from Oct. 1, 1973, to Oct. 1, 1974.

Pub. L. 93-85 extended the mortgage insurance authority under this section from June 30, 1973, to Oct. 1, 1973.

1972—Subsec. (f). Pub. L. 92-503 extended the mortgage insurance authority under this section from October 1, 1972 to June 30, 1973.

1970—Subsec. (f). Pub. L. 91-609 in second par., substituted "October 1, 1972" for "January 1, 1971"; provided for use of certain housing facilities for classroom purposes where public schools in the community are overcrowded due in part to attendance of residents of the property or project; dispensed with need for kitchen facilities in family units in projects for displaced, elderly, or handicapped families, but permitted inclusion of central dining and other shared facilities; provided that any person who is a displaced person shall be deemed to be a family; and, in third par., substituted "the terms 'displaced family', 'displaced families', and 'displaced person' shall mean a family or families, or a person" for "the terms 'displaced family' and 'displaced families' shall mean a family or families", respectively.

Pub. L. 91-606 substituted "the Disaster Relief Act of 1970" for "the Act entitled 'An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes', approved September 30, 1950, as amended".

Pub. L. 91-525 substituted "January 1, 1971" for "December 1, 1970".

Pub. L. 91-473 substituted "December 1, 1970" for "November 1, 1970".

Pub. L. 91-432 substituted "November 1, 1970" for "October 1, 1970".

1969—Subsec. (d)(2). Pub. L. 91-152, §113(e)(1), (2), substituted "\$18,000" for "\$15,000", "\$21,000" for "\$17,500", wherever appearing, "\$24,000" for "\$20,000" wherever appearing, "\$30,000" for "\$25,000", "\$32,400" for "\$27,000", "\$38,400" for "\$32,000", "\$39,600" for "\$33,000", and "\$45,600" for "\$38,000".

Subsec. (d)(3)(ii). Pub. L. 91-152, §113(e)(3), (4), substituted "\$9,200" for "\$8,000", "\$10,925" for "\$9,500", "\$12,937.50" for "\$11,250", "\$15,525" for "\$13,500" wherever appearing, "\$18,400" for "\$16,000", "\$19,550" for "\$17,000", "\$22,137.50" for "\$19,250", "\$23,000" for "\$20,000", and "\$26,162.50" for "\$22,750".

Subsec. (d)(4)(ii). Pub. L. 91-152, §113(e)(5), (6), substituted "\$9,200" for "\$8,000", "\$10,925" for "\$9,500", "\$12,937.50" for "\$11,250", "\$15,525" for "\$13,500" wherever appearing, "\$18,400" for "\$16,000", "\$19,550" for "\$17,000", "\$22,137.50" for "\$19,250", "\$23,000" for "\$20,000", and "\$26,162.50" for "\$22,750".

Subsec. (f). Pub. L. 91-152, §101(c), substituted "October 1, 1970" for "January 1, 1970".

Pub. L. 91-78 substituted "January 1, 1970" for "October 1, 1969".

Subsec. (h)(6)(A). Pub. L. 91-152, §113(e)(7), substituted "\$18,000" for "\$15,000".

1968—Subsec. (d)(2)(A). Pub. L. 90-448, §§101(b)(1), 305, increased maximum amount of mortgages for single-family residences from \$12,500 to \$15,000 (or \$17,500 if mortgagor's family includes five or more persons), and in geographical areas where costs levels so require from \$15,000 to \$17,500 (or \$20,000 if the mortgagor's family includes five or more persons), and §305(d)(2)(A) substituted "the mortgagor" for "a displaced family" in first proviso.

Subsec. (d)(2)(B). Pub. L. 90-448, §101(b)(2), inserted ", in cash or its equivalent" in cl. (2), and inserted proviso directing that a mortgagor who is the owner and an occupant of the property be given the opportunity to contribute the value of his labor as equity in such dwelling.

Subsec. (d)(3)(iii). Pub. L. 90-448, §311(b), inserted proviso to permit the mortgage to involve the financing of the purchase of property which has been rehabilitated by a local public agency with Federal assistance pursuant to section 1460(c)(8) of title 42.

Subsec. (f). Pub. L. 90-448, §§105(d), 306, authorized the Secretary to insure mortgages meeting the requirements of subsec. (i) or (j) of this section, struck out "if the mortgagor waives the right to receive dividends on its equity investment in the portion thereof devoted to community and shopping facilities" from first proviso, and inserted proviso making provisions of section 1715k(d)(3)(B)(iv) applicable, in the case of a mortgage which bears interest at the below-market interest rate prescribed in subsec. (d)(5) of this section, only if the mortgagor waives the right to receive dividends on its equity investment in the portion thereof devoted to commercial facilities.

Subsec. (g)(1). Pub. L. 90-448, §105(b), included mortgages meeting requirements of par. (2) of subsec. (i)

of this section.

Subsec. (g)(2). Pub. L. 90-448, §105(c), included mortgages meeting requirements of par. (2) of subsec. (j) of this section.

Subsec. (h)(2)(A). Pub. L. 90-448, §316(a), reduced number of one-family dwellings from five or more to four or more, and permitted the mortgage to cover four or more one-family units in a structure or structures for which a plan of family unit ownership approved by the Secretary is established.

Subsec. (h)(4). Pub. L. 90-448, §101(c)(2), increased aggregate principal balance of mortgages insured from \$20,000,000 to \$50,000,000.

Subsec. (h)(5)(B)(ii). Pub. L. 90-448, §101(c)(1), permitted mortgage to bear interest at such lower rate, not less than 1 per centum, as the Secretary may prescribe if in his judgment purchaser's income is sufficiently low to justify the lower rate, and inserted proviso requiring rate of interest to be increased if purchaser's income subsequently rises.

Subsec. (h)(6). Pub. L. 90-448, §101(c)(3), added par. (6).

Subsec. (h)(7), (8). Pub. L. 90-448, §316(b), added pars. (7) and (8).

Subsecs. (i), (j). Pub. L. 90-448, §105(a), added subsecs. (i) and (j).

1967—Pub. L. 90-19, §1(a)(3), substituted "Secretary" for "Commissioner" wherever appearing in subsecs. (b), (d)(1) to (3), (d)(3)(ii), (iii), (d)(4), (d)(4)(ii) to (iv), (d)(5), (6), (e)(1), (2), (f), and (g)(3), (4).

Subsec. (d). Pub. L. 90-19, §1(a)(4), substituted "Secretary's" for "Commissioner's" wherever appearing in pars. (2), (3)(iii), (4)(iv), and (6).

1966—Subsec. (a). Pub. L. 89-769, §4(a), substituted "displaced families" for "families displaced from urban renewal areas or as a result of governmental action".

Subsec. (d)(2), (6). Pub. L. 89-769, §4(a), substituted "displaced family" for "family displaced from an urban renewal area or as a result of governmental action" wherever appearing.

Subsec. (d)(2)(A). Pub. L. 89-754, §307, increased maximum amount of mortgages for single-family and two-family residences from \$11,000 and \$18,000 to \$12,500 and \$20,000, respectively.

Subsec. (d)(3)(iii). Pub. L. 89-769, §4(a), substituted "displaced families" for "families displaced by urban renewal or other governmental action".

Subsec. (f). Pub. L. 89-769, §4(a), (b), substituted "displaced families" for "families displaced from urban renewal areas or as a result of governmental action", and inserted definition of "displaced family" and "displaced families".

Pub. L. 89-754, §§308, 309, 310(c), inserted in first sentence provision for nondwelling facilities in projects in urban renewal areas, inserted provision respecting single occupants in housing under subsec. (d)(3) of this section, and inserted in fourth sentence "or which meet the requirements of subsection (h)", respectively.

Subsec. (g)(1). Pub. L. 89-754, §310(b)(1), inserted "or paragraph (5) of subsection (h) of this section".

Subsec. (g)(2). Pub. L. 89-754, §310(b)(2), inserted "or paragraph (1) of subsection (h) of this section".

Subsec. (h). Pub. L. 89-754, §310(a), added subsec. (h). A prior subsec. (h) was repealed by Pub. L. 89-117, title XI, §1108(i)(4), Aug. 10, 1965, 79 Stat. 505.

1965—Subsec. (d)(3)(ii). Pub. L. 89-117, §207(d), substituted "\$17,000 per family unit with three bedrooms, and \$19,250 per family unit with four or more bedrooms" for "and \$17,000 per family unit with three or more bedrooms" and "\$20,000 per family unit with three bedrooms, and \$22,750 per family unit with four or more bedrooms" for "and \$20,000 per family unit with three or more bedrooms".

Subsec. (d)(4). Pub. L. 89-117, §§207(d), 1108(i)(1), substituted "\$17,000 per family unit with three bedrooms, and \$19,250 per family unit with four or more bedrooms" for "and \$17,000 per family unit with three or more bedrooms" and "\$20,000 per family unit with three bedrooms, and \$22,750 per family unit with four or more bedrooms" for "and \$20,000 per family unit with three or more bedrooms" in subpar. (ii) and substituted "General Insurance Fund" for "section 221 Housing Insurance Fund" wherever appearing.

Subsec. (d)(5). Pub. L. 89-117, §102(b), substituted "not less than the lower of (A) 3 per centum per annum, or (B) the annual rate of interest determined" for "not less than the annual rate of interest determined" in proviso.

Subsec. (f). Pub. L. 89-117, §§102(a), 1108(i)(1), substituted "this section after October 1, 1969" for "subsection (d)(2) or (d)(4) after September 30, 1965, or under subsection (d)(3) after September 30, 1965" and substituted "General Insurance Fund" for "section 221 Housing Insurance Fund".

Subsec. (g)(1). Pub. L. 89-117, §1108(i)(1), substituted "General Insurance Fund" for "section 221 Housing Insurance Fund".

Subsec. (g)(2). Pub. L. 89-117, §1108(i)(2), struck out provision that all references in section 1713 to the Housing Insurance Fund or the Housing Fund shall be construed to refer to the section 221 Housing Insurance Fund.

Subsec. (g)(3). Pub. L. 89-117, §1108(i)(1), (3), substituted "General Insurance Fund" for "section 221 Housing Insurance Fund" and struck out provision that all references in section 1713 of this title to the Housing Insurance Fund, the Housing Fund, or the Fund shall be construed to refer to the section 221 Housing Insurance Fund.

Subsec. (h). Pub. L. 89-117, §1108(i)(4), repealed subsec. (h) which created the section 221 Housing Insurance Fund, provided for the transfer of funds thereto, authorized the purchase and cancellation of debentures and the credit and payment of charges and fees.

1964—Subsec. (d)(3). Pub. L. 88-560, §114(a), inserted ", or other mortgagor approved by the Commissioner, and" after "or association".

Subsec. (d)(3)(ii), (4)(ii). Pub. L. 88-560, §107(d)(1), (2), changed limits on mortgages for property or project attributable to dwelling use from "\$2,250 per room (or \$8,500 per family unit if the number of rooms in such property or project is less than four per family unit)" to "\$8,000 per family unit without a bedroom, \$11,250 per family unit with one bedroom, \$13,500 per family unit with two bedrooms, and \$17,000 per family unit with three or more bedrooms", changed such mortgage limits on project consisting of elevator-type structures from a sum "of \$2,250 per room to not to exceed \$2,750 per room, and the dollar amount limitation of \$8,500 per family unit to not to exceed \$9,000 per family unit" to dollar amount limitations "per family unit to not to exceed \$9,500 per family unit without a bedroom, \$13,500 per family unit with one bedroom, \$16,000 per family unit with two bedrooms, and \$20,000 per family unit with three or more bedrooms", and substituted provision authorizing an increase "by not to exceed 45 per centum" of any of such limits because of cost levels for former provision authorizing such an increase "by not to exceed \$1,000 per room without regard to the number of rooms being less than four, or four or more".

Subsec. (d)(3)(iii). Pub. L. 88-560, §114(c), inserted "*Provided further*, That in the case of any mortgagor other than a nonprofit corporation or association, cooperative (including an investor-sponsor), or public body, or a mortgagor meeting the special requirements of subsection (e)(1), the amount of the mortgage shall not exceed 90 per centum of the amount otherwise authorized under this section".

Subsec. (e). Pub. L. 88-560, §114(b), added par. (1) and designated existing provisions as par. (2).

Subsec. (f). Pub. L. 88-560, §§114(d), 202, 203(b), extended the mortgage insurance authority under subsec. (d)(2) and (4) of this section from July 1, 1965 to Sept. 30, 1965, inserted definition of "family", and substituted in such definition "person who is sixty-two years of age or over, or who is a handicapped person within the meaning of section 1701q of this title," for "person who is sixty-two years of age or over".

Subsec. (g)(3). Pub. L. 88-560, §105(c)(2), substituted a period for "; or" and inserted "If the insurance is paid in cash, there shall be added to such payment an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Commissioner."

1963—Subsec. (f). Pub. L. 88-54 extended mortgage insurance authority under subsec. (d)(2) and (4) of this section from July 1, 1963, to July 1, 1965.

1961—Pub. L. 87-70, §101(a)(1), added section catchline.

Subsec. (a). Pub. L. 87-70, §101(a)(2), redefined the purpose of this section as one to assist private industry in providing housing for low and moderate income families and families displaced from urban renewal areas or as a result of governmental action, and eliminated provisions which required localities, communities or environs of communities to request the mortgage insurance, which limited the number of dwelling units to not more than the aggregate number which the Housing Administrator certified to the Commissioner, and which authorized assistance for relocation of families to be displaced as the result of governmental action in a community to those cases in which a certification by the Housing Administrator pursuant to section 1451(c) of title 42 has been made, or there is being carried out a project covered by a Federal aid contract executed, or prior approval granted, under subchapter II of chapter 8A of title 42, or there is being carried out an urban renewal project assisted under section 1462 of title 42.

Subsec. (b). Pub. L. 87-70, §101(a)(3), empowered the Commissioner to insure advances during construction on mortgages covering property of the character described in pars. (3) and (4) of subsec. (d) of this section.

Subsec. (d)(2). Pub. L. 87-70, §101(a)(4), (5), increased the maximum amount of mortgages for single-family residences from \$9,000 to \$11,000, three-family residences from \$25,000 to \$27,000 and for four-family residences from \$32,000 to \$33,000, increased the maximum amount of mortgages that the Commissioner may authorize in cases where he finds the cost levels so require from \$12,000 to \$15,000 for single-family residences, \$20,000 to \$25,000 for two-family residences, \$27,500 to \$32,000 for three-family residences and \$35,000 to \$38,000 for four-family residences, required families other than those displaced from an urban renewal area or as a result of Government action to pay on account of the property at least 3 per centum of the Commissioner's estimate of its acquisition cost, prohibited insurance of mortgages for dwellings designed principally for two-, three-, or four-family residences except in the case of dwellings for occupancy

by a family displaced from an urban renewal area or as a result of governmental action, and eliminated provisions which required the Commissioner to prescribe procedures relating to priorities in occupancy of the remaining units of two-, three-, and four-family dwellings after occupancy of one unit by the owner.

Subsec. (d)(3). Pub. L. 87-70, §101(a)(6), included public bodies and agencies which certify that they are not receiving financial assistance exclusively pursuant to the United States Housing Act of 1937 cooperatives, and limited dividend corporations, increased the maximum amount of mortgages from not more than \$9,000 per family unit for such part of such property or project as may be attributable to dwelling use to not more than \$2,250 per room (or \$8,500 per family unit if the number of rooms is less than four per family unit) for such part of such property or project as may be attributable to dwelling use (excluding exterior land improvements), empowered the Commissioner to increase the maximum from \$2,250 to \$2,750 per room and from \$8,500 to \$9,000 per family unit to compensate for higher costs incident to the construction of elevator-type structures, and in geographical areas which the cost levels so require from \$2,250 to \$3,250 per room, increased the maximum amount of the mortgage in the case of repair and rehabilitation from not more than the Commissioner's estimate of the value of the property when the proposed repair and rehabilitation is completed to not more than the sum of the estimated cost of repair and rehabilitation and the Commissioner's estimate of the value of the property before repair and rehabilitation, limited, in cases involving refinancing, the amount of the mortgage to not more than the estimated cost of repair and rehabilitation and the amount (as determined by the Commissioner) required to refinance existing indebtedness secured by the property or project, and eliminated provisions which required the property or project to be for use as rental accommodations for ten or more families eligible for occupancy.

Subsec. (d)(4). Pub. L. 87-70, §101(a)(7)-(10), substituted "other than a mortgagor referred to in subsection (d)(3) of this section" for "which is not a nonprofit organization" in opening provisions, increased the maximum amount of mortgages from not more than \$9,000 per family unit for such part of such property or project as may be attributable to dwelling use to not more than \$2,250 per room (or \$8,500 per family unit if the number of rooms is less than four per family unit) for such part of such property or project as may be attributable to dwelling use (excluding exterior land improvements), empowered the Commissioner to increase the maximum from \$2,250 to \$2,750 per room and from \$8,500 to \$9,000 per family unit to compensate for higher costs incident to the construction of elevator-type structures, and in geographical areas which the cost levels so require from \$2,250 to \$3,250 per room, increased the maximum amount of the mortgage in the case of repair and rehabilitation from not more than 90 per centum of the Commissioner's estimate of the value of the property or project when the proposed repair and rehabilitation is completed to not more than 90 per centum of the sum of the estimated cost of repair and rehabilitation and the Commissioner's estimate of the value of the property before repair and rehabilitation, limited, in cases involving refinancing, the amount of the mortgage to not more than the estimated cost of repair and rehabilitation and the amount (as determined by the Commissioner) required to refinance existing indebtedness secured by the property of project, and eliminated provisions which required the property or project to be for use as rental accommodations for ten or more families eligible for occupancy.

Subsec. (d)(5). Pub. L. 87-70, §101(a)(10), (11), struck out provisions which required the mortgage to provide for complete amortization by periodic payments within such terms as the Commissioner may prescribe, but not to exceed 40 years from the date of insurance of the mortgage or three-quarters of the Commissioner's estimate of the remaining economic life of the building improvements, whichever is the lesser, and inserted proviso requiring the mortgage to bear interest at not less than the annual rate of interest determined by estimating the average market yield to maturity on all outstanding marketable obligations of the United States, and by adjusting such yield to the nearest one-eighth of 1 per centum.

Subsec. (d)(6). Pub. L. 87-70, §101(a)(10), added par. (6).

Subsec. (f). Pub. L. 87-70, §101(a)(12), required a property or project covered by a mortgage insured under subsec. (d)(3) or (d)(4) of this section to include five or more family units, empowered the Commissioner to adopt such procedures and requirements to assure that the dwelling accommodations provided under this section are available to families displaced from urban renewal areas or as a result of governmental action, authorized the Commissioner to insure a mortgage which meets subsec. (d)(3) of this section with no premium charge, with a reduced premium charge, or with a premium charge for such period or periods during the time the insurance is in effect as he may determine, and prohibited insurance of mortgages under subsec. (d)(2) or (d)(4) of this section after July 1, 1963, or under subsec. (d)(3) of this section after July 1, 1965, except pursuant to a commitment to insure before that date or except a mortgage covering property which will assist in the provision of housing for families displaced from urban renewal areas or as a result of governmental action.

Subsec. (g)(3), (4). Pub. L. 87-70, §101(a)(13), (14), added par. (3), redesignated former par. (3) as (4), and substituted "this paragraph" for "this paragraph (3)".

Subsec. (h). Pub. L. 87-70, §101(a)(15), inserted "cash payments," after "cash adjustments," in last sentence.

1959—Subsec. (a). Pub. L. 86-372, §110(a)(1), (2), inserted provisions in first par. to authorize assistance in relocating families residing in the environs of a community described in cl. (2) which are to be displaced as the result of governmental action, inserted provisions in second par. making mortgage insurance available in environs of communities and substituted "in or near any such community" for "in any such community" in second proviso of second par.

Subsec. (d)(2). Pub. L. 86-372, §110(b), required a mortgage to be secured by property upon which there is located a dwelling conforming to applicable standards prescribed by the Commissioner under subsec. (f) of this section, and meeting the requirements of all State laws, or local ordinances or regulations, relating to the public health or safety, zoning, or otherwise, which may be applicable thereto, increased the maximum amount of the mortgage on a single-family residence in a high cost area from \$10,000 to \$12,000, authorized insurance of mortgages for two-, three-, and four-family residences and required the Commissioner to prescribe such procedures as are necessary to secure to families, referred to in subsec. (a) of this section, priorities in occupancy of the remaining units of two-, three-, and four-family dwellings after occupancy of one unit by the owner.

Subsec. (d)(3). Pub. L. 86-372, §110(c)(1), (2), substituted "\$12,000" for "\$10,000", and "not in excess of (1) in the case of new construction, the amount which the Commissioner estimates will be the replacement cost of the property or project when the proposed improvements are completed (the replacement cost may include the land, the proposed physical improvements utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Commissioner), or (2) in the case of repair and rehabilitation, the Commissioner's estimate of the value of the property when the proposed repair and rehabilitation is completed: *Provided*, That such property or project, when constructed, or repaired and rehabilitated, shall be for use as rental accommodations for ten or more families eligible for occupancy as provided in this section; or" for "not in excess of the Commissioner's estimate of the value of the property or project when constructed, or repaired and rehabilitated, for use as rental accommodations for ten or more families eligible for occupancy as provided in this section; and".

Subsec. (d)(4), (5). Pub. L. 86-372, §110(c)(3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (f). Pub. L. 86-372, §110(d), authorized the property or project to include such commercial and community facilities as the Commissioner deems adequate to serve the occupants.

Subsec. (g)(1). Pub. L. 86-372, §116(b), inserted reference to subsec. (k) of section 1710 of this title.

Subsec. (g)(2). Pub. L. 86-372, §110(e), substituted "paragraph (3) or (4)" for "paragraph (3)".

1957—Subsec. (g)(1). Pub. L. 85-104 substituted "(h), and (j) of section 1710 of this title" for "and (h) of section 1710 of this title".

1956—Subsec. (a). Act Aug. 7, 1956, §307(c), inserted in first sentence ", or (3) there is being carried out an urban renewal project assisted under section 1462 of title 42" and substituted "clause (2) or (3)" for "clause (2)" each place it appears in last proviso.

Subsec. (d). Act Aug. 7, 1956, §108, substituted "\$9,000" for "\$7,600" and "\$10,000" for "\$8,600" in pars. (2) and (3); amended par. (2) to allow mortgage insurance for appraised value and to require at least \$200 initial payment, which amount could include prepaid expenses, in lieu of former provisions which allowed mortgage to be insured up to 95 percent of the appraised value and required at least a 5 percent initial payment; eliminated "95 per centum of" after "not in excess of" and inserted "or the Federal Housing Commissioner" after "agencies thereof" in par. (3) and substituted "forty" for "thirty" in par. (4).

1955—Subsec. (a). Act Aug. 11, 1955, §102(j), authorized assistance in relocating families from urban renewal areas even though such families are not required to leave the area.

Subsec. (d)(3). Act Aug. 11, 1955, §102(c), increased from \$5,000,000 to \$12,500,000 the limitation on the maximum amount of a mortgage.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 406(b)(10)–(13) of Pub. L. 100-242 applicable only with respect to mortgages insured pursuant to conditional commitment issued on or after Feb. 5, 1988, or in accordance with direct endorsement program (24 CFR 200.163), if approved underwriter of mortgagee signs appraisal report for property on or after Feb. 5, 1988, see section 406(d) of Pub. L. 100-242, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by section 423(b)(3) of Pub. L. 98–181, see section 423(c) of Pub. L. 98–181, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–288 effective Apr. 1, 1974, see section 605 of Pub. L. 93–288, formerly set out as an Effective Date note under section 5121 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–606 effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as a note under section 165 of Title 26, Internal Revenue Code.

IMPLEMENTATION OF 1982 AMENDMENT

Amendment by Pub. L. 97–253 to be implemented only if Secretary determines that program of advance payment of insurance premiums, considering the effect of said amendment, is actuarially sound, see section 201(g) of Pub. L. 97–253, set out as a note under section 1709 of this title.

DELEGATION OF PROCESSING OF MORTGAGE INSURANCE

Secretary of Housing and Urban Development to implement system of mortgage insurance for mortgages insured under this section that delegates processing functions to selected approved mortgagees, with Secretary to retain authority to approve rents, expenses, property appraisals, and mortgage amounts and to execute firm commitments, see section 328 of Pub. L. 101–625, set out as a note under section 1713 of this title.

EFFECTIVE DATE OF TEMPORARY EXTENSION OF EMERGENCY LOW INCOME HOUSING PRESERVATION ACT OF 1987 AND CORRECTION OF ANY REPEAL

Pub. L. 101–494, §1, Oct. 31, 1990, 104 Stat. 1185, provided that:

"(a) EFFECTIVE DATE OF EXTENDER.—Public Law 101–402 [amending section 1709 of this title and section 11319 of Title 42, The Public Health and Welfare, and amending provisions set out as a note below] shall be deemed to have taken effect as if such law were enacted on September 29, 1990.

"(b) STATUS OF ACT.—The Emergency Low Income Housing Preservation Act of 1987 [title II of Pub. L. 100–242] (12 U.S.C. 17151 note) shall be deemed to have been in effect on and after September 29, 1990, as if Public Law 101–402 had been enacted on September 29, 1990.

"(c) CORRECTION OF ANY REPEAL.—The provisions of the Emergency Low Income Housing Preservation Act of 1987 (12 U.S.C. 17151 note), other than section 203, are amended to read as such provisions were in effect on September 29, 1990. The amendment made by this subsection shall take effect as if this Act were enacted on September 29, 1990.

"(d) EFFECTIVE DATE.—If the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, which was approved Nov. 28, 1990] is enacted before the enactment of this Act [Oct. 31, 1990], this section shall be deemed to have taken effect immediately before the enactment of the Cranston-Gonzalez National Affordable Housing Act."

PRESERVATION OF LOW-INCOME HOUSING

The Emergency Low Income Housing Preservation Act of 1987, consisting of title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, amended the National Housing Act, the United States Housing Act of 1937, and the Housing Act of 1949, and enacted provisions formerly set out as a note under this section. The provisions set out as a note under this section consisted of subtitles A and B [§§201–203, 221–230, and 231–235] of title II of Pub. L. 100–242, 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, which set up a temporary program for the prepayment of mortgages on low income housing insured under the National Housing Act that terminated on the date of enactment of the Cranston-Gonzalez National Affordable Housing Act (Nov. 28, 1990). The Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625] amended subtitles A and B of title II of Pub. L. 100–242 generally, changing the name of title II of Pub. L.

100–242 to the "Low-Income Housing Preservation and Resident Homeownership Act of 1990". As amended, subtitles A and B of title II are classified generally to subchapter I (§4101 et seq.) of chapter 42 of this title. Prior to the general revision by Pub. L. 101–625, subtitles A and B of title II read as follows:

"SUBTITLE A—GENERAL PROVISIONS

"SEC. 201. SHORT TITLE.

"This title [amending sections 1715z–6 and 1715z–15 of this title and sections 1437f, 1472, 1485, and 1487 of Title 42, The Public Health and Welfare] may be cited as the 'Emergency Low Income Housing Preservation Act of 1987'.

"SEC. 202. FINDINGS AND PURPOSE.

"(a) FINDINGS.—The Congress finds that—

"(1) in the next 15 years, more than 330,000 low income housing units insured or assisted under sections 221(d)(3) and 236 of the National Housing Act [12 U.S.C. 1715l(d)(3), 1715z–1] could be lost as a result of the termination of low income affordability restrictions;

"(2) in the next decade, more than 465,000 low income housing units produced with assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] could be lost as a result of the expiration of the rental assistance contracts;

"(3) some 150,000 units of rural low income housing financed under section 515 of the Housing Act of 1949 [42 U.S.C. 1485] are threatened with loss as a result of the prepayment of mortgages by owners;

"(4) the loss of this privately owned and federally assisted housing, which would occur in a period of sharply rising rents on unassisted housing and extremely low production of additional low rent housing, would inflict unacceptable harm on current tenants and would precipitate a grave national crisis in the supply of low income housing that was neither anticipated nor intended when contracts for these units were entered into;

"(5) the loss of this affordable housing, to encourage the production of which the public has provided substantial benefits over past years, would irreparably damage hard-won progress toward such important and long-established national objectives as—

"(A) providing a more adequate supply of decent, safe, and sanitary housing that is affordable to low income Americans;

"(B) increasing the supply of housing affordable to low income Americans that is accessible to employment opportunities; and

"(C) expanding housing opportunities for all Americans, particularly members of disadvantaged minorities;

"(6) the provision of an adequate supply of low income housing has depended and will continue to depend upon a strong, long-term partnership between the public and private sectors that accommodates a fair return on investment;

"(7) recent reductions in Federal housing assistance and tax benefits related to low income housing have increased the incentives for private industry to withdraw from the production and management of low income housing;

"(8) efforts to retain this housing must take account of specific financial and market conditions that differ markedly from project to project;

"(9) a major review of alternative responses to this threatened loss of affordable housing is now being undertaken by numerous private sector task forces as well as State and local organizations; and

"(10) until the Congress can act on recommendations that will emerge from this review, interim measures are needed to avoid the irreplaceable loss of low income housing and irrevocable displacement of current tenants.

"(b) PURPOSE.—It is the purpose of this title—

"(1) to preserve and retain to the maximum extent practicable as housing affordable to low income families or persons those privately owned dwelling units that were produced for such purpose with Federal assistance;

"(2) to minimize the involuntary displacement of tenants currently residing in such housing; and

"(3) to continue the partnership between all levels of government and the private sector in the production and operation of housing that is affordable to low income Americans.

"SEC. 203. TERMINATION OF CERTAIN PROVISIONS.

"(a) IN GENERAL.—Effective on November 30, 1990, or the date of enactment of the Cranston-Gonzalez National Affordable Housing Act [Nov. 28, 1990], whichever is earlier—

"(1) subtitles B and D [amending sections 1715z–6 and 1715z–15 of this title and sections 1437f and

1485 of Title 42, The Public Health and Welfare and enacting provisions set out in this note] are repealed; and

"(2) each provision of law amended by subtitle B or D is amended to read as it would without such amendment.

"(b) SAVINGS PROVISION.—The repeal or amendment of any provision under subsection (a) shall have no effect on any action taken or authorized under the provision prior to such repeal or amendment.

"SUBTITLE B—PREPAYMENT OF MORTGAGES INSURED UNDER NATIONAL HOUSING ACT

"SEC. 221. GENERAL PREPAYMENT LIMITATION.

"(a) PRIOR APPROVAL OF PLAN OF ACTION.—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 of Housing and Urban Development under this subtitle. An insurance contract with respect to eligible low-income housing may be terminated pursuant to section 229 of the National Housing Act [12 U.S.C. 1715t] only in accordance with a plan of action approved by the Secretary under this subtitle.

"(b) ALTERNATIVE PREPAYMENT MORATORIUM.—In the event any court of the United States or any State invalidates the requirements established in this subtitle (1) an owner of eligible low income housing located in the geographic area subject to the jurisdiction of such court may not prepay, and a mortgagee may not accept prepayment of, a mortgage on such housing during the 2-year period following the date of such invalidation, and (2) an insurance contract with respect to eligible low-income housing located in the geographic area subject to the jurisdiction of such court may not be terminated pursuant to section 229 of the National Housing Act [12 U.S.C. 1715t] during the 2-year period following the date of such invalidation.

"SEC. 222. NOTICE OF INTENT.

"An owner of eligible low income housing seeking to initiate prepayment or other changes in the status or terms of the mortgage or regulatory agreement (including a request to terminate the insurance contract pursuant to section 229 of the National Housing Act [12 U.S.C. 1715t]) shall file with the Secretary a notice of the intent of the owner in such form and manner as the Secretary shall prescribe. The owner shall simultaneously file the notice of intent with any appropriate State or local government agency for the jurisdiction within which the housing is located.

"SEC. 223. PLAN OF ACTION.

"(a) PREPARATION AND SUBMISSION.—Upon receipt of a notice of intent, the Secretary shall provide the owner with such information as the owner needs to prepare a plan of action, which information shall include a description of the Federal incentives authorized under this title, and any relevant market area and demographic information that the Secretary has custody of and that the owner may use in preparing the plan. The owner shall submit the plan of action to the Secretary in such form and manner as the Secretary shall prescribe. The owner may simultaneously submit the plan of action to any appropriate State or local government agency for the jurisdiction within which the housing is located, which agency shall, in reviewing the plan, consult with representatives of the tenants of the housing.

"(b) CONTENTS.—The plan of action shall include—

"(1) a description of any proposed changes in the status or terms of the mortgage or regulatory agreement, which may include a request for incentives to extend the low income use of the housing;

"(2) a description of any assistance that could be provided by State or local government agencies, as determined by prior consultation between the owner and any appropriate State or local agencies;

"(3) a description of any proposed changes in the low income affordability restrictions;

"(4) a description of any change in ownership that is related to prepayment;

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

"(6) a statement of the effect of the proposed changes on the supply of housing affordable to lower 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

"(7) any other information that the Secretary determines is necessary to achieve the purposes of this title.

"(c) REVISIONS.—The 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 subtitle.

"(d) AUTHORITY TO LIMIT CONTENTS OF PLAN.—The Secretary shall limit the amount of appraisal, market area, and demographic information required under this section in the case of a plan of action requesting incentives.

"SEC. 224. INCENTIVES TO EXTEND LOW INCOME USE.

"(a) AGREEMENTS BY SECRETARY.—After receiving a plan of action from an owner of eligible low income housing, the Secretary may enter into such agreements as are necessary to satisfy the criteria for approval under section 225.

"(b) PERMISSIBLE INCENTIVES.—Agreements entered into under subsection (a) that by modifications to the existing regulatory agreement or mortgage extend the low income affordability restrictions through the term of the mortgage or, in the case of the prepayment of a mortgage, by a recorded instrument impose low income affordability restrictions (including the obligations specified in the regulatory agreement) through a period equivalent to the term of the original mortgage may include one or more of the following incentives that the Secretary, after taking into account local market conditions, determines to be necessary to achieve the purposes of this title:

"(1) An increase in the allowable distribution or other measures to increase the rate of return on investment.

"(2) Revisions to the method of calculating equity.

"(3) Increased access to residual receipts accounts or excess replacement reserves.

"(4) Provision of insurance for a second mortgage under section 241(f) of the National Housing Act [12 U.S.C. 1715z-6(f)].

"(5) An increase in the rents permitted under an existing contract under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], or (subject to the availability of amounts provided in appropriation Acts) additional assistance under such section 8 or an extension of any project-based assistance attached to the housing.

"(6) Financing of capital improvements under section 201 of the Housing and Community Development Amendments of 1978 [12 U.S.C. 1715z-1a].

"(7) Other actions, authorized in other provisions of law, to facilitate a transfer or sale of the project to a qualified nonprofit organization, limited equity tenant cooperative, public agency, or other entity acceptable to the Secretary.

"(8) Other incentives authorized in law.

"SEC. 225. CRITERIA FOR APPROVAL OF PLAN OF ACTION.

"(a) PLAN OF ACTION INVOLVING TERMINATION OF LOW INCOME AFFORDABILITY RESTRICTIONS.—The Secretary may approve a plan of action that involves termination of the low income affordability restrictions only upon a written finding that—

"(1) implementation of the plan of action will not materially increase economic hardship for current tenants (and will not in any event result in (A) a monthly rental payment by a 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 (B) 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 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)(A) the supply of vacant, comparable housing is sufficient to ensure that such prepayment will not materially affect—

"(i) the availability of decent, safe, and sanitary housing affordable to lower income and very low-income families or persons in the area that the housing could reasonably be expected to serve;

"(ii) the ability of lower income and very low-income families or persons to find affordable, decent, safe, and sanitary housing near employment opportunities; or

"(iii) the housing opportunities of minorities in the community within which the housing is located; or

"(B) the plan has been approved by the appropriate State agency and any appropriate local government agency for the jurisdiction within which the housing is located as being in accordance with a State strategy approved by the Secretary under section 226.

"(b) PLAN OF ACTION INCLUDING INCENTIVES.—The Secretary may approve a plan of action that includes incentives only upon finding that—

"(1) the package of incentives is necessary to provide a fair return on the investment of the owner;

"(2) 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; and

"(3) binding commitments have been made to ensure that—

"(A) the housing will be retained as housing affordable for very low-income families or persons, lower income families or persons, and moderate income families or persons for the remaining term of the mortgage;

"(B) throughout such period, adequate expenditures will be made for maintenance and operation of the housing;

"(C) current tenants shall not be involuntarily displaced (except for good cause);

"(D) any increase in rent contributions for current tenants shall be to a level that does not exceed 30 percent of the adjusted income of the tenant or the fair market rent for comparable housing under section 8(b) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)], whichever is lower;

"(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 8 of the United States Housing Act of 1937 shall be provided if necessary to mitigate any adverse affect on current income eligible tenants; and

"(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, lower 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 subtitle and shall make provision for such annual rent adjustments as may be made necessary by future reasonable increases in operating costs.

"(c) SECTION 8 RENTAL ASSISTANCE.—When providing rental assistance under section 8 [of the United States Housing Act of 1937, 42 U.S.C. 1437f], 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 as is 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 the binding commitments made pursuant to subsection (b) that are dependent on such rental assistance.

"(2) If action under paragraph (1) is not feasible, release of an owner from the binding commitments made pursuant to subsection (b) that are dependent on such rental assistance.

"(3) If action under paragraphs (1) and (2) would, in the determination of the Secretary, result in the default of the insured loan, approval of the revised plan of action, notwithstanding subsection (a), that involves the termination of low-income affordability restrictions.

At least 30 days prior to making a request under the preceding sentence, 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 subsection (b).

"(d) RELOCATION OF DISPLACED TENANTS.—Any plan of action shall specify actions that the Secretary and the owner shall take to ensure that any tenants, displaced as a result of a plan of action approved under subsection (a) or as a result of modifications taken pursuant to subsection (c), are relocated to affordable housing.

"SEC. 226. ALTERNATIVE STATE STRATEGY.

"(a) CRITERIA FOR APPROVAL.—The Secretary may approve a State strategy for purposes of section 225(a) only upon finding that it is a practicable statewide strategy that ensures at a minimum that—

"(1) current tenants will not be involuntarily displaced (except for good cause);

"(2) housing opportunities for minorities will not be adversely affected in the communities within

which the housing is located;

"(3) any increase in rent for current tenants shall be to a level that does not exceed 30 percent of the adjusted income of the tenants or the fair market rent for comparable housing under section 8(b) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)], whichever is lower, except that any increase not necessitated by increased operating costs shall be phased in equally over not less than 3 years if such increase exceeds 10 percent;

"(4) housing approved under the State strategy will remain affordable to very low-income, lower income or moderate income families and persons for not less than the remaining term of the original mortgage, if the housing is to be made available for rental, or for not less than 40 years, if the housing is to be made available for homeownership;

"(5)(A) not less than 80 of all units in eligible low income housing approved under the State strategy shall be retained as affordable to families or persons meeting the income eligibility standards for initial occupancy that applies to the housing on January 1, 1987; and

"(B) not less than 60 percent of the units in any one project shall remain available and affordable to such families or persons, within which not less than 20 percent of the units shall remain available and affordable to very low income families or persons as determined by the Secretary with adjustments for smaller and larger families;

"(6) expenditures for rehabilitation, maintenance and operation shall be at a level necessary to maintain the housing as decent, safe and sanitary for the period specified in paragraph (4);

"(7) not less than 25 percent of new assistance required to maintain low income affordability in accordance with this section shall be provided through State and local actions, such as tax exempt financing, low-income tax credits, State or local tax concessions, and other incentives provided by the State or local governments; and

"(8) for each unit of eligible low income housing approved under the State strategy that is not retained as affordable to families or persons meeting the income eligibility standards for initial occupancy on January 1, 1987, the State will provide with State funds 1 additional unit of comparable housing in the same market area that is available and affordable to such families or persons, and such units or funds shall be made available before the Secretary approves the State strategy.

"(b) ADDITIONAL REQUIREMENTS.—

"(1) The Secretary may not approve a State strategy until the State has entered into all of the agreements necessary to carry out the strategy.

"(2) Each State strategy shall include any other provision that the Secretary determines to be necessary to implement an approved State strategy.

"(c) IMPLEMENTATION AGREEMENTS.—The Secretary may enter into such agreements as are necessary to implement an approved State strategy, which agreements may include incentives that are authorized in other provisions of this subtitle.

"SEC. 227. 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 could 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.

"SEC. 228. MODIFICATION OF EXISTING REGULATORY AGREEMENTS.

"(a) IN GENERAL.—If a plan of action cannot be approved within 300 days after a plan of action is submitted, the Secretary may, upon the request of the owner, modify existing regulatory agreements to—

"(1) prevent involuntary displacement of current tenants (except for good cause);

"(2) ensure that adequate expenditures will be made for maintenance and operation of the housing;

"(3) extend any expiring project-based assistance on the housing for the term of the agreement;

"(4) permit an increase in the allowable distribution that could be accommodated by a rise in rents on occupied units to rise to a level no higher than 30 percent of the adjusted income of the current tenants, as

determined by the Secretary, except that rents shall not exceed the fair market rent for comparable housing under section 8(b) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)] and any resulting increase in rents for current tenants shall be phased in equally over a period of no less than 3 years unless such increase is less than 10 percent; and

"(5) ensure that units becoming vacant during the term of the agreement are made available in accordance with section 225(b)(3)(F).

"(b) EXPIRATION.—Agreements entered into under this section shall expire upon the expiration of the 4-year period beginning on the date of the enactment of this Act [Feb. 5, 1988]. Upon the expiration of the agreements, the housing covered by the agreements shall be subject to any law then affecting low income affordability restrictions.

"SEC. 229. 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 and shall give consideration to the views of any such agency when making determinations under section 225. 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 title.

"SEC. 230. RIGHT OF CONVERSION TO ALTERNATIVE PREPAYMENT SYSTEM.

"Any agreement to extend low income affordability restrictions under section 225(b) shall, for 4 years from the date of the enactment of this Act [Feb. 5, 1988], provide the owner the right to convert to any system of incentives and restrictions provided in law during such period, with such adjustments as the Secretary determines are appropriate to compensate for the value of any benefits the owner had received under this title.

"SEC. 232. REPORT TO CONGRESS.

"Not later than 1 year after the date of the enactment of this Act [Feb. 5, 1988], the Secretary shall submit to the Congress a report setting forth the activities carried out under this subtitle. The report shall include a description of the plans of action approved under subsections (a) and (b) of section 225 and an analysis of the extent to which the plans retain housing affordable for very low-income families or persons, lower income families or persons, and moderate income families or persons. The report shall also include a detailed description of (1) the actions taken by the Secretary to ensure meaningful participation by affected tenants; and (2) the incentives developed by the Secretary under section 224 to ensure compliance with this subtitle.

"SEC. 233. DEFINITIONS.

"For purposes of this subtitle:

"(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 221(d)(3) of the National Housing Act [12 U.S.C. 1715l(d)(3)] and assisted under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s] or section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

"(ii) insured or held by the Secretary and bears interest at a rate determined under the proviso of section 221(d)(5) of the National Housing Act;

"(iii) insured, assisted, or held by the Secretary or a State or State agency under section 236 of the National Housing Act [12 U.S.C. 1715z-1]; 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 the date of the enactment of this Act [Feb. 5, 1988], is or will within 1 year become eligible for prepayment without prior approval of the Secretary.

"(2) 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.

"(3) The terms 'lower 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 lower income families and very low-income families under section 3(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(2)].

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

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

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

"(7) The term 'termination of low income affordability restrictions' means any elimination or relaxation of low income affordability restrictions (other than those permitted under an approved plan of action under section 225(b)).

"SEC. 234. REGULATIONS.

"The Secretary shall issue final regulations to carry out this subtitle not later than 60 days after the date of the enactment of this Act [Feb. 5, 1988]. The Secretary shall provide for the regulations to take effect not later than 45 days after the date on which the regulations are issued.

"SEC. 235. EFFECTIVE DATE.

"The requirements of this subtitle shall apply to any project that is eligible low income housing on or after November 1, 1987."

[Pub. L. 101-494, §2(b), Oct. 31, 1990, 104 Stat. 1185, provided that: "If the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101-625, which was approved Nov. 28, 1990] is enacted on or after October 31, 1990, this section [amending section 203(a) of Pub. L. 100-242 set out above] shall be deemed to have taken effect on October 30, 1990."

NEHEMIAH HOUSING OPPORTUNITY GRANTS

Pub. L. 100-242, title VI (§§601-613), Feb. 5, 1988, 101 Stat. 1951, as amended by Pub. L. 102-139, title II, Oct. 28, 1991, 105 Stat. 759; Pub. L. 102-550, title I, §183, Oct. 28, 1992, 106 Stat. 3738, established the Nehemiah Housing Opportunity Fund to provide assistance in the form of grants to nonprofit organizations for the construction, rehabilitation, and financing of housing for families not otherwise able to afford homeownership. Pub. L. 101-625, title II, §289(a)(3), (b), Nov. 28, 1990, 104 Stat. 4128, which is classified to section 12839(a)(3), (b) of Title 42, The Public Health and Welfare, provided that, except with respect to projects and programs for which binding commitments have been entered into prior to Oct. 1, 1991, no new grants or loans be made after Oct. 1, 1991, under title VI of Pub. L. 100-242, and effective Oct. 1, 1991, title VI of Pub. L. 100-242 is repealed.

**LIMITATION ON NUMBER OF DWELLING UNITS WITH MORTGAGES NOT PROVIDING
FOR COMPLETE AMORTIZATION**

For limitation on the number of dwelling units with mortgages not providing for complete amortization pursuant to authority granted by amendment to subsec. (d)(6) by section 446 of Pub. L. 98-181, see section 446(f) of Pub. L. 98-181, set out as a note under section 1713 of this title.

**AMENDMENTS TO PROVISIONS FOR FAMILY UNIT LIMITS ON RENTAL HOUSING;
EQUITABLE APPLICATION OF SUCH AMENDMENTS OR PRE-AMENDMENT
PROVISIONS TO PROJECTS SUBMITTED FOR CONSIDERATION PRIOR TO
SEPTEMBER 2, 1964**

Equitable application of amendment to subsec. (d)(3) (ii), (4)(ii) of this section by section 107(d)(1), (2) of Pub. L. 88-560 or pre-amendment provisions to projects submitted for consideration prior to Sept. 2, 1964, see section 107(g) of Pub. L. 88-560, set out as a note under section 1713 of this title.

**TAXATION OF INTEREST PAID ON OBLIGATIONS SECURED BY INSURED MORTGAGE AND
ISSUED BY PUBLIC AGENCY**

Pub. L. 93-383, title III, §319(b), Aug. 22, 1974, 88 Stat. 686, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "With respect to any obligation secured by a mortgage which is insured under section 221(d)(3) of the National Housing Acts [subsec. (d)(3) of this section] and issued by a public agency as mortgagor in connection with the financing of a project assisted under section 8 of the United States Housing Act of 1937 [section 1437f of title 42], the interest paid on such obligation shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1986 [chapter 1 of title 26]."

¹ *So in original. Probably should be preceded by a dollar sign.*

² *See References in Text note below.*

Section, act June 27, 1934, ch. 847, title II, §222, as added Aug. 2, 1954, ch. 649, title I, §124, 68 Stat. 603; amended Pub. L. 85-104, title I, §§103, 112, July 12, 1957, 71 Stat. 296, 297; Pub. L. 86-372, title I, §§111, 116(b), Sept. 23, 1959, 73 Stat. 661, 664; Pub. L. 88-560, title I, §115, Sept. 2, 1964, 78 Stat. 779; Pub. L. 89-117, title II, §212, title XI, §1108(j), Aug. 10, 1965, 79 Stat. 470, 505; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 90-448, title III, §301, Aug. 1, 1968, 82 Stat. 505; Pub. L. 91-152, title I, §§102(c), 105, 113(f), Dec. 24, 1969, 83 Stat. 380, 381, 384; Pub. L. 91-621, §7(b), Dec. 31, 1970, 84 Stat. 1865; Pub. L. 93-383, title III, §§302(d), 310(c), Aug. 22, 1974, 88 Stat. 676, 682; Pub. L. 95-128, title III, §§303(d), 304(c), Oct. 12, 1977, 91 Stat. 1132, 1133; Pub. L. 96-153, title III, §312(c), Dec. 21, 1979, 93 Stat. 1116; Pub. L. 96-399, title III, §336(c), Oct. 8, 1980, 94 Stat. 1654; Pub. L. 100-242, title IV, §406(b)(14), Feb. 5, 1988, 101 Stat. 1901; Pub. L. 109-241, title IX, §902(f), July 11, 2006, 120 Stat. 567, related to mortgage insurance for servicemen.

§1715n. Miscellaneous mortgage insurance

(a) Projects covered

Notwithstanding any of the provisions of this chapter and without regard to limitations upon eligibility contained in any section or subchapter of this chapter, other than the limitation in section 1709(g) of this title, the Secretary is authorized, upon application by the mortgagee, to insure or make commitments to insure under any section or subchapter of this chapter any mortgage—

(1) executed in connection with the sale by the Government, or any agency or official thereof, of any housing acquired or constructed under Public Law 849, Seventy-sixth Congress, as amended; Public Law 781, Seventy-sixth Congress, as amended; or Public Laws 9, 73, or 353, Seventy-seventh Congress, as amended (including any property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof); or

(2) executed in connection with the sale by the Secretary of Housing and Urban Development, or by any public housing agency with the approval of the Secretary, of any housing (including any property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof) owned or financially assisted pursuant to the provisions of Public Law 671, Seventy-sixth Congress; or

(3) executed in connection with the sale by the Government, or any agency or official thereof, of any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin, developed under the Emergency Relief Appropriation Act of 1935, or of any of the village properties or employee's housing under the jurisdiction of Tennessee Valley Authority, or of any housing under the jurisdiction of the Department of the Interior located within the town area of Coulee Dam, Washington, acquired by the United States for the construction, operation, and maintenance of Grand Coulee Dam and its appurtenant works: *Provided*, That for the purpose of the application of this subchapter to sales by the Secretary of the Interior pursuant to subsections 3(b)(1) and 3(b)(2) of the Coulee Dam Community Act of 1957, the selling price of the property involved shall be deemed to be the appraised value, of any permanent housing under the jurisdiction of the Department of the Interior constructed under the Boulder Canyon Project Act of December 21, 1928, as amended and supplemented [43 U.S.C. 617 et seq.] located within the Boulder City municipal area: *Provided*, That for purposes of the application of this subchapter to sales by the Secretary of the Interior pursuant to subsections 3(b)(1) and 3(b)(2) of the Boulder City Act of 1958, the selling price of the property involved shall be deemed to be the appraised value; or

(4) executed in connection with the sale by the Government, or any agency or official thereof, of any housing (including any property acquired, held, or constructed in connection therewith or to serve the inhabitants thereof) pursuant to the Atomic Energy Community Act of 1955, as amended [42 U.S.C. 2301 et seq.]: *Provided*, That such insurance shall be issued without regard to any preferences or priorities except those prescribed by this chapter or the Atomic Energy Community Act of 1955, as amended; or

(5) executed in connection with the sale by a State or municipality, or an agency, instrumentality, or political subdivision of either, of a project consisting of any permanent housing

(including any property acquired, held, or constructed in connection therewith or to serve the inhabitants thereof), constructed by or on behalf of such State, municipality, agency, instrumentality, or political subdivision, for the occupancy of veterans of World War II, or Korean veterans, their families, and others; or

(6) executed in connection with the first resale, within two years from the date of its acquisition from the Government, of any portion of a project or property of the character described in paragraphs (1), (2), (3), and (4) above; or

(7) given to refinance an existing mortgage insured under this chapter, or an existing mortgage held by the Secretary that is subject to a mortgage restructuring and rental assistance sufficiency plan pursuant to the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), provided that—

(A) the principal amount of any such refinancing mortgage shall not exceed the original principal amount or the unexpired term of such existing mortgage and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee, except that (i) the principal amount of any such refinancing mortgage may equal the outstanding balance of an existing mortgage insured pursuant to section 1715z-10 ¹ of this title, if the amount of the monthly payment due under the refinancing mortgage is less than that due under the existing mortgage for the month in which the refinancing mortgage is executed; (ii) a mortgagee may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage; (iii) in any case involving the refinancing of a loan in which the Secretary determines that the insurance of a mortgage for an additional term will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, such refinancing mortgage may have a term not more than twelve years in excess of the unexpired term of such existing insured mortgage; and (iv) any multifamily mortgage that is refinanced under this paragraph shall be documented through amendments to the existing insurance contract and shall not be structured through the provisions of a new insurance contract; and

(B) a mortgage of the character described in paragraphs (1) through (6) of this subsection shall have a maturity and a principal obligation not in excess of the maximums prescribed under the applicable section or subchapter of this chapter, except that in no case may the principal obligation of a mortgage referred to in paragraph (5) of this subsection exceed 90 per centum of the appraised value of the mortgaged property, and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee;

(C) a mortgage that is subject to a mortgage restructuring and rental assistance sufficiency plan pursuant to the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) and is refinanced under this paragraph may have a term of not more than 30 years; or

(8) executed in connection with the sale by the Government of any housing acquired pursuant to section 3374 of title 42.

(b) Insurance of mortgages given to refinance mortgages covering existing property or projects in urban renewal areas

Notwithstanding any of the provisions of this subchapter and without regard to limitations upon eligibility contained in section 1715l of this title, the Secretary may in his discretion insure under section 1715l(d)(3) of this title any mortgage executed by a mortgagor of the character described therein where such mortgage is given to refinance a mortgage covering an existing property or project (other than a one- to four-family structure) located in an urban renewal area, if the Secretary finds that such insurance will facilitate the occupancy of dwelling units in the property or project by families of low or moderate income or families displaced from an urban renewal area or displaced as a result of governmental action.

(c) Insurance of certain assigned mortgages

The Secretary shall also have authority to insure under this chapter any mortgage assigned to the

Secretary in connection with payment under a contract of mortgage insurance or executed in connection with the sale by the Secretary, including a sale through another entity acting under authority of the fourth sentence of section 1710(g) of this title, of any property acquired under any section or subchapter of this chapter without regard to any limitations or requirements contained in this chapter upon the eligibility of the mortgage, upon the payment of insurance premiums, or upon the terms and conditions of insurance settlement and the benefits of the insurance to be included in such settlement.

(d) Insurance of loans made to cover operating losses of certain projects having existing mortgages insured by Secretary

(1) Notwithstanding any other provision of this chapter, the Secretary is authorized to insure loans made to cover the operating losses of certain projects that have existing project mortgages insured by the Secretary. Insurance under this subsection shall be in the Secretary's discretion and upon such terms and conditions as the Secretary may prescribe, and shall be provided in accordance with the provisions of this subsection. For purposes of this subsection, the term "operating loss" means the amount by which the sum of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project covered by the mortgage, exceeds the income of the project.

(2) To be eligible for insurance pursuant to this paragraph—

(A) the existing project mortgage (i) shall have been insured by the Secretary at any time before or after February 5, 1988; and (ii) shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling;

(B) the operating loss shall have occurred during the first 24 months after the date of completion of the project, as determined by the Secretary; and

(C) the loan shall be in an amount not exceeding the operating loss.

(3) To be eligible for insurance pursuant to this paragraph—

(A) the existing project mortgage (i) shall have been insured by the Secretary at any time before or after February 5, 1988; (ii) shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and (iii) shall not cover a subsidized project, as defined by the Secretary;

(B) the loan shall be in an amount not exceeding 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Secretary, except that in no event may the amount of the loan exceed the operating loss during such period;

(C) the loan shall be made within 10 years after the end of the period of consecutive months referred to in the preceding subparagraph; and

(D) the project shall meet all applicable underwriting and other requirements of the Secretary at the time the loan is to be made.

(4) Any loan insured pursuant to this subsection shall (A) bear interest at such rate as may be agreed upon by the mortgagor and mortgagee; (B) be secured in such manner as the Secretary shall require; (C) be limited to a term not exceeding the unexpired term of the original mortgage; and (D) be insured under the same section as the original mortgage. The Secretary may provide insurance pursuant to paragraph (2) or (3), or pursuant to both such paragraphs, in connection with an existing project mortgage, except that the Secretary may not provide insurance pursuant to both such paragraphs in connection with the same period of months referred to in paragraphs (2)(B) and (3)(B). The Secretary is authorized to collect a premium charge for insurance of loans pursuant to this subsection in an amount computed at the same premium rate as is applicable to the original mortgage. This premium shall be payable in cash or in debentures of the insurance fund under which the loan is insured at par plus accrued interest. In the event of a failure of the borrower to make any payment due under such loan or under the original mortgage, both the loan and original mortgage shall be considered in default, and if such default continues for a period of thirty days, the lender

shall be entitled to insurance benefits, computed in the same manner as for the original mortgage, except that in determining the interest rate under section 1715o of this title for the debentures representing the portion of the claim applicable to the loan, the date of the commitment to insure the loan and the insurance date of the loan shall be taken into consideration rather than the commitment or insurance date for the original mortgage.

(5) A loan involving a project covered by a mortgage insured under section 1715e of this title that is the obligation of the Cooperative Management Housing Insurance Fund shall be the obligation of such fund, and loans involving projects covered by a mortgage insured under section 1715z-1 of this title or under any section of this subchapter pursuant to subsection (e) of this section shall be the obligation of the Special Risk Insurance Fund.

(6) In determining the amount of an operating loss loan to be insured pursuant to this subsection, the Secretary shall not reduce such amount solely to reflect any amounts placed in escrow (at the time the existing project mortgage was insured) for initial operating deficits. If an operating loss loan was insured by the Secretary pursuant to this subsection before October 28, 1992, and was reduced solely to reflect the amount placed in escrow for initial operating deficits, the Secretary shall insure, to the extent of the availability of insurance authority provided in appropriation Acts, an increase in the existing loan or a separate loan, in an amount equal to the lesser of (A) the maximum amount permitted under this subsection and the applicable underwriting requirements established by the Secretary and in effect at the time the loan is to be made, or (B) the amount of the escrow for initial operating deficits.

(e) Insurance of mortgages executed in connection with repair, rehabilitation, construction, or purchase of property in older, declining urban areas

Notwithstanding any of the provisions of this chapter except section 1715c of this title, and without regard to limitations upon eligibility contained in any section of this subchapter or subchapter IX-B, other than the limitation in section 1709(g) of this title, the Secretary is authorized, upon application by the mortgagee, to insure under any section of this subchapter or subchapter IX-B a mortgage executed in connection with the repair, rehabilitation, construction, or purchase of property located in an older, declining urban area in which the conditions are such that one or more of the eligibility requirements applicable to the section or subchapter under which insurance is sought could not be met, if the Secretary finds that (1) the area is reasonably viable, giving consideration to the need for providing adequate housing or group practice facilities for families of low and moderate income in such area, and (2) the property is an acceptable risk in view of such consideration. The insurance of a mortgage pursuant to this subsection shall be the obligation of the Special Risk Insurance Fund.

(f) Insurance of mortgages executed in connection with purchase or refinancing of existing multifamily housing project; refinancing of existing debt of existing hospital, or purchase or refinancing of rental rehabilitated property; terms and conditions, etc.

(1) Notwithstanding any of the provisions of this chapter, the Secretary is authorized, in his discretion, to insure under any section of this subchapter a mortgage executed in connection with the purchase of ² refinancing of an existing multifamily housing project or the purchase or refinancing of existing debt of an existing hospital (or existing nursing home, existing assisted living facility, existing intermediate care facility, existing board and care home, or any combination thereof).

(2) In the case of the purchase or refinancing under this subsection of a multifamily housing project located in an older, declining urban area, the Secretary shall make available an amount not to exceed \$30,000,000 of available purchase authority pursuant to section 1720 ¹ of this title to reduce interest rates on low- and moderate-income rental housing in projects having 100 units or less which otherwise could not support refinancing and moderate rehabilitation without causing excessive rent burdens on current tenants due to rent increases. The Secretary shall prescribe such terms and conditions as he deems necessary to assure that—

(A) the refinancing is used to lower the monthly debt service only to the extent necessary to assure the continued economic viability of the project, taking into account any rent reductions to be implemented by the mortgagor; and

(B) during the mortgage term no rental increases shall be made except those which are necessary to offset actual and reasonable operating expense increases or other necessary expense increases and maintain reasonable profit levels approved by the Secretary.

(3) For all insurance authorized by this subsection and provided pursuant to a commitment entered into after October 8, 1980, the Secretary may not accept an offer to prepay or request refinancing of a mortgage secured by rental housing unless the Secretary takes appropriate action that will obligate the borrower (and successors in interest thereof) to utilize the property as a rental property for a period of five years from the date on which the insurance was provided (twenty years in the case of any such mortgage purchased under section 1720 ¹ of this title) unless the Secretary finds that—

(A) the conversion of the property to a cooperative, or condominium form of ownership is sponsored by a bona fide tenants' organization representing a majority of the households in the project;

(B) continuance of the property as rental housing is clearly unnecessary to assure adequate rental housing opportunities for low- and moderate-income people in the community; or

(C) continuance of the property as rental housing would have an undesirable and deleterious effect on the surrounding neighborhood.

(4) In the case of refinancing of an existing hospital (or existing nursing home, existing assisted living facility, existing intermediate care facility, existing board and care home, or any combination thereof) the Secretary shall prescribe such terms and conditions as the Secretary deems necessary to assure that—

(A) the refinancing is employed to lower the monthly debt service costs (taking into account any fees or charges connected with such refinancing) of such existing hospital (or existing nursing home, existing assisted living facility, existing intermediate care facility, existing board and care home, or any combination thereof);

(B) the proceeds of any refinancing will be employed only to retire the existing indebtedness and pay the necessary cost of refinancing on such existing hospital (or existing nursing home, existing assisted living facility, existing intermediate care facility, existing board and care home, or any combination thereof);

(C) such existing hospital (or existing nursing home, existing assisted living facility, existing intermediate care facility, existing board and care home, or any combination thereof) is economically viable; and

(D) the applicable requirements for certificates, studies, and statements of section 1715w of this title (for the existing nursing home, existing assisted living facility, intermediate care facility, board and care home, or any combination thereof, proposed to be refinanced) or of section 1715z-7 of this title (for the existing hospital proposed to be refinanced) have been met.

(5) In the case of any purchase or refinancing under this subsection involving property to be rehabilitated or developed under section 1437o ¹ of title 42, the Secretary may—

(A) include rehabilitation or development costs of not to exceed \$20,000 per unit, except that the Secretary may increase such amount by not to exceed 25 per centum for specific properties where cost levels so require;

(B) permit subordinated liens securing up to the full amount of mortgage financing provided by State or local governments or agencies thereof; and

(C) pay such benefits in cash unless the mortgagee submits a written request for debenture payment.

(g) Insurance of mortgages covering multifamily housing projects including units not self-contained

Notwithstanding any other provisions of this chapter, the Secretary may, in his discretion, insure a mortgage covering a multifamily housing project including units which are not self-contained.

(June 27, 1934, ch. 847, title II, §223, as added Aug. 2, 1954, ch. 649, title I, §125, 68 Stat. 605;

amended Aug. 4, 1955, ch. 543, ch. 11, §201, 69 Stat. 484; Aug. 11, 1955, ch. 783, title I, §102(k), 69 Stat. 636; Pub. L. 85-104, title I, §114, July 12, 1957, 71 Stat. 298; Pub. L. 85-240, §4, Aug. 30, 1957, 71 Stat. 528; Pub. L. 85-900, §12, Sept. 2, 1958, 72 Stat. 1735; Pub. L. 87-70, title I, §101(d), title VI, §612(h), June 30, 1961, 75 Stat. 154, 182; Pub. L. 88-560, title I, §116, Sept. 2, 1964, 78 Stat. 779; Pub. L. 89-117, title I, §108(e), title II, §213, Aug. 10, 1965, 79 Stat. 461, 471; Pub. L. 89-754, title X, §1013(h), Nov. 3, 1966, 80 Stat. 1292; Pub. L. 90-19, §1(a)(3), (h), May 25, 1967, 81 Stat. 17, 18; Pub. L. 90-448, title I, §103(a), title III, §312, Aug. 1, 1968, 82 Stat. 486, 510; Pub. L. 91-152, title IV, §418(c), (d), Dec. 24, 1969, 83 Stat. 402; Pub. L. 93-383, title III, §311(a), Aug. 22, 1974, 88 Stat. 683; Pub. L. 95-557, title III, §326, Oct. 31, 1978, 92 Stat. 2104; Pub. L. 96-399, title III, §327, Oct. 8, 1980, 94 Stat. 1650; Pub. L. 97-35, title III, §339B(b), Aug. 13, 1981, 95 Stat. 417; Pub. L. 98-181, title I [title III, §303(b)], Nov. 30, 1983, 97 Stat. 1207; Pub. L. 98-479, title II, §204(a)(7), Oct. 17, 1984, 98 Stat. 2232; Pub. L. 100-242, title IV, §§406(b)(15), (16), 408(a), 409(a), (b), 419(b), 427, 429(d), Feb. 5, 1988, 101 Stat. 1901, 1903, 1913, 1916, 1918; Pub. L. 102-550, title V, §§510, 511(f), Oct. 28, 1992, 106 Stat. 3784, 3786; Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316; Pub. L. 105-276, title VI, §601(e), Oct. 21, 1998, 112 Stat. 2674; Pub. L. 107-116, title VI, §615, Jan. 10, 2002, 115 Stat. 2225; Pub. L. 109-115, div. A, title III, §323, Nov. 30, 2005, 119 Stat. 2466.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

Public Law 849, Seventy-sixth Congress, as amended, referred to in subsec. (a)(1), is act Oct. 14, 1940, ch. 862, 54 Stat. 1125, known as the "Lanham Public War Housing Act", which is classified generally to subchapters II to VII (§§ 1521 et seq., 1531 et seq., 1541 et seq., 1561 et seq., 1571 et seq., and 1581 et seq.) of chapter 9 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 42 and Tables.

Public Laws 9, 73, and 353, Seventy-seventh Congress, referred to in subsec. (a)(1), refer to the following acts, respectively: Public Law 9, Urgent Deficiency Appropriation Act, 1941, act Mar. 1, 1941, ch. 9, 55 Stat. 14; Public Law 73, Additional Urgent Deficiency Appropriation Act, 1941, act May 24, 1941, ch. 132, 55 Stat. 197; and Public Law 353, Third Supplemental National Defense Appropriation Act, 1942, act Dec. 17, 1941, ch. 591, 55 Stat. 810. These three acts appropriated a total of \$320,000,000 to the President for the purpose of providing housing necessary because of national defense activities and conditions arising out of World War II. These provisions were not classified to the code, although all three acts are cited in a "Prior Additional Appropriations" note under section 1523 of Title 42.

Public Law 671, Seventy-sixth Congress, referred to in subsec. (a)(2), is act June 28, 1940, ch. 440, 54 Stat. 676. Provisions of the Act relating to housing are contained in title II, which is classified generally to subchapter I (§1501 et seq.) of chapter 9 of Title 42. For complete classification of this Act to the Code, see Tables.

The Emergency Relief Appropriation Act of 1935, referred to in subsec. (a)(3), is Joint Res. Apr. 8, 1935, ch. 48, 49 Stat. 115. It was temporary legislation, and was formerly set out in a note in former chapter 16 of Title 15, Commerce and Trade. See notes under former sections 721 to 728 of that title.

Subsections 3(b)(1) and 3(b)(2) of the Coulee Dam Community Act of 1957 [Pub. L. 85-240, Aug. 30, 1957, 71 Stat. 524], referred to in subsec. (a)(3), are set out in a note under section 835c of Title 16, Conservation.

The Boulder Canyon Project Act of December 21, 1928, as amended and supplemented, referred to in subsec. (a)(3), is act Dec. 21, 1928, ch. 42, 45 Stat. 1057, which is classified generally to subchapter I (§617 et seq.) of chapter 12A of Title 43, Public Lands. For complete classification of this Act to the Code, see section 617t of Title 43 and Tables.

Subsections 3(b)(1) and 3(b)(2) of the Boulder City Act of 1958 [Pub. L. 85-900, Sept. 2, 1958, 72 Stat. 1726], referred to in subsec. (a)(3), are not classified to the Code. Subsections (a) to (d) of section 3 read as follows:

"(a) The Secretary is authorized to sell such dwelling houses, duplex houses or units thereof, and garages, with furniture, fixtures, and appurtenances, as are owned by the United States within the Boulder City

municipal area and are not needed in connection with the administration, operation, and maintenance of Federal activities located within or near the Boulder City municipal area.

"(b) Except in the case of property determined to be substandard under subsection (c) of this section, the following system of priority shall be established with respect to property authorized to be sold under subsection (a) of this section:

"(1) Persons employed by the Federal Government within or near the Boulder City municipal area (and surviving spouses of such persons who have not remarried) who are tenants in Federal housing in Boulder City shall be offered the opportunity to purchase the property in which they are tenants at the appraised value as established under subsection (d) of this section. This right of priority shall expire unless notice of intent to purchase has been received by the Secretary before the expiration of sixty days after the date on which the property has been offered for sale, and shall be deemed abandoned unless before the expiration of sixty days after the Secretary's tender of the instrument of transfer the prospective purchaser concludes the sale;

"(2) Persons employed by the Federal Government within or near the Boulder City municipal area may apply to purchase housing not purchased under subsection (b)(1) of this section. Applicants to purchase shall be placed in order of opportunity to choose pursuant to a public drawing, but spouses of such applicants shall not be entitled to apply. Sales shall be made at the appraised value as established under subsection (d) of this section and selections and purchases by successful applicants shall be concluded within limits of time to be established by the Secretary. A purchase under subsection (b)(1) or (b)(2) of this section shall render the purchaser and any spouse of such purchaser ineligible thereafter to purchase under subsection (b)(1) or (b)(2); and

"(3) Property subject to disposal under this section and not sold pursuant to subsections (b)(1) and (b)(2) of this section shall be opened to bids from the general public, and shall be sold to the highest responsible bidder.

"In the event that incorporation of the municipality shall be effected within four years after the date of this Act, persons purchasing housing under this subsection or their successors, assigns, or legal representatives, shall be entitled to a reduction in the purchase price (or rebate as appropriate) of 10 per centum: *Provided*, That no person who has purchased a house under the Act of May 25, 1948 (62 Stat. 268), shall be eligible for such reduction.

"(c) Where the Secretary determines that property authorized to be sold under subsection (a) of this section is substandard, he shall sell such property only for off-site use, such property to be opened to bids from the general public for sale to the highest responsible bidder.

"(d) The appraised value of all property to be sold under subsections (b)(1) and (b)(2) of this section, and of all lots leased or to be leased by the United States for the purpose of maintaining, locating, or erecting permanent structures thereon, shall be determined by an appraiser or appraisers to be designated by the Administrator of Housing and Home Finance Agency at the request of the Secretary. Said appraisals shall be made promptly after the date of this Act, or immediately prior to the granting of any lease of lands not previously appraised, as the case may be. The representatives of the Boulder City community, as determined by the Secretary, shall be granted an opportunity to offer advice in connection with [sic] such appraisals."

The Atomic Energy Community Act of 1955, as amended, referred to in subsec. (a)(4), is act Aug. 4, 1955, ch. 543, 69 Stat. 472, as amended, which is classified principally to chapter 24 (§2301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 42 and Tables.

The Multifamily Assisted Housing Reform and Affordability Act of 1997, referred to in subsec. (a)(7), is title V of Pub. L. 105–65, Oct. 27, 1997, 111 Stat. 1384. For complete classification of this Act to the Code, see Short Title of 1997 Amendment note set out under section 1701 of this title and Tables.

Section 1715z–10 of this title, referred to in subsec. (a)(7)(A), was repealed by Pub. L. 110–289, div. B, title I, §2120(a)(7), July 30, 2008, 122 Stat. 2835.

Section 1720 of this title, referred to in subsec. (f)(2), (3), was repealed by Pub. L. 98–181, title I [title IV, §483(a)], Nov. 30, 1983, 97 Stat. 1240.

Section 1437o of title 42, referred to in subsec. (f)(5), was repealed by Pub. L. 101–625, title II, §289(b), Nov. 28, 1990, 104 Stat. 4128.

AMENDMENTS

2005—Subsec. (f)(1). Pub. L. 109–115 inserted "purchase or" before "refinancing of existing debt".

2002—Subsec. (a)(7). Pub. L. 107–116, §615(1), substituted "under this chapter, or an existing mortgage held by the Secretary that is subject to a mortgage restructuring and rental assistance sufficiency plan pursuant to the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), provided that—" for "under this chapter: *Provided*, That".

Subsec. (a)(7)(A). Pub. L. 107–116, §615(1)–(5), designated as subpar. (A) existing provisions beginning

"the principal amount of any such refinancing mortgage shall not exceed" and ending "a new insurance contract", redesignated former cls. (A) to (D) as (i) to (iv), respectively, of subpar. (A), and inserted "; and" at end after "a new insurance contract".

Subsec. (a)(7)(B). Pub. L. 107-116, §615(6), (7), substituted "(B) a mortgage" for ": *Provided further*, That a mortgage" and struck out "or" after "and the mortgagee;". Former cl. (B) redesignated cl. (ii) of subpar. (A).

Subsec. (a)(7)(C). Pub. L. 107-116, §615(8), added subpar. (C). Former cl. (C) redesignated cl. (iii) of subpar. (A).

Subsec. (a)(7)(D). Pub. L. 107-116, §615(5), redesignated cl. (D) as cl. (iv) of subpar. (A).

1998—Subsec. (c). Pub. L. 105-276 substituted "the Secretary" for "him" in two places and inserted ", including a sale through another entity acting under authority of the fourth sentence of section 1710(g) of this title," before "of any property acquired".

1994—Subsec. (a)(7)(D). Pub. L. 103-327 added cl. (D).

1992—Subsec. (d)(6). Pub. L. 102-550, §510, added par. (6).

Subsec. (f)(1), (4). Pub. L. 102-550, §511(f), inserted "existing assisted living facility," after "existing nursing home," wherever appearing.

1988—Subsec. (a). Pub. L. 100-242, §406(b)(15), inserted "other than the limitation in section 1709(g) of this title," after first reference to "this chapter,".

Subsec. (a)(7). Pub. L. 100-242, §429(d)(1), substituted in first proviso "such rate as may be agreed upon by the mortgagor and the mortgagee" for "a rate not in excess of the maximum rate prescribed under the applicable section or subchapter of this chapter", substituted in second proviso "maturity and a principal obligation" for "maturity, a principal obligation, and an interest rate", and inserted before semicolon at end ", and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee".

Pub. L. 100-242, §419(b), in first proviso, inserted cl. (B) and designated former cl. (B) as (C).

Pub. L. 100-242, §408(a), in first proviso, inserted cl. (B) designation and added cl. (A).

Subsec. (d). Pub. L. 100-242, §427, added pars. (1) to (3), inserted par. (4) designation and "Any loan insured pursuant to this subsection shall (A) bear interest at such rate as may be agreed upon by the mortgagor and mortgagee; (B) be secured in such manner as the Secretary shall require; (C) be limited to a term not exceeding the unexpired term of the original mortgage; and (D) be insured under the same section as the original mortgage. The Secretary may provide insurance pursuant to paragraph (2) or (3), or pursuant to both such paragraphs, in connection with an existing project mortgage, except that the Secretary may not provide insurance pursuant to both such paragraphs in connection with the same period of months referred to in paragraphs (2)(B) and (3)(B).", inserted par. (5) designation, and struck out former first and second sentences of subsec. (d) which read as follows: "With respect to any mortgage, other than a mortgage covering a one- to four-family structure, heretofore or hereafter insured by the Secretary, and notwithstanding any other provision of this chapter, when the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project covered by such mortgage during the first two years following the date of completion of the project, as determined by the Secretary, exceed the project income, the Secretary may, in his discretion and upon such terms and conditions as he may prescribe, insure under the same section as the original mortgage a loan by the mortgagee in an amount not exceeding the excess of the foregoing expenses over the project income. Such loan shall (1) bear interest (exclusive of premium charges for insurance) at not to exceed the per centum per annum currently permitted for mortgages insured under the section under which it is to be insured, (2) be secured in such manner as the Secretary shall require, and (3) be limited to a term not exceeding the unexpired term of the original mortgage."

Pub. L. 100-242, §429(d)(2), which directed substitution of "bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee" for "bear interest (exclusive of premium charges for insurance) at not to exceed the per centum per annum currently permitted for mortgages insured under the section under which it is to be insured" in cl. (1) of sentence beginning "Such loan shall", could not be executed because of previous amendment by Pub. L. 100-242, §427, see above, which directed in part the striking out of second sentence of subsec. (d)(1), which contained the language sought to be amended.

Subsec. (e). Pub. L. 100-242, §406(b)(16), inserted reference to limitation in section 1709(g) of this title.

Subsec. (f)(1). Pub. L. 100-242, §409(b)(1), inserted parenthetical reference to existing nursing homes, intermediate care facilities, board and care homes, or any combination thereof after "existing hospital".

Subsec. (f)(4)(A) to (C). Pub. L. 100-242, §409(b)(2), inserted parenthetical reference to existing nursing homes, intermediate care facilities, board and care homes, or any combination thereof after "existing hospital" wherever appearing.

Subsec. (f)(4)(D). Pub. L. 100-242, §409(a), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "such existing hospital has received such certifications from a State agency designated in

accordance with section 291d(a)(1) or section 300m of title 42 for the State in which the hospital is located as the Secretary deems necessary and appropriate and comparable to the certification required for hospitals insured under section 1715z-7 of this title and that such State agency additionally certify that the services being provided by such existing hospital at the time of refinancing are appropriate as determined pursuant to section 300m-2(a)(6) title 42."

1984—Subsec. (f)(2). Pub. L. 98-479 in provisions preceding subpar. (A) inserted "a" before "multifamily".

1983—Subsec. (f)(5). Pub. L. 98-181 added par. (5).

1981—Subsec. (f). Pub. L. 97-35 inserted "and" after the semicolon at end of par. (2)(A), and redesignated par. (5) as (4).

1980—Subsec. (f)(1). Pub. L. 96-399, §327(1), redesignated first sentence of subsec. (f) as par. (1).

Subsec. (f)(2). Pub. L. 96-399, §327(2)-(6), redesignated second sentence of subsec. (f) as par. (2), inserted applicability to purchases, provisions authorizing the Secretary to make not to exceed \$30,000,000 available for purchase authority, and provisions authorizing rent increases to maintain reasonable profit levels, and substituted "(A)" and "(B)" for "(1)" and "(2)", respectively.

Subsec. (f)(3). Pub. L. 96-399, §327(7), added par. (3).

Subsec. (f)(5). Pub. L. 96-399, §327(8), redesignated third sentence of subsec. (f) as par. (5).

1978—Subsec. (f). Pub. L. 95-557 inserted "or the refinancing of existing debt of an existing hospital" after "housing project", substituted "multifamily housing project" for "housing project", and inserted provisions relating to the prescription of terms and conditions in the case of refinancing of an existing hospital.

1974—Subsecs. (f), (g). Pub. L. 93-383 added subsecs. (f) and (g).

1969—Subsec. (d). Pub. L. 91-152, §418(c), inserted provision that any loan involving a project covered by a mortgage insured under section 1715e, 1715z-1, or any section of this subchapter pursuant to subsec. (e) of this section be the obligation of the specified Fund.

Subsec. (e). Pub. L. 91-152, §418(d), substituted "this chapter" for "this subchapter" and inserted references to subchapter IX-B.

1968—Subsec. (a). Pub. L. 90-448, §312(a)(1), substituted "chapter" for "subchapter", "any section or subchapter of this chapter" for "section 1709, 1713, 1715e, 1715k, 1715l, 1715m, 1715v, 1715w, or 1715x of this title" and "under any section or subchapter of this chapter" for "under either of said sections".

Subsec. (a)(7). Pub. L. 90-448, §312(a)(2), substituted "prescribed under the applicable section or subchapter of this chapter" for "applicable to loans insured under section 1709, 1713, 1715e, 1715k, 1715l, 1715m, 1715v, 1715w, or 1715x of this title" in two places.

Subsec. (c). Pub. L. 90-448, §312(a)(3)-(5), substituted "this chapter" for "this subchapter" in two places, and "any section or subchapter of this chapter" for "subchapters I, II, VI, VII, VIII or X of this chapter", and struck out phrase which required payment of insurance to be in debentures.

Subsec. (d). Pub. L. 90-448, §312(b), substituted "insure under the same section as the original mortgage a loan by a mortgagee in an amount not exceeding the excess of the foregoing expenses over the project income" for "permit the excess of the foregoing expenses over the project income to be added to the amount of such mortgage, and extend the coverage of the mortgage insurance thereto, and such additional amount shall be deemed to be part of the original face amount of the mortgage", and inserted sentences requiring the loan to bear interest at not more than the per centum per annum currently permitted for mortgages insured under the section under which it is to be insured, to be secured, and to be limited to a term not more than the unexpired term of the original mortgage, authorizing collection of a premium charge for insurance of loans, directing the premium to be payable in cash or in debentures of the fund, and making the lender entitled to insurance benefits in the event of a failure of the borrower to make any payment due under the loan or under the original mortgage and the default continues for a period of thirty days.

Subsec. (e). Pub. L. 90-448, §103(a), added subsec. (e).

1967—Pub. L. 90-19, §1(a)(3), substituted "Secretary" for "Commissioner" wherever appearing in subsecs. (a) preceding par. (1), (a)(7), and (b) to (d).

Subsec. (a)(2). Pub. L. 90-19, §1(h), substituted "Secretary of Housing and Urban Development" and "Secretary" for "Public Housing Administration" and "said Administration", respectively.

1966—Subsec. (a)(8). Pub. L. 89-754 substituted "Government" and "section 3374 of title 42" for "Commissioner" and "section 1735h of this title", respectively.

1965—Subsec. (a)(7). Pub. L. 89-117, §213, substituted "this Act" for "section 608 of title VI prior to the effective date of the Housing Act of 1954 or under section 220, 221, 903, or section 908", which for purposes of codification has been changed to "this chapter".

Subsec. (a)(8). Pub. L. 89-117, §108(e)(2), added par. (8).

1964—Subsec. (c). Pub. L. 88-560 substituted "limitations or requirements contained in this subchapter

upon the eligibility of the mortgage, upon the payment of insurance premiums, or upon the terms and conditions of insurance settlement and the benefits of the insurance to be included in such settlement (except that in any case the payment of insurance shall be in debentures)" for "limitation upon eligibility contained in this subchapter".

1961—Subsec. (a). Pub. L. 87–70, §612(h)(1), (2), included sections 1715k, 1715l, 1715v, 1715w and 1715x in the opening provisions, and, in par. (7), substituted "section 1715k, 1715l, 1750b, or 1750g of this title" for "section 1750b or 1750g of this title," "1715e, 1715k, 1715l, 1715m, 1715v, 1715w, or 1715x of this title" for "1715e or 1715m of this title" in two places, and struck out "insured under section 1743 of section 1750g of this title" after "refinancing of a loan".

Subsecs. (b), (c). Pub. L. 87–70, §101(d), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (d). Pub. L. 87–70, §612(h)(3), added subsec. (d).

1958—Subsec. (a)(3). Pub. L. 85–900 authorized insurance of mortgages executed in connection with the sale of property constructed under the Boulder Canyon Project Act and located in Boulder City.

1957—Subsec. (a). Pub. L. 85–104, §114(1), substituted "1715e, or 1715m of this title" for "or 1715e of this title".

Subsec. (a)(3). Pub. L. 85–240 authorized insurance of mortgages executed in connection with the sale of Government housing at Coulee Dam.

Subsec. (a)(4). Pub. L. 85–104, §114(2), inserted "this chapter or" after "prescribed by".

Subsec. (a)(7). Pub. L. 85–104, §114(3), substituted "1715e, or 1715m of this title" for "or 1715e of this title" in first proviso, and substituted provisions of second proviso for former provisions which required mortgages described in pars. (1), (2), (3), (4), (5), or (6) to have maturity satisfactory to Commissioner but forbade maturity of such mortgage to exceed maximum terms of loans insured under sections 1709, 1713, or 1715e of this title, forbade principal obligation to exceed 90 percent of value of property, and forbade interest rate to exceed rate of loans made under either of said sections, with the exception that where such mortgage covered property held by certain nonprofit cooperatives, principal obligation should not exceed 95 percent of appraised value.

1955—Subsec. (a). Act Aug. 11, 1955, substituted "section 1709, 1713, or 1715e of this title" for "section 1709 or 1713 of this title" wherever appearing.

Act Aug. 4, 1955, added par. (4), and redesignated pars. (4) to (6) as (5) to (7), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–116, title VI, §603, Jan. 10, 2002, 115 Stat. 2222, provided that: "Except as provided in sections 616(a)(2), 633(b), and 634(b) [enacting provisions set out as notes under section 1701q of this title and sections 1437f and 11301 of Title 42, The Public Health and Welfare], this title [amending this section and sections 1437f and 5305 of Title 42, enacting provisions set out as notes under section 1701q of this title and sections 1437, 1437f, and 11301 of Title 42, and amending provisions set out as notes under section 1701q of this title and sections 1437f and 11301 of Title 42] and the amendments made by this title shall take effect or are deemed to have taken effect, as appropriate, on the earlier of—

"(1) the date of the enactment of this title [Jan. 10, 2002]; or

"(2) September 30, 2001."

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENTS

Pub. L. 104–134, title I, §101(e) [title II, §209], Apr. 26, 1996, 110 Stat. 1321–257, 1321–285; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327, provided that: "Notwithstanding the 16th paragraph under the item relating to 'administrative provisions' in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Public Law 103–327; 108 Stat. 2316) [set out below], the amendments to section 223(a)(7) of the National Housing Act [12 U.S.C. 1715n(a)(7)] made by the 15th paragraph of such Act shall be effective during fiscal year 1996 and thereafter."

Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316, provided in part that: "The amendments of the two immediately preceding paragraphs [amending this section and section 1437f of Title 42, The Public Health and Welfare] shall be effective only during fiscal year 1995." [For provision that amendment by Pub. L. 103–327 to subsec. (a)(7) of this section be effective during fiscal year 1996 and thereafter, see Pub. L. 104–134, title I, §101(e) [title II, §209], set out above.]

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 406(b)(15), (16) of Pub. L. 100–242 applicable only with respect to mortgages insured pursuant to conditional commitment issued on or after Feb. 5, 1988, or in accordance with direct endorsement program (24 CFR 200.163), if approved underwriter of mortgagee signs appraisal report for property on or after Feb. 5, 1988, see section 406(d) of Pub. L. 100–242, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

REGULATIONS

Pub. L. 100–242, title IV, §409(c), Feb. 5, 1988, 101 Stat. 1904, provided that: "The Secretary of Housing and Urban Development shall issue such regulations as may be necessary to carry out the amendment made by this section [amending this section] by not later than the expiration of the 90-day period following the date of the enactment of this Act [Feb. 5, 1988]."

HEALTHCARE OPERATING LOSS LOANS

Pub. L. 116–260, div. N, title V, §542, Dec. 27, 2020, 134 Stat. 2090, provided that:

"(a) DEFINITIONS.—In this section:

"(1) OPERATING LOSS.—The term 'operating loss' has the meaning given the term in section 223(d) of the National Housing Act (12 U.S.C. 1715n(d)).

"(2) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

"(b) AUTHORIZATION TO PROVIDE MORTGAGE INSURANCE.—Notwithstanding any other provision of law, for fiscal years 2020 and 2021, in addition to the authority provided to insure operating loss loans under section 223(d) of the National Housing Act (12 U.S.C. 1715n(d)), the Secretary may insure or enter into commitments to ensure mortgages under such section 223(d) with respect to healthcare facilities—

"(1) insured under section 232 or section 242 of the National Housing Act (12 U.S.C. 1715w, 1715z–7);

"(2) that were financially sound immediately prior to the President's March 13, 2020 Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak [Proc. No. 9994, 50 U.S.C. 1621 note];

"(3) that have exhausted all other forms of assistance; and

"(4) subject to—

"(A) the limitation for new commitments to guarantee loans insured under the General and Special Risk Insurance Funds under the heading 'General and Special Risk Program Account' for fiscal years 2020 and 2021; and

"(B) the underwriting parameters and other terms and conditions that the Secretary determines appropriate through guidance.

"(c) AMOUNT OF LOAN.—After all other realized or reasonably anticipated assistance (including reimbursements, loans, or other payments from other Federal sources) are taken into account, a loan insured under subsection (b) shall be in an amount not exceeding the lesser of—

"(1) the temporary losses or additional expenses incurred or expected to be incurred by the healthcare facility as a result of the impact of the circumstances giving rise to the President's March 13, 2020 Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak; or

"(2) the amount expected to be needed to cover the sum of—

"(A) 1 year of principal and interest payments for the existing loans of the healthcare facility insured by the Secretary;

"(B) 1 year of principal and interest payments for the loan pursuant to this section;

"(C) 1 year of mortgage insurance premiums for the loans described in subparagraphs (A) and (B);

"(D) 1 year of monthly deposits to reserve accounts required by the Secretary for the loans described in subparagraphs (A) and (B);

"(E) 1 year of property taxes and insurance for the healthcare facility; and

"(F) transaction costs, including legal fees, for the loans described in subparagraphs (A) and (B)."

STREAMLINED REFINANCING

Pub. L. 103–233, title I, §103(d), Apr. 11, 1994, 108 Stat. 361, provided that: "As soon as practicable, the Secretary shall implement a streamlined refinancing program under the authority provided in section 223 of

the National Housing Act [12 U.S.C. 1715n] to prevent the default of mortgages insured by the FHA which cover multifamily housing projects, as defined in section 203(b) of the Housing and Community Development Amendments of 1978 [12 U.S.C. 1701z-11(b)]."

DELEGATION OF PROCESSING OF MORTGAGE INSURANCE

Secretary of Housing and Urban Development to implement system of mortgage insurance for mortgages insured under this section that delegates processing functions to selected approved mortgagees, with Secretary to retain authority to approve rents, expenses, property appraisals, and mortgage amounts and to execute firm commitments, see section 328 of Pub. L. 101-625, set out as a note under section 1713 of this title.

PURPOSE OF SECTION

Act Aug. 2, 1954, ch. 649, title I, §125, 68 Stat. 605, as amended by Pub. L. 90-19, §10(b), May 25, 1967, 81 Stat. 22, in enacting this section, provided in part that the purpose thereof was to transfer to title II of the National Housing Act [this subchapter] "the mortgage insurance program in connection with the sale of certain publicly owned property as contained in section 610 of title VI [section 1745 of this title]; the insurance of mortgages to refinance existing loans insured under section 608 of title VI and sections 903 and 908 of title IX [sections 1743, 1750b and 1750g of this title]; and to authorize the insurance under title II [this subchapter] of mortgages assigned to the Secretary of Housing and Urban Development under insurance contracts and mortgages held by the Secretary of Housing and Urban Development in connection with the sale of property acquired under insurance contracts".

¹ [See References in Text note below.](#)

² [So in original. Probably should be "or".](#)

§1715o. Interest rate on debentures; method of establishment

Notwithstanding any other provisions of this chapter, debentures issued under any section of this chapter with respect to a loan or mortgage accepted for insurance on or after thirty days following August 2, 1954 (except debentures issued pursuant to paragraph (4) of section 1715l(g) of this title) shall bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed for insurance, or (when there are two or more insurance endorsements) the date the loan or mortgage was initially endorsed for insurance, whichever rate is the highest, except that debentures issued pursuant to section 1715k(f), 1715k(h)(7), 1715l(g), 1715x, or 1715z-3 of this title may, at the discretion of the Secretary, bear interest at the rate in effect on the date they are issued. The Secretary shall from time to time, with the approval of the Secretary of the Treasury, establish such interest rate in an amount not in excess of the annual rate of interest determined by the Secretary of the Treasury, at the request of the Secretary, by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the calendar month next preceding the establishment of such rate of interest, on all outstanding marketable obligations of the United States having a maturity date of fifteen years or more from the first day of such next preceding month, and by adjusting such estimated average annual yield to the nearest one-eighth of 1 per centum. Notwithstanding the preceding sentence and the following paragraph,¹ if an insurance claim is paid in cash for any mortgage that is insured under section 1709 or 1715y of this title and is endorsed for mortgage insurance after January 23, 2004, the debenture interest rate for purposes of calculating such a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

(June 27, 1934, ch. 847, title II, §224, as added Aug. 2, 1954, ch. 649, title I, §126, 68 Stat. 606; amended Pub. L. 87-70, title VI, §612(i), June 30, 1961, 75 Stat. 182; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 90-448, title I, §104(b), Aug. 1, 1968, 82 Stat. 488; Pub. L. 108-199, div. G, title II, §215, Jan. 23, 2004, 118 Stat. 394.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2004—Pub. L. 108–199, which directed amendment of section by adding sentence relating to interest rate for claim paid in cash at end of first paragraph, was executed by adding sentence at end of section to reflect the probable intent of Congress.

1968—Pub. L. 90–448 included debentures issued pursuant to section 1715z–3 of this title.

1967—Pub. L. 90–19 substituted "Secretary" for "Commissioner" wherever appearing.

1961—Pub. L. 87–70 changed the date for determination of the rate of interest for debentures, other than those issued pursuant to section 1715k(f), 1715k(h)(7), 1715l(g), 1715l(g)(4), or 1715x, from the rate in effect on the date the debentures are issued to the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed for insurance, or (when there are two or more insurance endorsements) the date the loan or mortgage was initially endorsed for insurance, whichever rate is highest.

¹ So in original.

§1715p. Insurance of advances under open-end mortgages; payment of charges; eligibility and conditions

Notwithstanding any other provisions of this chapter, in connection with any mortgage insured pursuant to any section of this chapter which covers a property upon which there is located a dwelling designed principally for residential use for not more than four families in the aggregate, the Secretary is authorized, upon such terms and conditions as he may prescribe, to insure under said section the amount of any advance for the improvement or repair of such property made to the mortgagor pursuant to an "open-end" provision in the mortgage, and to add the amount of such advance to the original principal obligation in determining the value of the mortgage for the purpose of computing the amounts of debentures and certificate of claim to which the mortgagee may be entitled: *Provided*, That the Secretary may require the payment of such charges, including charges in lieu of insurance premiums, as he may consider appropriate for the insurance of such "open-end" advances: *Provided, further*, That only advances for such improvements or repairs as substantially protect or improve the basic livability or utility of the property involved shall be eligible for insurance under this section; *Provided further*, That no such advance shall be insured under this section if the amount thereof plus the amount of the unpaid balance of the original principal obligation of the mortgage would exceed the amount of such original principal obligation unless the mortgagor certifies that the proceeds of such advance will be used to finance the construction of additional rooms or other enclosed space as a part of the dwelling: *And provided further*, That the insurance of "open-end" advances shall not be taken into account in determining the aggregate amount of principal obligations of mortgages which may be insured under this chapter.

(June 27, 1934, ch. 847, title II, §225, as added Aug. 2, 1954, ch. 649, title I, §126, 68 Stat. 607; amended Pub. L. 90–19, §1(a) (3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1967—Pub. L. 90–19 substituted "Secretary" for "Commissioner" wherever appearing.

§1715q. Delivery of statement of appraisal or estimates to home buyers

The Secretary is authorized and directed to require that in connection with any property upon which there is located a dwelling designed principally for a single-family residence or a two-family residence and which is approved for mortgage insurance under section 1709 or 1715e of this title with respect to any property or project of a corporation or trust of the character described in paragraph (2) of subsection (a) of section 1715e of this title, or sections 1715k, 1715l, 1715m,¹ 1715x, 1715y, 1715z(i), 1715z–2,¹ or 1750b of this title, the seller or builder or such other person as may be designated by the Secretary shall agree to deliver, prior to the sale of the property, to the person purchasing such dwelling for his own occupancy, a written statement setting forth the amount of the appraised value of the property as determined by the Secretary. This section shall not apply in any case where the mortgage involved was insured or the commitment for such insurance was issued prior to August 2, 1954. Notwithstanding the first sentence of this section, the Secretary is authorized to require, in connection with any mortgage where the mortgage amount is computed on the basis of the Secretary's estimate of the replacement cost of the property, or on the basis of any other estimates of the Secretary, that a written statement setting forth such estimate or estimates, as the case may be, be furnished under this section in lieu of a written statement setting forth the amount of the appraised value of the property.

(June 27, 1934, ch. 847, title II, §226, as added Aug. 2, 1954, ch. 649, title I, §126, 68 Stat. 607; amended Pub. L. 85–104, title I, §115, July 12, 1957, 71 Stat. 298; Pub. L. 87–70, title VI, §612(j), June 30, 1961, 75 Stat. 182; Pub. L. 90–19, §1(a)(3), (4), May 25, 1967, 81 Stat. 17; Pub. L. 90–448, title I, §102(b), Aug. 1, 1968, 82 Stat. 486.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1715m of this title, referred to in text, was repealed by Pub. L. 110–289, div. B, title I, §2120(a)(5), July 30, 2008, 122 Stat. 2835.

Section 1715z–2 of this title, referred to in text, was repealed by Pub. L. 110–289, div. B, title I, §2120(a)(6), July 30, 2008, 122 Stat. 2835.

AMENDMENTS

1968—Pub. L. 90–448 inserted references to sections 1715z(i) and 1715z–2 of this title.

1967—Pub. L. 90–19 substituted "Secretary" for "Commissioner" wherever appearing, and "Secretary's" for "Commissioner's".

1961—Pub. L. 87–70 inserted references to sections 1715x and 1715y of this title, and substituted "or on the basis of any other estimates of the Commissioner, that a written statement setting forth such estimate or estimates, as the case may be," for "that a written statement setting forth such estimate".

1957—Pub. L. 85–104 inserted sentence authorizing estimate of replacement cost in lieu of an estimate of value where mortgage amount is based upon replacement cost.

¹ [*See References in Text note below.*](#)

§1715r. Requirement of builder's cost certification; definitions

(a) Requirement

Except as provided in subsection (b) and notwithstanding any other provision of this chapter, no mortgage covering new or rehabilitated multifamily housing or a property or project described in subchapter IX–B shall be insured under this chapter unless the mortgagor has agreed (A) to certify,

upon completion of the physical improvements on the mortgaged property or project and prior to final endorsement of the mortgage, either (i) that the approved percentage of actual cost (as those terms are herein defined) equaled or exceeded the proceeds of the mortgage loan or (ii) the amount by which the proceeds of the mortgage loan exceeded such approved percentage of actual cost, as the case may be, and (B) to pay forthwith to the mortgagee, for application to the reduction of the principal obligation of such mortgage, the amount, if any, certified to be in excess of such approved percentage of actual cost. Upon the Secretary's approval of the mortgagor's certification as required hereunder, such certification shall be final and incontestable, except for fraud or material misrepresentation on the part of the mortgagor.

(b) Exemption for certain projects assisted with low-income housing tax credit

In the case of any mortgage insured under any provision of this subchapter that is executed in connection with the construction, rehabilitation, purchase, or refinancing of a multifamily housing project for which equity ¹ provided through any low-income housing tax credit pursuant to section 42 of title 26, if the Secretary determines at the time of issuance of the firm commitment for insurance that the ratio of the loan proceeds to the actual cost of the project is less than 80 percent, subsection (a) of this section shall not apply.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) The term "new or rehabilitated multifamily housing" means a project or property approved for mortgage insurance prior to the construction or the repair and rehabilitation involved and covered by a mortgage insured or to be insured (i) under section 1713 of this title, (ii) under section 1715e of this title with respect to any property or project of a corporation or trust of the character described in paragraph (1) of subsection (a) of section 1715e of this title or with respect to any property or project of a mortgagor of the character described in paragraph (3) of subsection (a) thereof, (iii) under section 1715k of this title if the mortgage meets the requirements of paragraph (3)(B) of subsection (d) thereof, (iv) under section 1715l of this title if the mortgage meets the requirements of paragraph (3) or paragraph (4) of subsection (d) thereof, (v) under section 1715v of this title, (vi) under section 1715x of this title if the mortgage meets the requirements of subsection (b), (vii) under section 1748h-2 of this title if the mortgage meets the requirements of subsection (f), (viii) under section 1715y(d) of this title, or (ix) under section 1715z-1 of this title;

(2) The term "approved percentage" means the percentage figure which, under applicable provisions of this chapter, the Secretary is authorized to apply to his estimate of value, cost, or replacement costs, as the case may be, of the property or project in determining the maximum insurable mortgage amount; except that if the mortgage is to assist the financing of repair or rehabilitation and no part of the proceeds will be used to finance the purchase of the land or structure involved, the approved percentage shall be 100 per centum; and

(3) The term "actual cost" has the following meaning: (i) in case the mortgage is to assist the financing of new construction, the term means the actual cost to the mortgagor of such construction, including amounts paid for labor, materials, construction contracts, off-site public utilities, streets, organizational and legal expenses, such allocations of general overhead items as are acceptable to the Secretary, and other items of expense approved by the Secretary, plus (I) a reasonable allowance for builder's profit if the mortgagor is also the builder as defined by the Secretary, and (II) an amount equal to the Secretary's estimate of the fair market value of any land (prior to the construction of the improvements built as a part of the project) in the property or project owned by the mortgagor in fee (or, in case the land in the property or project is held by the mortgagor under a leasehold or other interest less than a fee, such amount as the mortgagor paid for the acquisition of such leasehold or other interest but, in no event, in excess of the fair market value of such leasehold or other interest exclusive of the proposed improvements), but excluding the amount of any kickbacks, rebates, or trade discounts received in connection with the construction of the improvements, or (ii) in case the mortgage is to assist the financing of repair or rehabilitation the term means the actual cost to the mortgagor of such repair or rehabilitation,

including the amounts paid for labor, materials, construction contracts, off-site public utilities, streets, organization and legal expenses, such allocations of general overhead items as are acceptable to the Secretary, and other items of expense approved by the Secretary, plus (I) a reasonable allowance for builder's profit if the mortgagor is also the builder as defined by the Secretary, and (II) an additional amount equal to (A) in case the land and improvements are to be acquired by the mortgagor and the purchase price thereof is to be financed with part of the proceeds of the mortgage, the purchase price of such land and improvements prior to such repair or rehabilitation, or (B) in case the land and improvements are owned by the mortgagor subject to an outstanding indebtedness to be refinanced with part of the proceeds of the mortgage, the amount of such outstanding indebtedness secured by such land and improvements, but excluding (for the purposes of this clause (ii)) the amount of any kickbacks, rebates, or trade discounts received in connection with the construction of the improvements: *Provided*, That such additional amount under (A) of this clause (ii) shall in no event exceed the Secretary's estimate of the fair market value of such land and improvements prior to such repair or rehabilitation, and such additional amount under (B) of this clause (ii) shall in no event exceed the approved percentage of the Secretary's estimate of the fair market value of such land and improvements prior to such repair or rehabilitation. In the case of a mortgage insured under section 1715k, 1715l(d)(3), 1715l(d)(4), 1715v, 1715x, or 1715z-1 of this title where the mortgagor is also the builder as defined by the Secretary, there shall be included in the actual cost, in lieu of the allowance for builder's profit under clause (i) or (ii) of the preceding sentence, an allowance for builder's and sponsor's profit and risk of 10 per centum (unless the Secretary, after finding that such allowance is unreasonable, shall by regulation prescribe a lesser percentage) of all other items entering into the term "actual cost" except land or amounts paid for a leasehold and amounts included under either (A) or (B) of clause (ii) of the preceding sentence. In the case of a mortgage insured under section 1715k, 1715l(d)(3), 1715l(d)(4), 1715v, 1715x, or 1715z-1 of this title, where the mortgagor is not also the builder as defined by the Secretary, there shall be included in the actual cost an allowance for sponsor's profit and risk of the said 10 per centum or lesser percentage of all other items entering into the term "actual cost" except land or amounts paid for a leasehold, amounts included under either (A) or (B) of the said clause (ii), and amounts paid by the mortgagor under a general construction contract.

(June 27, 1934, ch. 847, title II, §227, as added Aug. 2, 1954, ch. 649, title I, §126, 68 Stat. 607; amended Aug. 11, 1955, ch. 783, title I, §102(i), 69 Stat. 636; Aug. 7, 1956, ch. 1029, title I, §§105(d), 109, 70 Stat. 1094, 1095; Pub. L. 86-372, title I, §112, Sept. 23, 1959, 73 Stat. 661; Pub. L. 87-70, title VI, §612(k), June 30, 1961, 75 Stat. 183; Pub. L. 88-560, title I, §119(c), Sept. 2, 1964, 78 Stat. 782; Pub. L. 89-754, title V, §502(b), title X, §1020(b), Nov. 3, 1966, 80 Stat. 1277, 1295; Pub. L. 90-19, §1(a)(3), (4), May 25, 1967, 81 Stat. 17; Pub. L. 90-448, title II, §201(b)(2), (3), Aug. 1, 1968, 82 Stat. 502; Pub. L. 110-289, div. B, title VIII, §2834(b), July 30, 2008, 122 Stat. 2869.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c)(2), was in the original "this Act", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2008—Pub. L. 110-289 designated introductory provisions as subsec. (a) and inserted heading, in subsec. (a), as redesignated, substituted "Except as provided in subsection (b) and notwithstanding" for "Notwithstanding", redesignated cls. (a) and (b) as cls. (A) and (B), respectively, and struck out "As used in this section—" at end, added subsec. (b), inserted heading and introductory provisions of subsec. (c), and designated former subsecs. (a) to (c) as pars. (1) to (3), respectively, of subsec. (c) and subcls. (1) and (2) of cls. (i) and (ii) of former subsec. (c) as subcls. (I) and (II), respectively, of cls. (i) and (ii), respectively, of par. (3) of subsec. (c).

1968—Subsec. (a). Pub. L. 90-448, §201(b)(2), included mortgages insured or to be insured under section 1715z-1 of this title.

Subsec. (c). Pub. L. 90-448, §201(b)(3), substituted "section 1715x, or 1715z-1 of this title" for "section 1715x(b)(2) of this title", in two places.

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" in subsecs. (b) and (c), and "Secretary's" for "Commissioner's" in text preceding subsec. (a) and in subsec. (c).

1966—Pub. L. 89-754, §502(b), made the certification requirement applicable to mortgage covering property or project described in subchapter IX-B.

Subsec. (a). Pub. L. 89-754, §1020(b), substituted "subsection (b)" for "subsection (b)(2)" in cl. (vi).

1964—Subsec. (a). Pub. L. 88-560 included mortgages insured or to be insured under section 1715y(d) of this title.

1961—Subsec. (a). Pub. L. 87-70, §612(k)(1), included property covered by a mortgage insured or to be insured under section 1715x of this title if the mortgage meets the requirements of subsection (b)(2).

Subsec. (b). Pub. L. 87-70, §612(k)(2), substituted "value, cost, or replacement cost" for "value or replacement cost".

Subsec. (c). Pub. L. 87-70, §612(k)(3), substituted "section 1715l(d)(3), 1715l(d)(4), 1715v, or 1715x(b)(2) of this title" for "section 1715l of this title if the mortgage meets the requirements of paragraph (4) of subsection (d) thereof, or section 1715v of this title" in second and third sentences.

1959—Subsec. (a). Pub. L. 86-372, §112(a), included mortgages insured or to be insured under subsec. (d)(4) of section 1715l of this title, under section 1715v of this title, and under section 1748h-2 of this title, and struck out provisions which related to mortgages insured or to be insured under sections 1748b, 1750b and 1750g of this title.

Subsec. (c). Pub. L. 86-372, §112(b), substituted "under section 1715k of this title, section 1715l of this title if the mortgage meets the requirements of paragraph (4) of subsection (d) thereof, or section 1715v of this title" for "under section 1715k of this title" in two places.

1956—Act Aug. 7, 1956, §109, inserted sentence preceding subsec. (a), that upon Commissioner's approval, certification shall be final and incontestable, except for fraud or misrepresentation by mortgagor.

Subsec. (a). Act Aug. 7, 1956, §105(d), inserted "or with respect to any property or project of a mortgagor of the character described in paragraph (3) of subsection (a) of section 1715e of this title," before "(iii)".

Subsec. (b). Act Aug. 7, 1956, §109, inserted provision that if the insured mortgage is to assist financing of repairs and no part of proceeds will be used to purchase the land or structure involved, the approved percentage shall be 100 percent.

Subsec. (c). Act Aug. 7, 1956, §109, inserted "such allocations of general overhead items as are acceptable to the Commissioner," after "legal expenses" wherever appearing; struck out "(without reduction by reason of the application of the approved percentage requirements of this section)" before "secured by such land and improvements," in cl. (ii)(B), amended proviso to provide that additional amount under (B) of cl. (ii) should not exceed the approved percentage of the Commissioner's estimate of the fair market value of the land and improvements; and inserted provisions at end relating to 10 percent allowance for builder's profit in mortgages issued under section 1715k.

1955—Act Aug. 11, 1955, substituted "under section 1715l of this title if the mortgage meets the requirements of paragraph (3) of subsection (d) of such section" for "under section 1715l of this title".

¹ So in original. Probably should be followed by "is".

§1715s. Treatment of mortgages covering tax credit projects

(a) Definition

For purposes of this section, the term "insured mortgage covering a tax credit project" means a mortgage insured under any provision of this subchapter that is executed in connection with the construction, rehabilitation, purchase, or refinancing of a multifamily housing project for which equity ¹ provided through any low-income housing tax credit pursuant to section 42 of title 26.

(b) Acceptance of letters of credit

In the case of an insured mortgage covering a tax credit project, the Secretary may not require the escrowing of equity provided by the sale of any low-income housing tax credits for the project

pursuant to section 42 of title 26, or any other form of security, such as a letter of credit.

(c) Asset management requirements

In the case of an insured mortgage covering a tax credit project for which project the applicable tax credit allocating agency is causing to be performed periodic inspections in compliance with the requirements of section 42 of title 26, such project shall be exempt from requirements imposed by the Secretary regarding periodic inspections of the property by the mortgagee. To the extent that other compliance monitoring is being performed with respect to such a project by such an allocating agency pursuant to such section 42, the Secretary shall, to the extent that the Secretary determines such monitoring is sufficient to ensure compliance with any requirements established by the Secretary, accept such agency's evidence of compliance for purposes of determining compliance with the Secretary's requirements.

(d) Streamlined processing pilot program

(1) In general

The Secretary shall establish a pilot program to demonstrate the effectiveness of streamlining the review process, which shall include all applications for mortgage insurance under any provision of this subchapter for mortgages executed in connection with the construction, rehabilitation, purchase, or refinancing of a multifamily housing project for which equity ¹ provided through any low-income housing tax credit pursuant to section 42 of title 26. The Secretary shall issue instructions for implementing the pilot program under this subsection not later than the expiration of the 180-day period beginning upon July 30, 2008.

(2) Requirements

Such pilot program shall provide for—

(A) the Secretary to appoint designated underwriters, who shall be responsible for reviewing such mortgage insurance applications and making determinations regarding the eligibility of such applications for such mortgage insurance in lieu of the processing functions regarding such applications that are otherwise performed by other employees of the Department of Housing and Urban Development;

(B) submission of applications for such mortgage insurance by mortgagees who have previously been expressly approved by the Secretary; and

(C) determinations regarding the eligibility of such applications for such mortgage insurance to be made by the chief underwriter pursuant to requirements prescribed by the Secretary, which shall include requiring submission of reports regarding applications of proposed mortgagees by third-party entities expressly approved by the chief underwriter.

(June 27, 1934, ch. 847, title II, §228, as added Pub. L. 110–289, div. B, title VIII, §2834(c), July 30, 2008, 122 Stat. 2870.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 1715s, which was based in part on act Aug. 2, 1954, ch. 649, title VIII, §814, 68 Stat. 647, provided for the keeping of records with respect to multifamily housing and examination and audit thereof. Section 814 of act Aug. 2, 1954, was transferred and is classified in full to section 1434 of Title 42, The Public Health and Welfare.

STATUTORY NOTES AND RELATED SUBSIDIARIES

APPROVALS BY DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Pub. L. 110–289, div. B, title VIII, §2832, July 30, 2008, 122 Stat. 2867, provided that:

"(a) ADMINISTRATIVE AND PROCEDURAL CHANGES.—

"(1) IN GENERAL.—The Secretary of Housing and Urban Development (in this section referred to as the 'Secretary') shall, not later than the expiration of the 6-month period beginning upon after [sic] the date

of the enactment of this Act [July 30, 2008], implement administrative and procedural changes to expedite approval of multifamily housing projects under the jurisdiction of the Department of Housing and Urban Development that meet the requirements of the Secretary for such approvals.

"(2) PROJECTS.—The multifamily housing projects referred to in paragraph (1) shall include—

"(A) projects for which assistance is provided by such Department in conjunction with any low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 [26 U.S.C. 42] or tax-exempt housing bonds; and

"(B) existing public housing projects and assisted housing projects, for which approval of the Secretary is necessary for transactions, in conjunction with any such low-income housing tax credits or tax-exempt housing bonds, involving the preservation or rehabilitation of the project.

"(3) CHANGES.—The administrative and procedural changes referred to in paragraph (1) shall include all actions necessary to carry out paragraph (1), which may include—

"(A) improving the efficiency of approval procedures;

"(B) simplifying approval requirements,

"(C) establishing time deadlines or target deadlines for required approvals;

"(D) modifying division of approval authority between field and national offices;

"(E) improving outreach to project sponsors regarding information that is required to be submitted for such approvals;

"(F) requesting additional funding for increasing staff, if necessary; and

"(G) any other actions which would expedite approvals.

Any such changes shall be made in a manner that provides for full compliance with any existing requirements under law or regulation that are designed to protect families receiving public and assisted housing assistance, including income targeting, rent, and fair housing provisions, and shall also comply with requirements regarding environmental review and protection and wages paid to laborers.

"(b) CONSULTATION.—The Secretary shall consult with the Commissioner of the Internal Revenue Service and take such actions as are appropriate in conjunction with such consultation to simplify the coordination of rules, regulations, forms, and approval requirements for multifamily housing projects projects [sic] for which assistance is provided by such Department in conjunction with any low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 [26 U.S.C. 42] or tax-exempt housing bonds.

"(c) RECOMMENDATIONS.—In implementing the changes required under this section, the Secretary shall solicit recommendations regarding such changes from project owners and sponsors, investors and stakeholders in housing tax credits, State and local housing finance agencies, public housing agencies, tenant advocates, and other stakeholders in such projects.

"(d) REPORT.—Not later than the expiration of the 9-month period beginning on the date of the enactment of this Act [July 30, 2008], the Secretary shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that—

"(1) identifies the actions taken by the Secretary to comply with this section;

"(2) includes information regarding any resulting improvements in the expedited approval for multifamily housing projects;

"(3) identifies recommendations made pursuant to subsection (c);

"(4) identifies actions taken by the Secretary to implement the provisions in the amendments made by sections 2834 and 2835 of this Act [enacting this section and sections 1437z–8 and 11403f–1 of Title 42, The Public Health and Welfare, and amending sections 1701q and 1715r of this title and sections 1437f, 3545, 11403g, 11403h, 11404, 11405, 11405b, 11406, 11407, and 11407b of Title 42]; and

"(5) makes recommendations for any legislative changes that are needed to facilitate prompt approval of assistance for such projects."

¹ So in original. Probably should be followed by "is".

§1715t. Voluntary termination of insurance

Notwithstanding any other provision of this chapter and with respect to any loan or mortgage heretofore or hereafter insured under this chapter, except under section 1703 of this title and except as specified under section 1715z–15 of this title and subtitle B of the Emergency Low Income Housing Preservation Act of 1987,¹ the Secretary is authorized to terminate any insurance contract

upon request by the borrower or mortgagor and the financial institution or mortgagee and upon payment of such termination charge as the Secretary determines to be equitable, taking into consideration the necessity of protecting the various insurance Funds. Upon such termination, borrowers and mortgagors and financial institutions and mortgagees shall be entitled to the rights, if any, to which they would be entitled under this chapter if the insurance contract were terminated by payment in full of the insured loan or mortgage.

(June 27, 1934, ch. 847, title II, §229, as added Pub. L. 86-372, title I, §113, Sept. 23, 1959, 73 Stat. 662; amended Pub. L. 87-70, title VI, §612(l), June 30, 1961, 75 Stat. 183; Pub. L. 89-117, title XI, §1108(k), Aug. 10, 1965, 79 Stat. 505; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 101-235, title II, §202(d)(2), Dec. 15, 1989, 103 Stat. 2037.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

The Emergency Low Income Housing Preservation Act of 1987, referred to in text, is title II of Pub. L. 100-242, Feb. 5, 1988, 101 Stat. 1877, which, as amended by Pub. L. 101-625, is known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990. Subtitle B of title II, which was formerly set out as a note under section 1715l of this title and which amended section 1715z-6 of this title, was amended generally by Pub. L. 101-625 and is classified generally to subchapter I (§4101 et seq.) of chapter 42 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

1989—Pub. L. 101-235 inserted "and except as specified under section 1715z-15 of this title and subtitle B of the Emergency Low Income Housing Preservation Act of 1987," after "section 1703 of this title".

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing.

1965—Pub. L. 89-117 struck out "and Accounts" after "various Insurance Funds".

1961—Pub. L. 87-70 amended section generally, authorizing voluntary termination of insurance contracts with respect to loans insured under this chapter.

¹ *So in original.*

§1715u. Authority to assist mortgagors in default

(a) Loss mitigation

Upon default or imminent default, as defined by the Secretary ¹ of any mortgage insured under this subchapter, mortgagees shall engage in loss mitigation actions for the purpose of providing an alternative to foreclosure (including but not limited to actions such as special forbearance, loan modification, preforeclosure sale, support for borrower housing counseling, subordinate lien resolution, borrower incentives, and deeds in lieu of foreclosure, as required, but not including assignment of mortgages to the Secretary under section 1710(a)(1)(A) of this title) or subsection (c),² as provided in regulations by the Secretary.

(b) Payment of partial claim

(1) Establishment of program

The Secretary may establish a program for payment of a partial claim to a mortgagee that agrees to apply the claim amount to payment of a mortgage on a 1- to 4-family residence that is in default or faces imminent default, as defined by the Secretary.

(2) Payments and exceptions

Any payment of a partial claim under the program established in paragraph (1) to a mortgagee shall be made in the sole discretion of the Secretary and on terms and conditions acceptable to the Secretary, except that—

(A) the amount of the payment shall be in an amount determined by the Secretary, not to exceed an amount equivalent to 30 percent of the unpaid principal balance of the mortgage and any costs that are approved by the Secretary;

(B) the amount of the partial claim payment shall first be applied to any arrearage on the mortgage, and may also be applied to achieve principal reduction;

(C) the mortgagor shall agree to repay the amount of the insurance claim to the Secretary upon terms and conditions acceptable to the Secretary;

(D) the Secretary may permit compensation to the mortgagee for lost income on monthly payments, due to a reduction in the interest rate charged on the mortgage;

(E) expenses related to the partial claim or modification may not be charged to the borrower;

(F) loans may be modified to extend the term of the mortgage to a maximum of 40 years from the date of the modification; and

(G) the Secretary may permit incentive payments to the mortgagee, on the borrower's behalf, based on successful performance of a modified mortgage, which shall be used to reduce the amount of principal indebtedness.

(3) Payments in connection with certain activities

The Secretary may pay the mortgagee, from the appropriate insurance fund, in connection with any activities that the mortgagee is required to undertake concerning repayment by the mortgagor of the amount owed to the Secretary.

(c) Assignment and loan modification

(1) Assignment

(A) Program authority

The Secretary may establish a program for assignment to the Secretary, upon request of the mortgagee, of a mortgage on a 1- to 4-family residence insured under this chapter.

(B) Program requirements

The Secretary may accept assignment of a mortgage under this paragraph only if—

(i) the mortgage was in default or facing imminent default, as defined by the Secretary;

(ii) the mortgagee has modified the mortgage to cure the default and provide for mortgage payments within the reasonable ability of the mortgagor to pay, at interest rates not exceeding current market interest rates; and

(iii) the Secretary arranges for servicing of the assigned mortgage by a mortgagee (which may include the assigning mortgagee) through procedures that the Secretary has determined to be in the best interests of the appropriate insurance fund.

(C) Payment of insurance benefits

Upon accepting assignment of a mortgage under this paragraph, the Secretary may pay insurance benefits to the mortgagee from the appropriate insurance fund, in an amount that the Secretary determines to be appropriate, not to exceed the amount necessary to compensate the mortgagee for the assignment and any losses and expenses resulting from the mortgage modification.

(2) Assignment and loan modification

(A) Authority

The Secretary may encourage loan modifications for eligible delinquent mortgages or mortgages facing imminent default, as defined by the Secretary, through the payment of insurance benefits and assignment of the mortgage to the Secretary and the subsequent modification of the terms of the mortgage according to a loan modification approved by the mortgagee.

(B) Payment of benefits and assignment

In carrying out this paragraph, the Secretary may pay insurance benefits for a mortgage, in the amount determined in accordance with section 1710(a)(5) of this title, without reduction for any amounts modified, but only upon the assignment, transfer, and delivery to the Secretary of all rights, interest, claims, evidence, and records with respect to the mortgage specified in clauses (i) through (iv) of section 1710(a)(1)(A) of this title.

(C) Disposition

After modification of a mortgage pursuant to this paragraph, the Secretary may provide insurance under this subchapter for the mortgage. The Secretary may subsequently—

- (i) re-assign the mortgage to the mortgagee under terms and conditions as are agreed to by the mortgagee and the Secretary;
- (ii) act as a Government National Mortgage Association issuer, or contract with an entity for such purpose, in order to pool the mortgage into a Government National Mortgage Association security; or
- (iii) re-sell the mortgage in accordance with any program that has been established for purchase by the Federal Government of mortgages insured under this subchapter, and the Secretary may coordinate standards for interest rate reductions available for loan modification with interest rates established for such purchase.

(D) Loan servicing

In carrying out this paragraph, the Secretary may require the existing servicer of a mortgage assigned to the Secretary to continue servicing the mortgage as an agent of the Secretary during the period that the Secretary acquires and holds the mortgage for the purpose of modifying the terms of the mortgage, provided that the Secretary compensates the existing servicer appropriately, as such compensation is determined by the Secretary consistent, to the maximum extent possible, with section 1709(b) of this title. If the mortgage is resold pursuant to subparagraph (C)(iii), the Secretary may provide for the existing servicer to continue to service the mortgage or may engage another entity to service the mortgage.

(d) Prohibition of judicial review

No decision by the Secretary to exercise or forego exercising any authority under this section shall be subject to judicial review.

(e) Repealed. Pub. L. 104–134, title I, §101(e) [title II, §221(b)(2)], Apr. 26, 1996, 110 Stat.

1321–257, 1321–291; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327

(f) Applicability of other laws

No provision of this chapter, or any other law, shall be construed to require the Secretary to provide an alternative to foreclosure for mortgagees with mortgages on 1- to 4-family residences insured by the Secretary under this chapter, or to accept assignments of such mortgages.

(June 27, 1934, ch. 847, title II, §230, as added Pub. L. 86–372, title I, §114(a), Sept. 23, 1959, 73 Stat. 662; amended Pub. L. 88–560, title I, §104(b), Sept. 2, 1964, 78 Stat. 770; Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 96–399, title III, §341, Oct. 8, 1980, 94 Stat. 1659; Pub. L. 98–181, title I [title IV, §418], Nov. 30, 1983, 97 Stat. 1212; Pub. L. 100–242, title IV, §428, Feb. 5, 1988, 101 Stat. 1918; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–99, title IV, §407(b), Jan. 26, 1996, 110 Stat. 45; Pub. L. 104–134, title I, §101(e) [title II, §221(b)(2)], Apr. 26, 1996, 110 Stat. 1321–257, 1321–291; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–276, title VI, §601(f), Oct. 21, 1998, 112 Stat. 2674; Pub. L. 111–22, div. A, title II, §203(d)(1)–(3), May 20, 2009, 123 Stat. 1645, 1646.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c)(1)(A) and (f), was in the original "this Act", meaning act June 27,

1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–22, §203(d)(1)(C)–(E), inserted "preforeclosure sale, support for borrower housing counseling, subordinate lien resolution, borrower incentives," after "loan modification," "as required," after "deeds in lieu of foreclosure," and "or subsection (c)," before "as provided".

Pub. L. 111–22, §203(d)(1)(B), which directed substitution of "loan" for "loss", was executed by making the substitution before "modification" to reflect the probable intent of Congress.

Pub. L. 111–22, §203(d)(1)(A), inserted "or imminent default, as defined by the Secretary" after "default".

Subsec. (b). Pub. L. 111–22, §203(d)(2), amended subsec. (b) generally. Prior to amendment, text read as follows: "The Secretary may establish a program for payment of a partial claim to a mortgagee that agrees to apply the claim amount to payment of a mortgage on a 1- to 4-family residence that is in default. Any such payment under such program to the mortgagee shall be made in the sole discretion of the Secretary and on terms and conditions acceptable to the Secretary, except that—

"(1) the amount of the payment shall be in an amount determined by the Secretary, not to exceed an amount equivalent to 12 of the monthly mortgage payments and any costs related to the default that are approved by the Secretary; and

"(2) the mortgagor shall agree to repay the amount of the insurance claim to the Secretary upon terms and conditions acceptable to the Secretary.

The Secretary may pay the mortgagee, from the appropriate insurance fund, in connection with any activities that the mortgagee is required to undertake concerning repayment by the mortgagor of the amount owed to the Secretary."

Subsec. (c). Pub. L. 111–22, §203(d)(3)(A)–(C)(i), designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, of par. (1), and redesignated subpars. (A) to (C) of former par. (2) as cls. (i) to (iii), respectively, of par. (1)(B).

Subsec. (c)(1)(B). Pub. L. 111–22, §203(d)(3)(C)(ii), substituted "under this paragraph" for "under a program under this subsection" in introductory provisions.

Subsec. (c)(1)(B)(i). Pub. L. 111–22, §203(d)(3)(C)(iii), inserted "or facing imminent default, as defined by the Secretary" after "default".

Subsec. (c)(1)(C). Pub. L. 111–22, §203(d)(3)(D), which directed substitution of "under this paragraph" for "under a program under this subsection", was executed by making the substitution for "under a program established under this subsection" to reflect the probable intent of Congress.

Subsec. (c)(2). Pub. L. 111–22, §203(d)(3)(E), added par. (2). Former par. (2) redesignated subpar. (B) of par. (1).

1998—Pub. L. 105–276 added subsec. (a) and redesignated former subsecs. (a) to (e) as (b) to (f), respectively.

1996—Pub. L. 104–99 amended section generally, substituting subsecs. (a) to (e) relating to authority to assist mortgagors in default for former subsecs. (a) to (d) relating to temporary mortgage assistance payments and acquisition of mortgages to avoid foreclosures.

Subsec. (d). Pub. L. 104–134 struck out heading and text of subsec. (d). Text read as follows: "Any mortgage for which the mortgagor has applied to the Secretary, before the date of enactment of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996, for assignment pursuant to subsection (b) of this section as in effect before such date of enactment shall continue to be governed by the provisions of this section, as in effect immediately before such date of enactment."

1991—Subsec. (a)(5). Pub. L. 102–83 substituted "section 3703(c) of title 38" for "section 1803(c) of title 38".

1988—Subsec. (a)(5). Pub. L. 100–242 substituted "The interest rate on payments made under this subsection shall be the rate established under section 1803(c) of title 38. The interest rate to be charged shall be determined when the Secretary approves assistance under this subsection" for "The Secretary may establish interest charges on payments made under this subsection; except that such charges shall not exceed a rate which is more than the maximum interest rate applicable with respect to level payment mortgages insured pursuant to section 1709(b) of this title at the time assistance under this section is approved by the Secretary."

1983—Subsec. (d). Pub. L. 98–181 struck out ", to the extent practicable," after "Secretary shall".

1980—Subsec. (a). Pub. L. 96–399 added subsec. (a). Existing undesignated provisions were designated as subsec. (b)(1).

Subsec. (b). Pub. L. 96–399 designated existing undesignated provision as par. (1), made changes in

phraseology which included applicability of remedy provided by subsection (a) of this section and determinations made pursuant to such subsection, and added pars. (2) and (3).

Subsecs. (c), (d). Pub. L. 96-399 added subsecs. (c) and (d).

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing.

1964—Pub. L. 88-560 authorized the Commissioner to acquire the loan and security notwithstanding the fact that he has previously approved a request of the mortgagee for an extension of the time for curing the default and of the time for commencing foreclosure proceedings or for otherwise acquiring title to the mortgaged property or has approved a modification of the mortgage for the purpose of changing the amortization provisions by recasting the unpaid balance and substituted provisions for acquisition of the loan and security upon payment of the insurance benefits in an amount equal to the unpaid principal balance of the loan plus any unpaid mortgage interest plus reimbursement for such costs and attorney's fees as the Commissioner finds were properly incurred in connection with the defaulted mortgage and its assignment to the Commissioner for former provision for such acquisition upon issuance to the mortgagee of debentures having a total face value equal to the unpaid principal balance of the loan plus any accrued interest.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-99 applicable with respect to mortgages insured under this chapter that are executed before, on, or after Oct. 1, 1997, see section 407(c) of Pub. L. 104-99, as amended, set out as a note under section 1710 of this title.

SAVINGS PROVISION

Pub. L. 104-134, title I, §101(e) [title II, §221(b)(1)], Apr. 26, 1996, 110 Stat. 1321-257, 1321-291, provided that: "Any mortgage for which the mortgagor has applied to the Secretary, before the date of enactment of this Act [Apr. 26, 1996], for assignment to the Secretary pursuant to section 230(b) of the National Housing Act [12 U.S.C. 1715u(b)] shall continue to be governed by the provisions of such section, as in effect immediately before enactment of the Balanced Budget Downpayment Act, I [Pub. L. 104-99, which was approved Jan. 26, 1996]."

IMPLEMENTATION OF 2009 AMENDMENT

Pub. L. 111-22, div. A, title II, §203(d)(4), May 20, 2009, 123 Stat. 1647, provided that: "The Secretary of Housing and Urban Development may implement the amendments made by this subsection [amending this section] through notice or mortgagee letter."

¹ *So in original. Probably should be followed by a comma.*

² *So in original. Probably should be "section 1710(a)(1)(A) of this title or subsection (c))."*

§1715v. Insurance of mortgages for housing for elderly persons

(a) Purpose; definitions

The purpose of this section is to assist in relieving the shortage of housing for elderly persons and to increase the supply of rental housing for elderly persons.

For the purposes of this section—

(1) the term "housing" means eight or more new or rehabilitated living units, not less than 50 per centum of which are specially designed for the use and occupancy of elderly persons;

(2) the term "elderly person" means any person, married or single, who is sixty-two years of age or over; and

(3) the terms "mortgage", "mortgagee", "mortgagor", and "maturity date" shall have the meanings respectively set forth in section 1713 of this title.

(b) Authorization

The Secretary is authorized to insure any mortgage (including advances on mortgages during construction) in accordance with the provisions of this section upon such terms and conditions as he

may prescribe and to make commitments for insurance of such mortgages prior to the date of their execution or disbursement thereon.

(c) Eligibility for insurance; maximum amount of mortgage; terms and conditions

To be eligible for insurance under this section, a mortgage to provide housing for elderly persons shall—

(1) Repealed. Pub. L. 93-383, title III, §304(f), Aug. 22, 1974, 88 Stat. 678.

(2)(A) not exceed, for such part of the property or project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Secretary), \$35,978 per family unit without a bedroom, \$40,220 per family unit with one bedroom, \$48,029 per family unit with two bedrooms, \$57,798 per family unit with three bedrooms, and \$67,950 per family unit with four or more bedrooms; except that as to projects to consist of elevator-type structures the Secretary may, in his discretion, increase the dollar amount limitations per family unit to not to exceed \$40,876 per family unit without a bedroom, \$46,859 per family unit with one bedroom, \$56,979 per family unit with two bedrooms, \$73,710 per family unit with three bedrooms, and \$80,913 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design; (B) the Secretary may, by regulation, increase any of the dollar limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title) by not to exceed 170 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 170 percent, or 215 percent in high cost areas, where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720 ¹ of this title (as such section existed immediately before November 30, 1983) is involved; (C) the Secretary may, by regulation, increase any of the dollar limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title) by not to exceed 20 per centum if such increase is necessary to account for the increased cost of the project due to the installation therein of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42) ¹ in cases where the Secretary determines that such measures are in addition to those required under the minimum property standards and will be cost-effective over the life of the measure;

(3) if executed by a mortgagor which is a public instrumentality or a private nonprofit corporation or association or other acceptable private nonprofit organization regulated or supervised under Federal or State laws or by political subdivisions of States, or agencies thereof, or by the Secretary under a regulatory agreement or otherwise, as to rents, charges, and methods of operation, in such form and in such manner as, in the opinion of the Secretary, will effectuate the purpose of this section, involve a principal obligation not in excess of the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed improvements are completed (the replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Secretary): *Provided*, That in the case of properties other than new construction, the principal obligation shall not exceed the appraised value rather than the Secretary's estimate of the replacement cost;

(4) if executed by a mortgagor which is approved by the Secretary but is not a public instrumentality or a private nonprofit organization, involve a principal obligation not in excess (in the case of a property or project approved for mortgage insurance prior to the beginning of construction) of 90 per centum of the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed improvements are completed (the replacement costs may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous

charges incident to construction and approved by the Secretary, and shall include an allowance for builder's and sponsor's profit and risk of 10 per centum of all of the foregoing items except the land unless the Secretary, after certification that such allowance is unreasonable, shall by regulation prescribe a lesser percentage): *Provided*, That in the case of properties other than new construction the principal obligation shall not exceed 90 per centum of the Secretary's estimate of the value of the property or project: *And provided further*, That the Secretary may in his discretion require such mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operating, and for such purpose the Secretary may make contracts with and acquire for not to exceed \$100 such stock or interest in any such mortgagor as the Secretary may deem necessary to render effective such restrictions or regulations; such stock or interest shall be paid for out of the General Insurance Fund and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance;

(5) provide for a complete amortization by periodic payments (unless otherwise approved by the Secretary) within such terms as the Secretary shall prescribe;

(6) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee; and

(7) cover a property or project which is approved for mortgage insurance prior to the beginning of construction or rehabilitation, with 50 per centum or more of the units therein specially designed for the use and occupancy of elderly persons in accordance with standards established by the Secretary, and which may include such commercial and special facilities as the Secretary deems adequate to serve the occupants.

(d) Release of part of mortgaged property or project from lien; preferences and priorities in rental of dwellings

The Secretary may consent to the release of a part or parts of the mortgaged property or project from the lien of any mortgage insured under this section upon such terms and conditions as he may prescribe, and shall prescribe such procedures as in his judgment are necessary to secure to elderly persons a preference or priority of opportunity to rent the dwellings included in such property or project.

(e) Applicability of other laws

The provisions of subsections (d), (e), (g), (h), (i), (j), (k), (l), and (n) of section 1713 of this title shall apply to mortgages insured under this section and all references therein to section 1713 of this title shall refer to this section.

(f) Handicapped family units and facilities; rental preference or priority

Notwithstanding any of the provisions of this section, the housing provided under this section may include family units which are specially designed for the use and occupancy of any person or family qualifying as a handicapped family as defined in section 1701q ¹ of this title, and such special facilities as the Secretary deems adequate to serve handicapped families (as so defined). The Secretary may also prescribe procedures to secure to such families preference or priority of opportunity to rent the living units specially designed for their use and occupancy.

(June 27, 1934, ch. 847, title II, §231, as added Pub. L. 86-372, title II, §201(a), Sept. 23, 1959, 73 Stat. 665; amended Pub. L. 87-70, title VI, §612(m), June 30, 1961, 75 Stat. 183; Pub. L. 88-560, title I, §107(e), title II, §203(c), Sept. 2, 1964, 78 Stat. 776, 784; Pub. L. 89-117, title II, §207(e), title XI, §1108(l), Aug. 10, 1965, 79 Stat. 467, 505; Pub. L. 90-19, §1(a)(3), (4), May 25, 1967, 81 Stat. 17; Pub. L. 90-301, §3(d), May 7, 1968, 82 Stat. 114; Pub. L. 91-152, title I, §113(g), Dec. 24, 1969, 83 Stat. 384; Pub. L. 93-383, title III, §§303(f), 304(f), Aug. 22, 1974, 88 Stat. 677, 678; Pub. L. 94-173, §3, Dec. 23, 1975, 89 Stat. 1027; Pub. L. 94-375, §8(a), (b)(6), Aug. 3, 1976, 90 Stat. 1071, 1072; Pub. L. 96-153, title III, §314, Dec. 21, 1979, 93 Stat. 1117; Pub. L. 96-399, title III, §310(e), Oct. 8, 1980, 94 Stat. 1642; Pub. L. 97-35, title III, §339B(a), Aug. 13, 1981, 95 Stat. 417; Pub. L. 97-377, title I, §101(g), Dec. 21, 1982, 96 Stat. 1908; Pub. L. 98-181, title I [title IV, §§404(b)(9), 446(e)], Nov. 30, 1983, 97 Stat. 1209, 1228; Pub. L. 100-242, title IV, §426(f), (h), Feb. 5, 1988, 101 Stat. 1916; Pub. L. 102-550, title V, §509(f), Oct. 28, 1992, 106 Stat. 3783; Pub. L. 107-73, title II, §213(f), Nov. 26, 2001, 115 Stat. 677; Pub. L. 107-326, §5(b)(6), Dec. 4, 2002,

116 Stat. 2795; Pub. L. 108–186, title III, §302(b), Dec. 16, 2003, 117 Stat. 2692; Pub. L. 110–161, div. K, title II, §221(1), Dec. 26, 2007, 121 Stat. 2436.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1720 of this title, referred to in subsec. (c)(2)(B), was repealed by Pub. L. 98–181, title I [title IV, §483(a)], Nov. 30, 1983, 97 Stat. 1240.

Section 8211 of title 42, referred to in subsec. (c)(2)(C), was omitted from the Code pursuant to section 8229 of Title 42, The Public Health and Welfare, which terminated authority under that section on June 30, 1989.

The General Insurance Fund, referred to in subsec. (c)(4), was established by section 1735c of this title.

Section 1701q of this title, referred to in subsec. (f), was amended generally by Pub. L. 101–625, title VIII, §801(a), Nov. 28, 1990, 104 Stat. 4297, and, as so amended, no longer defines the term "handicapped family".

AMENDMENTS

2007—Subsec. (c)(2)(B). Pub. L. 110–161 substituted "170 percent" for "140 percent" after "not to exceed" in two places and "215 percent in high cost areas" for "170 percent in high cost areas".

2003—Subsec. (c)(2)(B). Pub. L. 108–186 substituted "140 percent in" for "110 percent in" and inserted ", or 170 percent in high cost areas," after "and by not to exceed 140 percent".

2002—Subsec. (c)(2). Pub. L. 107–326 inserted "(A)" after "(2)" and substituted "; (B) the Secretary may, by regulation, increase any of the dollar limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title)" for "; and except that the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this paragraph" and "; (C) the Secretary may, by regulation, increase any of the dollar limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title)" for ": *Provided*, That the Secretary may further increase the dollar amount limitations which would otherwise apply for the purpose of this section".

2001—Subsec. (c)(2). Pub. L. 107–73 substituted "\$35,978", "\$40,220", "\$48,029", "\$57,798", and "\$67,950" for "\$28,782", "\$32,176", "\$38,423", "\$46,238", and "\$54,360", respectively, and "\$40,876", "\$46,859", "\$56,979", "\$73,710", and "\$80,913" for "\$32,701", "\$37,487", "\$45,583", "\$58,968", and "\$64,730", respectively.

1992—Subsec. (c)(2). Pub. L. 102–550 substituted "\$28,782", "\$32,176", "\$38,423", "\$46,238", and "\$54,360" for "\$23,985", "\$26,813", "\$32,019", "\$38,532", and "\$45,300", respectively, and "\$32,701", "\$37,487", "\$45,583", "\$58,968", and "\$64,730" for "\$27,251", "\$31,239", "\$37,986", "\$49,140", and "\$53,942", respectively.

1988—Subsec. (c)(2). Pub. L. 100–242 substituted "\$23,985", "\$26,813", "\$32,019", "\$38,532", and "\$45,300" for "\$18,450", "\$20,625", "\$24,630", "\$29,640", and "\$34,846", respectively, and "\$27,251", "\$31,239", "\$37,986", "\$49,140", and "\$53,942" for "\$20,962", "\$24,030", "\$29,220", "\$37,800", and "\$41,494", respectively, and substituted "not to exceed 110 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 140 percent where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720 of this title (as such section existed immediately before November 30, 1983) is involved" for "not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum (by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved) in such an area".

1983—Subsec. (c)(5). Pub. L. 98–181, §446(e), inserted "(unless otherwise approved by the Secretary)" after "periodic payments".

Subsec. (c)(6). Pub. L. 98–181, §404(b)(9), substituted provision that the interest rate be at such a rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate, exclusive of premium

charges for insurance, not exceed 5 per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such per centum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market.

1982—Subsec. (c)(2). Pub. L. 97-377 inserted "(by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved)" after "90 per centum".

1981—Subsec. (c)(2). Pub. L. 97-35 inserted "therein" after "installation" and struck out "therein" after "measure".

1980—Subsec. (c)(2). Pub. L. 96-399 inserted proviso relating to increase of dollar amount limitations due to installation of a solar energy system.

1979—Subsec. (c)(2). Pub. L. 96-153 substituted "75 per centum" for "50 per centum" and inserted exception that the dollar amount limitations may be exceeded by not be exceed 90 per centum where the Secretary determines it to be necessary.

1976—Subsec. (c)(2). Pub. L. 94-375 substituted "50 per centum in any geographical area" for "75 per centum in any geographical area", "\$18,450" for "\$12,300", "\$20,625" for "\$17,188", "\$24,630" for "\$20,525", "\$29,640" for "\$24,700", "\$34,846" for "\$29,038", "\$20,962" for "\$13,975", "\$24,030" for "\$20,025", "\$29,220" for "\$24,350", "\$37,800" for "\$31,500", and "\$41,494" for "\$34,578".

1975—Subsec. (c)(2). Pub. L. 94-173 raised from 45 per centum to 75 per centum the amount by which any dollar limitation may, by regulation, be increased.

1974—Subsec. (c)(1). Pub. L. 93-383, §304(f), struck out par. (1) which set forth limits on principal obligations of mortgages.

Subsec. (c)(2). Pub. L. 93-383, §303(f), substituted "\$12,300" for "\$8,800", "\$13,975" for "\$10,450", "\$17,188" for "\$12,375", "\$20,025" for "\$14,850", "\$20,525" for "\$14,850", "\$24,350" for "\$17,600", "\$24,700" for "\$18,700", "\$29,038" for "\$21,175", "\$31,500" for "\$22,000", and "\$34,578" for "\$25,025".

1969—Subsec. (c)(2). Pub. L. 91-152 substituted "\$8,800" for "\$8,000", "\$10,450" for "\$9,500", "\$12,375" for "\$11,250", "\$14,850" for "\$13,500" wherever appearing, "\$17,600" for "\$16,000", "\$18,700" for "\$17,000", "\$21,175" for "\$19,250", "\$22,000" for "\$20,000", and "\$25,025" for "\$22,750".

1968—Subsec. (c)(6). Pub. L. 90-301 increased limitation on interest rates from 5½ to 6 per centum per annum.

1967—Pub. L. 90-19, §1(a)(3), substituted "Secretary" for "Commissioner" wherever appearing in subsecs. (b), (c)(2) to (7), (d), and (f).

Subsec. (c)(3), (4). Pub. L. 90-19, §1(a)(4), substituted "Secretary's" for "Commissioner's".

1965—Subsec. (c)(2). Pub. L. 89-117, §207(e), substituted "\$17,000 per family unit with three bedrooms, and \$19,250 per family unit with four or more bedrooms" for "and \$17,000 per family unit with three or more bedrooms" and "\$20,000 per family unit with three bedrooms, and \$22,750 per family unit with four or more bedrooms" for "and \$20,000 per family unit with three or more bedrooms".

Subsec. (c)(4). Pub. L. 89-117, §1108(l)(1), substituted "General Insurance Fund" for "section 207 Housing Insurance Fund".

Subsec. (e). Pub. L. 89-117, §1108(l)(2), struck out references to subsecs. (f), (m) and (p) of section 1713 of this title.

1964—Subsec. (c)(2). Pub. L. 88-560, §107(e), changed limits on mortgages for property or project attributable to dwelling use from "\$2,250 per room (or \$9,000 per family unit if the number of rooms in such property or project is less than four per family unit)" to "\$8,000 per family unit without a bedroom, \$11,250 per family unit with one bedroom, \$13,500 per family unit with two bedrooms, and \$17,000 per family unit with three or more bedrooms", changed such mortgage limits on project consisting of elevator-type structures from a sum "of \$2,250 per room to not to exceed \$2,750 per room, and the dollar amount limitation of \$9,000 per family unit to not to exceed \$9,400 per family unit" to dollar amount limitations "per family unit to not to exceed \$9,500 per family unit without a bedroom, \$13,500 per family unit with one bedroom, \$16,000 per family unit with two bedrooms, and \$20,000 per family unit with three or more bedrooms", and substituted provisions authorizing an increase "by not to exceed 45 per centum" of any of such limits because of cost levels for former provision authorizing such increase "by not to exceed \$1,250 per room, without regard to the number of rooms being less than four, or four or more".

Subsec. (f). Pub. L. 88-560, §203(c), added subsec. (f).

1961—Subsec. (c)(2). Pub. L. 87-70 increased the maximum amount of mortgages from not more than \$9,000 per dwelling unit for such part of such property or project as may be attributable to dwelling use to not more than \$2,250 per room (or \$9,000 per family unit if the number of rooms in such property or project is less than four per family unit) for such part of such property or project as may be attributable to dwelling use

(excluding exterior land improvements), and permitted an increase of from \$2,250 per room to not more than \$2,750 per room to compensate for the higher costs incident to the construction of elevator-type structures.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 90-301, §3(d), May 7, 1968, 82 Stat. 114, cited as a credit to this section, was repealed by Pub. L. 98-181, title I [title IV, §404(a)], Nov. 30, 1983, 97 Stat. 1208.

LIMITATION ON NUMBER OF DWELLING UNITS WITH MORTGAGES NOT PROVIDING FOR COMPLETE AMORTIZATION

For limitation on the number of dwelling units with mortgages not providing for complete amortization pursuant to authority granted by amendment to subsec. (c)(5) by section 446 of Pub. L. 98-181, see section 446(f) of Pub. L. 98-181, set out as a note under section 1713 of this title.

AMENDMENTS TO PROVISIONS FOR FAMILY UNIT LIMITS ON RENTAL HOUSING; EQUITABLE APPLICATION OF SUCH AMENDMENTS OR PRE-AMENDMENT PROVISIONS TO PROJECTS SUBMITTED FOR CONSIDERATION PRIOR TO SEPTEMBER 2, 1964

Equitable application of amendment to subsec. (c)(2) of this section by section 107(e) of Pub. L. 88-560 or pre-amendment provisions to projects submitted for consideration prior to Sept. 2, 1964, see section 107(g) of Pub. L. 88-560, set out as a note under section 1713 of this title.

¹ [*See References in Text note below.*](#)

§1715w. Mortgage insurance for nursing homes, intermediate care facilities, and board and care homes

(a) Purpose

The purpose of this section is to assist in the provision of facilities for any of the following purposes or for a combination of such purposes:

(1) The development of nursing homes for the care and treatment of convalescents and other persons who are not acutely ill and do not need hospital care but who require skilled nursing care and related medical services, including additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day.

(2) The development of intermediate care facilities and board and care homes for the care of persons who, while not in need of nursing home care and treatment, nevertheless are unable to live fully independently and who are in need of minimum but continuous care provided by licensed or trained personnel, including additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day.

(3) The development of assisted living facilities for the care of frail elderly persons.

(b) Definitions

For the purposes of this section—

(1) the term "nursing home" means a public facility, proprietary facility or facility of a private nonprofit corporation or association, licensed or regulated by the State (or, if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located), for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing

care and related medical services, in which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located;

(2) the term "intermediate care facility" means a proprietary facility or facility of a private nonprofit corporation or association licensed or regulated by the State (or, if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located) for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services;

(3) the term a ¹ "nursing home" or "intermediate care facility" may include such additional facilities as may be authorized by the Secretary for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day;

(4) the term "mortgage" means a first mortgage on real estate in fee simple, or on the interest of either the lessor or lessee thereof (A) under a lease for not less than ninety-nine years which is renewable, or (B) under a lease having a period of not less than ten years to run beyond the maturity date of the mortgage. The term "first mortgage" means such classes of first liens as are commonly given to secure advances (including but not limited to advances during construction) on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby, and any mortgage may be in the form of one or more trust mortgages or mortgage indentures or deeds of trust, securing notes, bonds, or other credit instruments, and, by the same instrument or by a separate instrument, may create a security interest in initial equipment, whether or not attached to the realty. The term "mortgagor" shall have the meaning set forth in section 1713(a) of this title;

(5) the term "board and care home" means any residential facility providing room, board, and continuous protective oversight that is regulated by a State pursuant to the provisions of section 1616(e) of the Social Security Act [42 U.S.C. 1382e(e)], so long as the home is located in a State that, at the time of an application is made for insurance under this section, has demonstrated to the Secretary that it is in compliance with the provisions of such section 1616(e);

(6) the term "assisted living facility" means a public facility, proprietary facility, or facility of a private nonprofit corporation that—

(A) is licensed and regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located);

(B) makes available to residents supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy; and

(C) provides separate dwelling units for residents, each of which may contain a full kitchen and bathroom, and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility; and

(7) the term "frail elderly person" has the meaning given the term in section 8011(k) of title 42.

(c) Authorization

The Secretary is authorized to insure any mortgage (including advances on such mortgage during construction) in accordance with the provisions of this section upon such terms and conditions as he may prescribe and to make commitments for insurance of such mortgage prior to the date of its execution or disbursement thereon.

(d) Terms and conditions; limitation on maximum amount of mortgage; amortization; interest; certification from State agency

In order to carry out the purposes of this section, the Secretary is authorized to insure any

mortgage which covers a new or rehabilitated nursing home,² assisted living facility, or intermediate care facility, including a new addition to an existing nursing home, assisted living facility, or intermediate care facility and regardless of whether the existing home or facility is being rehabilitated, or any combination of nursing home, assisted living facility, and intermediate care facility or a board and care home, including equipment to be used in its operation, subject to the following conditions:

(1) The mortgage shall be executed by a mortgagor approved by the Secretary. The Secretary may in his discretion require any such mortgagor to be regulated or restricted as to charges and methods of financing, and, in addition thereto, if the mortgagor is a corporate entity, as to capital structure and rate of return. As an aid to the regulation or restriction of any mortgagor with respect to any of the foregoing matters, the Secretary may make such contracts with and acquire for not to exceed \$100 such stock or interest in such mortgagor as he may deem necessary. Any stock or interest so purchased shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

(2) The mortgage shall involve a principal obligation in an amount not to exceed 90 per centum of the estimated value of the property or project, or 95 percent of the estimated value of the property or project in the case of a mortgagor that is a private nonprofit corporation or association (under the meaning given such term for purposes of section 1715l(d)(3) of this title), including—

(A) equipment to be used in the operation of the home or facility or combined home and facility when the proposed improvements are completed and the equipment is installed; or

(B) a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42)³ in cases where the Secretary determines that such measures are in addition to those required under the minimum property standards and will be cost-effective over the life of the measure.

(3) The mortgage shall—

(A) provide for complete amortization by periodic payments within such terms as the Secretary shall prescribe; and

(B) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee.

The Secretary shall not promulgate regulations or establish terms or conditions that interfere with the ability of the mortgagor and mortgagee to determine the interest rate; and⁴

(4)(A) With respect to nursing homes and intermediate care facilities and combined nursing home and intermediate care facilities, the Secretary shall not insure any mortgage under this section unless he has received, from the State agency designated in accordance with section 604(a)(1) or section 1521³ of the Public Health Service Act [42 U.S.C. 291d (a)(1), 300m] for the State in which is located the nursing home or intermediate care facility or combined nursing home and intermediate care facility covered by the mortgage, a certification that (i) there is a need for such home or facility or combined home and facility, and (ii) there are in force in such State or in the municipality or other political subdivision of the State in which the proposed home or facility or combined home and facility is to be located reasonable minimum standards of licensure and methods of operation governing it. No such mortgage shall be insured under this section unless the Secretary has received such assurance as he may deem satisfactory from the State agency that such standards will be applied and enforced with respect to any home or facility or combined home and facility located in the State for which mortgage insurance is provided under this section. If no such State agency exists, or if the State agency exists but is not empowered to provide a certification that there is a need for the home or facility or combined home and facility as required in clause (i) of the first sentence, the Secretary shall not insure any mortgage under this section unless (i) the State in which the home or facility or combined home and facility is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility

that (I) is prepared in accordance with the principles established by the American Institute of Certified Public Accountants; (II) assesses, on a marketwide basis, the impact of the proposed home or facility or combined home and facility on, and its relationship to, other health care facilities and services, the percentage of excess beds, demographic projections, alternative health care delivery systems, and the reimbursement structure of the home, facility, or combined home and facility; (III) is addressed to and is acceptable to the Secretary in form and substance; and (IV) in the event the State does not prepare the study, is prepared by a financial consultant who is selected by the State or the applicant for mortgage insurance and is approved by the Secretary; and (ii) the State complies with the other provisions of this subparagraph that would otherwise be required to be met by a State agency designated in accordance with section 604(a)(1) or section 1521 ³ of the Public Health Service Act. The proposed mortgagor may reimburse the State for the cost of the independent feasibility study required in the preceding sentence. In the case of a small intermediate care facility for the mentally retarded or developmentally disabled, or a board and care home housing less than 10 individuals, the State program agency or agencies responsible for licensing, certifying, financing, or monitoring the facility or home may, in lieu of the requirements of clause (i) of the third sentence, provide the Secretary with written support identifying the need for the facility or home.

(B) With respect to board and care homes, the Secretary shall not insure any mortgage under this section unless he has received from the appropriate State licensing agency a statement verifying that the State in which the home is or is to be located is in compliance with the provisions of section 1616(e) of the Social Security Act [42 U.S.C. 1382e(e)].

(C) With respect to assisted living facilities or any such facility combined with any other home or facility, the Secretary shall not insure any mortgage under this section unless—

(i) the Secretary determines that the level of financing acquired by the mortgagor and any other resources available for the facility will be sufficient to ensure that the facility contains dwelling units and facilities for the provision of supportive services in accordance with subsection (b)(6);

(ii) the mortgagor provides assurances satisfactory to the Secretary that each dwelling unit in the facility will not be occupied by more than 1 person without the consent of all such occupants; and

(iii) the appropriate State licensing agency for the State, municipality, or other political subdivision in which the facility is or is to be located provides such assurances as the Secretary considers necessary that the facility will comply with any applicable standards and requirements for such facilities.

(e) Release of part of mortgaged property or project from lien

The Secretary may consent to the release of a part or parts of the mortgaged property or project from the lien of any mortgage insured under this section upon such terms and conditions as he may prescribe.

(f) Applicability of other laws

The provisions of subsections (d), (e), (g), (h), (i), (j), (k), (l), and (n) of section 1713 of this title shall apply to mortgages insured under this section and all references therein to section 1713 of this title shall refer to this section.

(g) Regulations covering intermediate care facilities; consultations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section relating to intermediate care facilities, after consulting with the Secretary of Health and Human Services with respect to any health or medical aspects of the program which may be involved in such regulations.

(h) Consultations concerning need for and availability of intermediate care facilities

The Secretary shall also consult with the Secretary of Health and Human Services as to the need for and the availability of intermediate care facilities in any area for which an intermediate care facility is proposed under this section.

(i) Fire safety equipment for nursing homes, assisted living facilities, intermediate care facilities, or board and care homes

(1) The Secretary is authorized upon such terms and conditions as he may prescribe to make commitments to insure and to insure loans made by financial institutions or other approved mortgagees to nursing homes, assisted living facilities, and intermediate care facilities or to board and care homes to provide for the purchase and installation of fire safety equipment necessary for compliance with the 1967 edition of the Life Safety Code of the National Fire Protection Association (or any subsequent edition specified by the Secretary of Health and Human Services) or other such codes or requirements approved by the Secretary of Health and Human Services as conditions of participation for providers of services under title XVIII and title XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.] or as mandated by a State under the provisions of section 1616(e) of such Act [42 U.S.C. 1382e(e)].

(2) To be eligible for insurance under this subsection a loan shall—

(A) not exceed the Secretary's estimate of the reasonable cost of the equipment fully installed;

(B) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee;

(C) have a maturity satisfactory to the Secretary;

(D) be made by a financial institution or other mortgagee approved by the Secretary as eligible for insurance under section 1703 of this title or a mortgagee approved under section 1709(b)(1) of this title;

(E) comply with other such terms, conditions, and restrictions as the Secretary may prescribe; and

(F) in the case of board and care homes, be made with respect to such a home located in a State with respect to which the Secretary has received from the appropriate State licensing agency a statement verifying that the State in which the home is or is to be located is in compliance with the provisions of section 1616(e) of the Social Security Act [42 U.S.C. 1382e(e)].

(3) The provisions of paragraphs (5), (6), (7), (9), and (10) of section 1715k(h) of this title shall be applicable to loans insured under this subsection, except that all references to "home improvement loans" shall be construed to refer to loans under this subsection.

(4) The provisions of subsections (c), (d), and (h) of section 1703 of this title shall apply to loans insured under this subsection, and for the purpose of this subsection references in such subsections to "this section" or "this title" shall be construed to refer to this subsection.

(j) Schedules and deadlines for processing and approval of applications

The Secretary shall establish schedules and deadlines for the processing and approval (or provision of notice of disapproval) of applications for mortgage insurance under this section. The Secretary shall submit a report to the Congress annually describing such schedules and deadlines and the extent of compliance by the Department with the schedules and deadlines during the year.

(June 27, 1934, ch. 847, title II, §232, as added Pub. L. 86-372, title I, §115, Sept. 23, 1959, 73 Stat. 663; amended Pub. L. 87-70, title VI, §610, June 30, 1961, 75 Stat. 180; Pub. L. 88-560, title I, §117, Sept. 2, 1964, 78 Stat. 779; Pub. L. 89-117, title XI, §1108(m), Aug. 10, 1965, 79 Stat. 505; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 90-448, title III, §314, Aug. 1, 1968, 82 Stat. 511; Pub. L. 91-152, title I, §111, Dec. 24, 1969, 83 Stat. 382; Pub. L. 93-204, Dec. 28, 1973, 87 Stat. 883; Pub. L. 93-383, title III, §304(g), Aug. 22, 1974, 88 Stat. 678; Pub. L. 95-128, title III, §308(a), Oct. 12, 1977, 91 Stat. 1135; Pub. L. 95-557, title III, §312, Oct. 31, 1978, 92 Stat. 2099; Pub. L. 96-399, title III, §310(f), Oct. 8, 1980, 94 Stat. 1643; Pub. L. 98-181, title I [title IV, §§404(b)(10), 437], Nov. 30, 1983, 97 Stat. 1209, 1222, 1223; Pub. L. 98-479, title I, §104(a)(1), Oct. 17, 1984, 98 Stat. 2224; Pub. L. 100-242, title IV, §§410(a), (b), 429(e), Feb. 5, 1988, 101 Stat. 1904, 1918; Pub. L. 102-550, title V, §511(a)-(e), Oct. 28, 1992, 106 Stat. 3784-3786; Pub. L. 105-65, title II, §216, Oct. 27, 1997, 111 Stat. 1367; Pub. L. 105-276, title II, §214(a), Oct. 21, 1998, 112 Stat. 2486.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Insurance Fund, referred to in subsec. (d)(1), was established by section 1735c of this title.

Section 8211 of title 42, referred to in subsec. (d)(2)(B), was omitted from the Code pursuant to section 8229 of Title 42, The Public Health and Welfare, which terminated authority under that section on June 30, 1989.

Section 1521 of the Public Health Service Act, referred to in subsec. (d)(4)(A), is section 1521 of act July 1, 1944, which was classified to section 300m of Title 42, The Public Health and Welfare, prior to repeal, effective Jan. 1, 1987, by Pub. L. 99-660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799.

The Social Security Act, referred to in subsec. (i)(1), is act Aug. 13, 1935, ch. 531, 49 Stat. 620. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1998—Subsec. (b)(4)(B). Pub. L. 105-276 made technical correction to directory language of Pub. L. 105-65. See 1997 Amendment note below.

1997—Subsec. (b)(4)(B). Pub. L. 105-65, as amended by Pub. L. 105-276, substituted "ten years to run beyond the maturity date of the mortgage" for "fifty years to run from the date the mortgage was executed".

1992—Subsec. (a). Pub. L. 102-550, §511(a)(1), substituted "any" for "either" in introductory provisions.

Subsec. (a)(3). Pub. L. 102-550, §511(a)(2), added par. (3).

Subsec. (b)(6), (7). Pub. L. 102-550, §511(b), added pars. (6) and (7).

Subsec. (d). Pub. L. 102-550, §511(c)(1), in introductory provisions, inserted ", assisted living facility," after "rehabilitated nursing home," substituted "any combination of nursing home, assisted living facility, and intermediate care facility" for "combined nursing home and intermediate care facility", and inserted ", including a new addition to an existing nursing home, assisted living facility, or intermediate care facility and regardless of whether the existing home or facility is being rehabilitated," after first reference to "intermediate care facility".

Subsec. (d)(2). Pub. L. 102-550, §511(c)(2), inserted "or 95 percent of the estimated value of the property or project in the case of a mortgagor that is a private nonprofit corporation or association (under the meaning given such term for purposes of section 17151(d)(3) of this title)," before "including" in introductory provisions.

Subsec. (d)(3). Pub. L. 102-550, §511(c)(3), inserted concluding provisions.

Subsec. (d)(4)(C). Pub. L. 102-550, §511(c)(4), added subpar. (C).

Subsec. (i)(1). Pub. L. 102-550, §511(d), inserted ", assisted living facilities," after "nursing homes".

Subsec. (j). Pub. L. 102-550, §511(e), added subsec. (j).

1988—Subsec. (b)(1). Pub. L. 100-242, §410(a), inserted "public facility," before "proprietary".

Subsec. (b)(3) to (5). Pub. L. 100-242, §429(e)(1), indented as par. (3) former run-in cl. (3) defining "nursing home" and "intermediate care facility", inserted "the term", and struck out "and" after semicolon at end, redesignated as par. (4) former par. (3) defining "mortgage", and redesignated as par. (5) former par. (4).

Subsec. (d)(4)(A). Pub. L. 100-242, §410(b), inserted "If no such State agency exists, or if the State agency exists but is not empowered to provide a certification that there is a need for the home or facility or combined home and facility as required in clause (i) of the first sentence, the Secretary shall not insure any mortgage under this section unless (i) the State in which the home or facility or combined home and facility is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility that (I) is prepared in accordance with the principles established by the American Institute of Certified Public Accountants; (II) assesses, on a marketwide basis, the impact of the proposed home or facility or combined home and facility on, and its relationship to, other health care facilities and services, the percentage of excess beds, demographic projections, alternative health care delivery systems, and the reimbursement structure of the home, facility, or combined home and facility; (III) is addressed to and is acceptable to the Secretary in form and substance; and (IV) in the event the State does not prepare the study, is prepared by a financial consultant who is selected by the State or the applicant for mortgage insurance and is approved by the Secretary; and (ii) the State complies with the other provisions of this subparagraph that would otherwise be required to be met by a State agency designated in accordance with section 291d(a)(1) or section 300m of title 42. The proposed mortgagor may reimburse the State for the cost of the independent feasibility study required in the preceding sentence. In the case of a small intermediate care facility for the mentally retarded or developmentally disabled, or a board and care home housing less than 10 individuals, the

State program agency or agencies responsible for licensing, certifying, financing, or monitoring the facility or home may, in lieu of the requirements of clause (i) of the third sentence, provide the Secretary with written support identifying the need for the facility or home."

Subsec. (i)(2)(B). Pub. L. 100-242, §429(e)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "bear interest at not to exceed a rate determined by the Secretary to be necessary to meet the loan market".

1984—Pub. L. 98-479 inserted reference to board and care homes in section catchline.

1983—Subsec. (a)(2). Pub. L. 98-181, §437(a), inserted "and board and care homes" after "intermediate care facilities".

Subsec. (b)(4). Pub. L. 98-181, §437(b), added par. (4).

Subsec. (d). Pub. L. 98-181, §437(c)(1), in provisions preceding par. (1) inserted "or a board and care home" after "and intermediate care facility,".

Subsec. (d)(3)(B). Pub. L. 98-181, §404(b)(10), substituted provision that the interest rate be at such a rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate, exclusive of premium charges for insurance, not exceed 5 per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such per centum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market.

Subsec. (d)(4). Pub. L. 98-181, §437(c)(2), designated existing provision as subpar. (A), substituted "With respect to nursing homes and intermediate care facilities and combined nursing home and intermediate care facilities, the" for "The" and "(i)" and "(ii)" for "(A)" and "(B)", respectively, and added subpar. (B).

Subsecs. (g), (h). Pub. L. 98-181, §437(d), (e), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (i)(1). Pub. L. 98-181, §437(f)(1), inserted "or to board and care homes" after "intermediate care facilities", "(or any subsequent edition specified by the Secretary of Health and Human Services)" after "Association", and "or as mandated by a State under provisions of section 1616(e) of such Act" after "Social Security Act", and substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (i)(2)(F). Pub. L. 98-181, §437(f)(2), added subpar. (F).

1980—Subsec. (d)(2). Pub. L. 96-399 revised existing provisions into introductory paragraph and subpar. (A) and added subpar. (B).

1978—Subsec. (a). Pub. L. 95-557, §312(a), inserted ", including additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day" after pars. (1) and (2).

Subsec. (b)(2). Pub. L. 95-557, §312(b), inserted "(3) a 'nursing home' or 'intermediate care facility' may include such additional facilities as may be authorized by the Secretary for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day".

1977—Subsec. (d)(4). Pub. L. 95-128 inserted reference to section 300m of title 42.

1974—Subsec. (d)(2). Pub. L. 93-383 struck out "not to exceed \$12,500,000, and" after "an amount".

1973—Subsec. (i). Pub. L. 93-204 added subsec. (i).

1969—Subsec. (a). Pub. L. 91-152, §111(1), added to stated purpose of this section of developing nursing homes, the development of intermediate care facilities or the development of such facilities in combination with nursing home facilities.

Subsec. (b). Pub. L. 91-152, §111(2), (3), struck out "and" after "is located;" in par. (1), redesignated par. (2) as (3), and added par. (2).

Subsec. (d). Pub. L. 91-152, §111(4), inserted provision authorizing the Secretary to insure any mortgage which covers an intermediate care facility or combined nursing home and intermediate care facility.

Subsec. (d)(2). Pub. L. 91-152, §111(5), substituted "operation of the home or facility or combined home or facility" for "operation of the nursing home".

Subsec. (d)(4). Pub. L. 91-152, §111(6), substituted "section 291d(a)(1) of title 42" for "section 291b(a)(1) of title 42", and made provisions applicable to the insurance of mortgages covering intermediate care facilities or combined nursing home and intermediate care facilities.

Subsecs. (g), (h). Pub. L. 91-152, §111(7), added subsecs. (g) and (h).

1968—Subsec. (b)(2). Pub. L. 90-448, §314(1), redefined term "mortgage" to mean a first mortgage on real estate in fee simple, or on the interest of either the lessor or lessee thereof under a lease for not less than ninety-nine years which is renewable, or under a lease having a period of not less than fifty years to run from the date the mortgage was executed, and inserted definition of "first mortgage".

Subsec. (d). Pub. L. 90-448, §314(2), (3), authorized the Secretary to insure a mortgage which includes equipment to be used in the operation of a nursing home, and permitted the value of the equipment to be included in the calculation of the 90 per centum of the estimated value.

1967—Pub. L. 90–19 substituted "Secretary" for "Commissioner" wherever appearing.

1965—Subsec. (d)(1). Pub. L. 89–117, §1108(m)(1), substituted "General Insurance Fund" for "section 207 Housing Insurance Fund".

Subsec. (f). Pub. L. 89–117, §1108(m)(2), struck out references to subsecs. (f), (m) and (p) of section 1713 of this title.

1964—Subsec. (b)(1). Pub. L. 88–560 inserted "or facility of a private nonprofit corporation or association" after "proprietary facility".

1961—Subsec. (d)(2). Pub. L. 87–70 substituted "90 per centum" for "75 per centum".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title II, §214(b), Oct. 21, 1998, 112 Stat. 2486, provided that: "The amendment made by subsection (a) [amending this section] shall be construed to have taken effect on October 27, 1997."

REGULATIONS

Pub. L. 100–242, title IV, §410(c), Feb. 5, 1988, 101 Stat. 1904, provided that: "The Secretary of Housing and Urban Development shall issue such regulations as may be necessary to carry out the amendments made by this section [amending this section] by not later than the expiration of the 90-day period following the date of the enactment of this Act [Feb. 5, 1988]."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (j) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 105 of House Document No. 103–7.

DELEGATION OF PROCESSING OF MORTGAGE INSURANCE

Secretary of Housing and Urban Development to implement system of mortgage insurance for mortgages insured under this section that delegates processing functions to selected approved mortgagees, with Secretary to retain authority to approve rents, expenses, property appraisals, and mortgage amounts and to execute firm commitments, see section 328 of Pub. L. 101–625, set out as a note under section 1713 of this title.

¹ *So in original. The word "a" probably should not appear.*

² *So in original.*

³ *See References in Text note below.*

⁴ *So in original. The "; and" probably should be a period.*

§1715x. Experimental housing insurance

(a) Purpose; authorization

(1) In order to assist in lowering housing costs and improving housing standards, quality, livability, or durability or neighborhood design through the utilization of advanced housing technology, or experimental property standards, the Secretary is authorized to insure and to make commitments to insure, under this section, mortgages (including home improvement loans, and including advances on mortgages during construction) secured by properties including dwellings involving the utilization and testing of advanced technology in housing design, materials, or construction, or experimental property standards for neighborhood design if the Secretary determines that (A) the property is an acceptable risk, giving consideration to the need for testing advanced housing technology or experimental property standards, (B) the utilization and testing of the advanced technology or experimental property standards involved will provide data or experience which the Secretary deems to be significant in reducing housing costs or improving housing

standards, quality, livability, or durability, or improving neighborhood design, and (C) the mortgages are eligible for insurance under the provisions of this section and under any further terms and conditions which may be prescribed by the Secretary to establish the acceptability of the mortgages for insurance.

(2) The Secretary is further authorized to insure and to make commitments to insure, under this section, mortgages (including advances on mortgages during construction) secured by properties in projects to be carried out in accordance with plans approved by the Secretary under section 1701z of this title.

(b) Eligibility for insurance; conditions; limits

To be eligible for insurance under this section, a mortgage shall meet the requirements of one of the other sections or subchapters of this chapter; except that, in lieu of determining the appraised value or the replacement cost of the property in cases involving new construction or the estimated cost of repair and rehabilitation or improvement in cases involving existing properties, the Secretary shall estimate the cost of replacing the property using comparable conventional design, materials, and construction, and any limitation upon the maximum mortgage amount available to a nonoccupant owner shall not, in the discretion of the Secretary, be applicable to mortgages insured under this section.

(c) Contracts, agreements, and financial undertakings with mortgagor

The Secretary may enter into such contracts, agreements, and financial undertakings with the mortgagor and others as he deems necessary or desirable to carry out the purposes of this section, and may expend available funds for such purposes, including the correction (when he determines it necessary to protect the occupants), at any time subsequent to insurance of a mortgage, of defects or failures in the dwellings which the Secretary finds are caused by or related to the advanced housing technology utilized in their design or construction or experimental property standards. Any authority which the Secretary may exercise in connection with a mortgage, or property covered by a mortgage, insured under any other section of this subchapter (including payments to reduce rentals for, or to facilitate homeownership by, lower income families) may be exercised in connection with a mortgage, or property covered by a mortgage, meeting the requirements of such other section (except as specified in subsection (b)), which is insured under this section to the same extent and in the same manner as if the mortgage insured under this section was insured under such other section.

(d) Investigations and analysis of data; publication and distribution of reports

The Secretary may make such investigations and analyses of data, and publish and distribute such reports, as he determines to be necessary or desirable to assure the most beneficial use of the data and information to be acquired as a result of this section.

(e) Entitlement to insurance benefits

Any mortgagee or lender under a mortgage insured under subsection (b) shall be entitled to insurance benefits determined in the same manner as such benefits would be determined if such mortgage or loan were insured under the section or subchapter of this chapter for which it otherwise would have been eligible except for the experimental feature of the property involved.

(f) Defaults; payment in cash or debentures; acquisition of mortgage

Notwithstanding the provisions of subsection (e) of this section, in the case of default on any mortgage insured under this section, the Secretary in his discretion, in accordance with such regulations as he may prescribe, may make payments pursuant to such subsections in cash or in debentures (as provided in the mortgage insurance contract), or may acquire the mortgage loan and the security therefor upon payment to the mortgagee in cash or in debentures (as provided in the mortgage insurance contract) of a total amount equal to the unpaid principal balance of the loan plus any accrued interest and any advances approved by the Secretary made previously by the mortgagee under the provisions of the mortgage. After the acquisition of the mortgage by the Secretary the mortgagee shall have no further rights, liabilities, or obligations with respect to the mortgage. The appropriate provisions of sections 1710 and 1713 of this title relating to the issuance of debentures

shall apply with respect to debentures issued under this subsection, and the appropriate provisions of sections 1710 and 1713 of this title relating to the rights, liabilities, and obligations of a mortgagee shall apply with respect to the Secretary when he has acquired an insured mortgage under this subsection, in accordance with and subject to regulations (modifying such provisions to the extent necessary to render their application for such purposes appropriate and effective) which shall be prescribed by the Secretary, except that as applied to mortgages insured under this section (1) all references in section 1710 of this title to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund, and (2) all references in section 1710 of this title to section 1709 of this title shall be construed to refer to this section. If the insurance payment is made in cash, there shall be added to such payment an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Secretary.

(June 27, 1934, ch. 847, title II, §233, as added Pub. L. 87-70, title I, §103, June 30, 1961, 75 Stat. 158; amended Pub. L. 88-560, title I, §§105(c)(1), 118, Sept. 2, 1964, 78 Stat. 772, 779; Pub. L. 89-117, title XI, §1108(n), Aug. 10, 1965, 79 Stat. 505; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 90-448, title I, §108(f), title III, §309, Aug. 1, 1968, 82 Stat. 496, 509.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (e), was in the original "this Act", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

The General Insurance Fund, referred to in subsec. (f), was established by section 1735c of this title.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-448, §108(f)(1), designated existing provision as par. (1), redesignated cls. (1), (2), and (3) as cls. (A), (B), and (C), respectively, and added par. (2).

Subsec. (b). Pub. L. 90-448, §309(1), substituted "one of the other sections or subchapters of this chapter" for "one of the other sections of this subchapter".

Subsec. (c). Pub. L. 90-448, §108(f)(2), inserted sentence providing that any authority which the Secretary may exercise in connection with a mortgage, or property covered by a mortgage, insured under any other section of this subchapter (including payments to reduce rentals for, or to facilitate homeownership by, lower income families) may be exercised in connection with a mortgage, or property covered by a mortgage, meeting the requirements of such other section (except as specified in subsec. (b)), which is insured under this section to the same extent and in the same manner as if the mortgage insured under this section was insured under such other section.

Subsec. (e). Pub. L. 90-448, §309(2), substituted "the section or subchapter of this chapter" for "the section of this subchapter".

1967—Subsecs. (a) to (d), (f). Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing.

1965—Subsec. (f). Pub. L. 89-117, §1108(n)(1), (2), substituted "General Insurance Fund" for "Experimental Housing Insurance Fund" and struck out provision that all references in section 1713 of this title to the Housing Insurance Fund, the Housing Fund, or the Fund shall be construed to refer to the Experimental Housing Insurance Fund.

Subsec. (g). Pub. L. 89-117, §1108(n)(3), repealed subsec. (g) which created the Experimental Housing Insurance Fund, provided for transfer of funds thereto, and authorized the charging of expenses thereto.

1964—Subsec. (a). Pub. L. 88-560, §118(a), substituted "home improvement loans, and including advances on mortgages" for ", in the case of mortgages insured under subsection (b)(2) of this section, advances on such mortgages".

Subsec. (b). Pub. L. 88-560, §118(b), substituted provisions which make insurance available for mortgages meeting the requirements of any other sections of subchapter II of this chapter for provisions which made insurance available for mortgages meeting the requirements of section 1709(b) or 1713(b), (c) of this title and made the Commissioner's estimate of replacement cost of the property applicable to mortgages meeting the

requirements of any section of subchapter II of this chapter in lieu of determining the appraised value or the replacement cost of the property in new construction or estimated cost of repair and rehabilitation or improvement for existing properties.

Subsec. (e). Pub. L. 88-560, §118(c), substituted provision for entitlement to insurance benefits determined in the same manner as such benefits would be determined if such mortgage or loan were insured under the section of this subchapter for which it otherwise would have been eligible except for the experimental feature of the property involved for former provision for entitlement to insurance benefits provided in section 1710(a) of this title.

Subsec. (f). Pub. L. 88-560, §§105(c)(1), 118(c), (d), added to subsec. (g), redesignated (f), provision that "If the insurance payment is made in cash, there shall be added to such payment an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Commissioner", deleted former provisions of subsec. (f) which related to entitlement to insurance benefits provided in section 1713(g) of this title, now covered by subsec. (e) of this section, and redesignated former subsec. (g) as (f), substituting in first sentence "subsection (e)" for "subsections (e) and (f)", respectively.

Subsecs. (g), (h). Pub. L. 88-560, §118(d), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

§1715y. Mortgage insurance for condominiums

(a) Purpose

The purpose of this section is to provide an additional means of increasing the supply of privately owned dwelling units where, under the laws of the State in which the property is located, real property title and ownership are established with respect to a one-family unit which is part of a multifamily project.

(b) Definitions

The terms "mortgage", "mortgagee", "mortgagor", "maturity date", and "State" shall have the meanings respectively set forth in section 1707 of this title, except that the term "mortgage" for the purposes of subsection (c) may include a first mortgage given to secure the unpaid purchase price of a fee interest in, or a long-term leasehold interest in, a one-family unit in a multifamily project, including a project in which the dwelling units are attached, semi-attached, or detached, and an undivided interest in the common areas and facilities which serve the project where the mortgage is determined by the Secretary to be eligible for insurance under this section. The term "common areas and facilities" as used in this section shall be deemed to include the land and such commercial, community, and other facilities as are approved by the Secretary.

(c) Authorization; eligibility for insurance; conditions; limits

The Secretary is authorized, in his discretion and under such terms and conditions as he may prescribe (including the minimum number of family units in the project which shall be offered for sale and provisions for the protection of the consumer and the public interest), to insure any mortgage covering a one-family unit in a multifamily project and an undivided interest in the common areas and facilities which serve the project, if (1) the mortgage meets the requirements of this subsection and of section 1709(b) of this title, except as that section is modified by this subsection, (2) at least 80 percent of the units in the project covered by mortgages insured under this subchapter are occupied by the mortgagors or comortgagors, and (3) the project has a blanket mortgage insured by the Secretary under subsection (d). Any project proposed to be constructed or rehabilitated after June 30, 1961, with the assistance of mortgage insurance under this chapter, where the sale of family units is to be assisted with mortgage insurance under this subsection, shall be subject to such requirements as the Secretary may prescribe. To be eligible for insurance pursuant to this subsection, a mortgage shall (A) involve a principal obligation in an amount not to exceed the maximum principal obligation of a mortgage which may be insured in the area pursuant to section 1709(b)(2) of this title or pursuant to section 1709(h) of this title under the conditions described in section 1709(h) of this title, and (B) have a maturity satisfactory to the Secretary, but not to exceed, in any event, thirty-five years from the date of the beginning of amortization of the mortgage. The

mortgage shall contain such provisions as the Secretary determines to be necessary for the maintenance of common areas and facilities and the multifamily project. The mortgagor shall have exclusive right to the use of the one-family unit covered by the mortgage and, together with the owners of other units in the multifamily project, shall have the right to the use of the common areas and facilities serving the project and the obligation of maintaining all such common areas and facilities. The Secretary may require that the rights and obligations of the mortgagor and the owners of other dwelling units in the project shall be subject to such controls as he determines to be necessary and feasible to promote and protect individual owners, the multifamily project, and its occupants. For the purposes of this subsection, the Secretary is authorized in his discretion and under such terms and conditions as he may prescribe to permit one-family units and interests in common areas and facilities in multifamily projects covered by mortgages insured under any section of this chapter (other than section 1715e(a)(1) and (2) of this title) to be released from the liens of those mortgages.

(d) Blanket mortgages of multifamily projects; plan of family unit ownership; regulations; stock purchase and redemption

In addition to individual mortgages insured under subsection (c), the Secretary is authorized, in his discretion and under such terms and conditions as he may prescribe, to insure blanket mortgages (including advances on such mortgages during construction) which cover multifamily projects to be constructed or rehabilitated in cases where the mortgage is held by a mortgagor, approved by the Secretary, which—

(1) has certified to the Secretary, as a condition of obtaining the insurance of a blanket mortgage under this subsection, that upon completion of the multifamily project covered by such mortgage it intends to commit the ownership of the multifamily project to a plan of family unit ownership under which each family unit would be eligible for individual mortgage insurance under subsection (c) and will faithfully and diligently make and carry out all reasonable efforts to establish such plan of family unit ownership and to sell such family units to purchasers approved by the Secretary; and

(2) may, in the Secretary's discretion, be regulated or restricted as to rents, charges, capital structure, rate of return, and methods of operation until the termination of all obligations of the Secretary under the insurance and during such further period of time as the Secretary shall be the owner, holder or reinsurer of the mortgage. The Secretary may make such contracts with and acquire for not to exceed \$100 such stock or interest in such mortgagor as he may deem necessary to render effective any such regulation or restriction of such mortgagor. The stock or interest acquired by the Secretary shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par at any time upon the request of the Secretary after the termination of all obligations of the Secretary under the insurance.

(e) Eligibility for insurance of blanket mortgages of multifamily projects

To be eligible for insurance, a blanket mortgage on any multifamily project of a mortgagor of the character described in subsection (d) shall involve a principal obligation in an amount—

(1) Repealed. Pub. L. 93-383, title III, §304(h), Aug. 22, 1974, 88 Stat. 678;

(2) not to exceed 90 per centum of the amount which the Secretary estimates will be the replacement cost of the project when the proposed physical improvements are completed;

(3)(A) not to exceed, for such part of the project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Secretary), \$42,048 per family unit without a bedroom, \$48,481 per family unit with one bedroom, \$58,469 per family unit with two bedrooms, \$74,840 per family unit with three bedrooms, and \$83,375 per family unit with four or more bedrooms; except that as to projects to consist of elevator-type structures the Secretary may, in his discretion, increase the dollar amount limitations per family unit to not to exceed \$44,250 per family unit without a bedroom, \$50,724 per family unit with one bedroom, \$61,680 per family unit with two bedrooms, \$79,793 per family unit with three bedrooms, and \$87,588 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design; (B) the

Secretary may, by regulation, increase any of the dollar limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title) by not to exceed 170 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 170 percent, or 215 percent in high cost areas, where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720 ¹ of this title (as such section existed immediately before November 30, 1983) is involved; and

(4) not to exceed an amount equal to the sum of the unit mortgage amounts determined under the provisions of subsection (c) assuming the mortgagor to be the owner and occupant of each family unit.

(f) Amortization of blanket mortgages of multifamily projects; interest; releases; extent of project

Any blanket mortgage insured under subsection (d) shall provide for complete amortization by periodic payments within such terms as the Secretary may prescribe but not to exceed 40 years from the beginning of amortization of the mortgage, and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the blanket mortgage upon such terms and conditions as he may prescribe and the blanket mortgage may provide for such release. The project covered by the blanket mortgage may include four or more family units and such commercial and community facilities as the Secretary deems adequate to serve the occupants.

(g) Entitlement to insurance benefits as provided in section 1710(a) of this title

Any mortgagee under a mortgage insured under subsection (c) of this section is entitled to receive the benefits of the insurance as provided in section 1710(a) of this title with respect to mortgages insured under section 1709 of this title, and the provisions of subsections (b), (c), (d), (e), (f), (g), (h), ¹ (j), and (k) ¹ of section 1710 of this title shall be applicable to the mortgages insured under subsection (c) of this section.

(h) Applicability of other provisions

The provisions of subsections (d), (e), (g), (h), (i), (j), (k), (l), and (n) of section 1713 of this title shall be applicable to mortgages insured under subsection (d) of this section.

(i) Applicability of other provisions

The provisions of sections 1715p and 1715u of this title shall be applicable to the mortgages insured under subsection (c) of this section.

(j) Increase in maximum insurance amounts for costs incurred from solar energy systems and energy conservation measures

The Secretary may further increase the dollar amount limitations which would otherwise apply under subsection (e) by not to exceed 20 per centum if such increase is necessary to account for the increased cost of a project due to the installation therein of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42) ¹ in cases where the Secretary determines that such measures are in addition to those required under the minimum property standards and will be cost-effective over the life of the measure.

(k) Rental housing conversion

With respect to a unit in any project which was converted from rental housing, no insurance may be provided under this section unless (1) the conversion occurred more than one year prior to the application for insurance, (2) the mortgagor or comortgagor was a tenant of that rental housing, (3) the conversion of the property is sponsored by a bona fide tenants organization representing a majority of the households in the project, or (4) before April 20, 1984 (A) application was made to

the Secretary for a commitment to insure a mortgage covering any unit in the project, (B) in the case of direct endorsement, the mortgagee received the case number assigned by the Secretary for any unit in the project, or (C) application was made for approval of the project for guarantee, insurance, or direct loan under chapter 37 of title 38.

(June 27, 1934, ch. 847, title II, §234, as added Pub. L. 87–70, title I, §104, June 30, 1961, 75 Stat. 160; amended Pub. L. 88–560, title I, §119(a), Sept. 2, 1964, 78 Stat. 780; Pub. L. 89–117, title II, §207(f), title XI, §1108(o), Aug. 10, 1965, 79 Stat. 468, 506; Pub. L. 90–19, §1(a)(3), (4), May 25, 1967, 81 Stat. 17; Pub. L. 90–301, §3(e), May 7, 1968, 82 Stat. 114; Pub. L. 90–448, title III, §303, Aug. 1, 1968, 82 Stat. 507; Pub. L. 91–152, title I, §§102(d), 113(h), Dec. 24, 1969, 83 Stat. 380, 384; Pub. L. 93–383, title III, §§302(e), 303(g), 304(h), 310(d), Aug. 22, 1974, 88 Stat. 676–678, 683; Pub. L. 94–173, §3, Dec. 23, 1975, 89 Stat. 1027; Pub. L. 94–375, §8(a), (b)(7), Aug. 3, 1976, 90 Stat. 1071, 1072; Pub. L. 95–128, title III, §§303(e), 304(d), Oct. 12, 1977, 91 Stat. 1132, 1133; Pub. L. 95–557, title III, §313, Oct. 31, 1978, 92 Stat. 2099; Pub. L. 96–153, title III, §§312(c), 314, Dec. 21, 1979, 93 Stat. 1116, 1117; Pub. L. 96–399, title III, §§310(g), 318, 333(e), 336(d), Oct. 8, 1980, 94 Stat. 1643, 1646, 1653, 1654; Pub. L. 97–35, title III, §§339(a), 339B(a), (d), Aug. 13, 1981, 95 Stat. 416, 417; Pub. L. 97–253, title II, §201(e), Sept. 8, 1982, 96 Stat. 789; Pub. L. 97–377, title I, §101(g), Dec. 21, 1982, 96 Stat. 1908; Pub. L. 98–181, title I [title IV, §§404(b)(11), 420, 423(b)(4), 431(b)], Nov. 30, 1983, 97 Stat. 1209, 1213, 1217, 1220; Pub. L. 98–479, title I, §104(a)(2), Oct. 17, 1984, 98 Stat. 2224; Pub. L. 100–242, title IV, §§406(b)(17), 422(a), 426(g), (h), Feb. 5, 1988, 101 Stat. 1901, 1914, 1916; Pub. L. 102–550, title V, §509(g), Oct. 28, 1992, 106 Stat. 3783; Pub. L. 103–211, title I, Feb. 12, 1994, 108 Stat. 12; Pub. L. 103–233, title III, §306, Apr. 11, 1994, 108 Stat. 373; Pub. L. 105–18, title II, §10005, June 12, 1997, 111 Stat. 201; Pub. L. 107–73, title II, §213(g), Nov. 26, 2001, 115 Stat. 677; Pub. L. 107–326, §5(b)(7), Dec. 4, 2002, 116 Stat. 2796; Pub. L. 108–186, title III, §302(b), Dec. 16, 2003, 117 Stat. 2692; Pub. L. 110–161, div. K, title II, §221(1), Dec. 26, 2007, 121 Stat. 2436; Pub. L. 110–289, div. B, title I, §2117(a), July 30, 2008, 122 Stat. 2832.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

The General Insurance Fund, referred to in subsec. (d)(2), was established by section 1735c of this title.

Section 1720 of this title, referred to in subsec. (e)(3)(B), was repealed by Pub. L. 98–181, title I [title IV, §483(a)], Nov. 30, 1983, 97 Stat. 1240.

Subsection (h) of section 1710 of this title, referred to in subsec. (g), was redesignated subsec. (i) by Pub. L. 105–276, title VI, §602(1), Oct. 21, 1998, 112 Stat. 2674.

Subsection (k) of section 1710 of this title, referred to in subsec. (g), was repealed by Pub. L. 105–276, title VI, §601(c), Oct. 21, 1998, 112 Stat. 2673.

Section 8211 of title 42, referred to in subsec. (j), was omitted from the Code pursuant to section 8229 of Title 42, The Public Health and Welfare, which terminated authority under that section on June 30, 1989.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–289, §2117(a)(1), in first sentence, struck out "and" before "(2)" and inserted ", and (3) the project has a blanket mortgage insured by the Secretary under subsection (d)" before period at end.

Subsec. (g). Pub. L. 110–289, §2117(a)(2), struck out ", except that (1) all references in section 1710 of this title to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund, (2) all references therein to section 1709 of this title shall be construed to refer to subsection (c) of this section, and (3) the excess remaining, referred to in section 1710(f)(1) of this title, shall be retained by the Secretary and credited to the General Insurance Fund" before period at end.

2007—Subsec. (e)(3)(B). Pub. L. 110–161 substituted "170 percent" for "140 percent" after "not to exceed" in two places and "215 percent in high cost areas" for "170 percent in high cost areas".

2003—Subsec. (e)(3)(B). Pub. L. 108–186 substituted "140 percent in" for "110 percent in" and inserted

", or 170 percent in high cost areas," after "and by not to exceed 140 percent".

2002—Subsec. (e)(3). Pub. L. 107–326 inserted "(A)" after "(3)" and substituted "\$42,048" for "\$38,025", "\$48,481" for "\$42,120", "\$58,469" for "\$50,310", "\$74,840" for "\$62,010", "\$83,375" for "\$70,200", "\$44,250" for "\$43,875", "\$50,724" for "\$49,140", "\$61,680" for "\$60,255", "\$79,793" for "\$75,465", "\$87,588" for "\$85,328", and "; (B) the Secretary may, by regulation, increase any of the dollar limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title)" for "; except that each of the foregoing dollar amounts is increased to the amount established for a comparable unit in section 1715l(d)(3)(ii) of this title; and except that the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this paragraph".

2001—Subsec. (e)(3). Pub. L. 107–73 substituted "\$38,025", "\$42,120", "\$50,310", "\$62,010", and "\$70,200" for "\$30,420", "\$33,696", "\$40,248", "\$49,608", and "\$56,160", respectively, and "\$43,875", "\$49,140", "\$60,255", "\$75,465", and "\$85,328" for "\$35,100", "\$39,312", "\$48,204", "\$60,372", and "\$68,262", respectively.

1997—Subsec. (c). Pub. L. 105–18 inserted "or pursuant to section 1709(h) of this title under the conditions described in section 1709(h) of this title" after "section 1709(b)(2) of this title".

1994—Subsec. (c). Pub. L. 103–211, effective for 18-month period following Feb. 12, 1994, for eligible persons, inserted "or pursuant to section 1709(h) of this title under the conditions described in section 1709(h) of this title" after "section 1709(b)(2) of this title". See Applicability of 1994 Amendment note below.

Subsec. (e)(3). Pub. L. 103–233 substituted "\$56,160" for "\$59,160".

1992—Subsec. (e)(3). Pub. L. 102–550 substituted "\$30,420", "\$33,696", "\$40,248", "\$49,608", and "\$59,160" for "\$25,350", "\$28,080", "\$33,540", "\$41,340", and "\$46,800", respectively, and "\$35,100", "\$39,312", "\$48,204", "\$60,372", and "\$68,262" for "\$29,250", "\$32,760", "\$40,170", "\$50,310", and "\$56,885", respectively.

1988—Subsec. (c). Pub. L. 100–242, §406(b)(17), struck out fourth sentence which read as follows: "In determining the amount of a mortgage in the case of a nonoccupant mortgagor the reference to paragraph (2) of section 1709(b) of this title in section 1709(b)(8) of this title shall be construed to refer to the preceding sentence in this subsection."

Subsec. (e)(3). Pub. L. 100–242, §426(g), substituted "\$25,350", "\$28,080", "\$33,540", "\$41,340", and "\$46,800" for "\$19,500", "\$21,600", "\$25,800", "\$31,800", and "\$36,000", respectively, and "\$29,250", "\$32,760", "\$40,170", "\$50,310", and "\$56,885" for "\$22,500", "\$25,200", "\$30,900", "\$38,700", and "\$43,758", respectively.

Pub. L. 100–242, §422(a), inserted "except that each of the foregoing dollar amounts is increased to the amount established for a comparable unit in section 1715l(d)(3)(ii) of this title;" after "design;".

Pub. L. 100–242, §426(h), substituted "not to exceed 110 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 140 percent where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 1720 of this title (as such section existed immediately before November 30, 1983) is involved" for "not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum (by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved) in such an area".

1984—Subsec. (k)(4). Pub. L. 98–479 added cl. (4).

1983—Subsec. (c). Pub. L. 98–181, §423(b)(4), purported to amend cl. (A) of third sentence of subsec. (c) by striking out ": *Provided*, That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured", but this provision had been previously struck out by section 420(b) of Pub. L. 98–181. See second par. below and Effective Date of 1983 Amendment note below.

Pub. L. 98–181, §420(a), in cl. (2) substituted provision that at least 80 percent of the units in the project covered by mortgages insured under this subchapter be occupied by mortgagors or comortgagors for provision that the project be covered by a mortgage insured under any section of this chapter, except section 1715e(a)(1) and (2) of this title, notwithstanding any requirements in such section that the project be constructed or rehabilitated for providing rental housing and providing that a one-family unit in a multifamily project involving eleven or less units, or twelve or more in the case of a multifamily project the construction of which was completed more than a year prior to application for mortgage insurance, be eligible for insurance without

having been covered by a project mortgage, and struck out cl. (3), which provided that the mortgagor is acquiring, or has acquired, a family unit covered by a mortgage insured under this subsection for his own use and occupancy and will not own more than four one-family units covered by mortgages insured under this subsection.

Pub. L. 98-181, §420(b), substituted in third sentence "(A) involve a principal obligation in an amount not to exceed the maximum principal obligation of a mortgage which may be insured in the area pursuant to section 1709(b)(2) of this title" for "(A) involve a principal obligation in an amount not to exceed \$67,500, except that the Secretary may increase such maximum dollar amount on an area-by-area basis to the extent the Secretary deems necessary, after taking into consideration the extent to which moderate and middle income persons have limited housing opportunities in the area due to high prevailing housing sales prices, but in no case may such limit, as so increased, exceed the lesser of 111 per centum of such amount or 95 per centum of the median one-family house price in the area, as determined by the Secretary: *Provided*, That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured; and not to exceed the sum of (i) 97 per centum (100 per centum if the mortgagor is a veteran as defined under section 1709(b)(2) of this title) of \$25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance and (ii) 95 per centum of such value in excess of \$25,000".

Subsec. (d)(2). Pub. L. 98-181, §431(b), substituted "may, in the Secretary's discretion, be regulated or restricted" for "shall be regulated or restricted by the Secretary", and substituted "any such regulation or restriction" for "the regulation and restriction".

Subsec. (f). Pub. L. 98-181, §404(b)(11), substituted provision that the interest rate for the mortgage be such a rate as agreed upon by the mortgagor and mortgagee for provision that the rate of interest, exclusive of premium charges for insurance, not exceed $5\frac{1}{4}$ per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such per centum per annum not in excess of 6 per centum per annum as the Secretary finds necessary to meet the mortgage market.

Subsec. (k). Pub. L. 98-181, §420(c), added subsec. (k).

1982—Subsec. (c)(A). Pub. L. 97-253 inserted provision that the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured.

Subsec. (e)(3). Pub. L. 97-377 inserted "(by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved)" after "90 per centum".

1981—Subsec. (b). Pub. L. 97-35, §339(a), inserted reference to projects in which the dwelling units are attached, semi-attached, or detached.

Subsec. (c)(2). Pub. L. 97-35, §339B(d)(1), reenacted provisions relating to covered projects in material preceding proviso in cl. (2). Section 339B(d)(2) of Pub. L. 97-35 repealed section 318 of the Housing and Community Development Act of 1980, which previously enacted these provisions. See Repeals note set out below.

Subsec. (j). Pub. L. 97-35, §339B(a), inserted "therein" after "installation" and struck out "therein" after "measure".

1980—Subsec. (c). Pub. L. 96-399, §§318, 333(e), 336(d), inserted provisions relating to projects approved under chapter 37 of title 38, and provisions relating to increases in the maximum dollar amounts on an area-by-area basis, and struck out applicability to determinations of three-quarters of the Secretary's estimate of the remaining economic life of the building improvements, if so determined as the lesser amount in the computations.

Subsec. (j). Pub. L. 96-399, §310(g), added subsec. (j).

1979—Subsec. (c). Pub. L. 96-153, §312(c), substituted "\$67,500" for "\$60,000".

Subsec. (e)(3). Pub. L. 96-153, §314, substituted "75 per centum" for "50 per centum" and inserted exception that the dollar amount limitations may be exceeded not to exceed 90 per centum where the Secretary determines it to be necessary.

1978—Subsec. (c). Pub. L. 95-557 inserted "or twelve or more units in the case of a multifamily project the construction of which was completed more than a year prior to the application for mortgage insurance" after "less units" in cl. (2) and "(100 per centum if the mortgagor is a veteran as defined under section 1709(b)(2) of this title)" after "97 per centum" in cl. (A)(i).

1977—Subsec. (c). Pub. L. 95-128 substituted in cl. (A) "\$60,000" for "\$45,000" and "and (ii) 95 per centum of such value in excess of \$25,000," for "(ii) 90 per centum of such value in excess of \$25,000 but not in excess of \$35,000, (iii) 80 per centum of such value in excess of \$35,000".

1976—Subsec. (e)(3). Pub. L. 94-375 substituted "50 per centum in any geographical area" for "75 per

centum in any geographical area", "\$19,500" for "\$13,000", "\$21,600" for "\$18,000", "\$25,800" for "\$21,500", "\$31,800" for "\$26,500", "\$36,000" for "\$30,000", "\$22,500" for "\$15,000", "\$25,200" for "\$21,000", "\$30,900" for "\$25,750", "\$38,700" for "\$32,250", and "\$43,758" for "\$36,465".

1975—Subsec. (e)(3). Pub. L. 94-173 raised from 45 per centum to 75 per centum the amount by which any dollar limitation may, by regulation, be increased.

1974—Subsec. (c). Pub. L. 93-383, §§302(e), 310(d), substituted "\$45,000" for "\$33,000" in cl. (A), "\$25,000" for "\$15,000" in cl. (A)(i), "\$25,000" for "\$15,000" and "\$35,000" for "\$25,000" in cl. (A)(ii), and "\$35,000" for "\$25,000" and "80" for "75" in cl. (A)(iii).

Subsec. (e)(1). Pub. L. 93-383, §304(h), struck out par. (1) which set forth limitations on principal obligations of mortgages.

Subsec. (e)(3). Pub. L. 93-383, §303(g), substituted "\$13,000" for "\$9,900", "\$15,000" for "\$11,550", "\$18,000" for "\$13,750", "\$21,000" for "\$16,500", "\$21,500" for "\$16,500", "\$25,750" for "\$19,800", "\$26,500" for "\$20,350", "\$30,000" for "\$23,100", "\$32,250" for "\$25,750", and "\$36,465" for "\$28,050".

1969—Subsec. (c). Pub. L. 91-152, §§102(d), 113(h)(1), substituted "\$25,000" for "\$20,000" wherever appearing, and "\$33,000" for "\$30,000".

Subsec. (e)(3). Pub. L. 91-152, §113(h)(2), (3), substituted "\$9,900" for "\$9,000", "\$11,550" for "\$10,500", "\$13,750" for "\$12,500", "\$16,500" for "\$15,000" wherever appearing, "\$19,800" for "\$18,000", "\$20,350" for "\$18,500", "\$23,100" for "\$21,000", "\$24,750" for "\$22,500", and "\$28,050" for "\$25,500".

1968—Subsec. (c). Pub. L. 90-448, §303(a), (b), made one-family units in multifamily projects involving eleven or less units eligible for insurance without having been covered by a project mortgage, and increased the maximum mortgage limits from 75 to 80 per centum of the appraised value of the property in excess of \$20,000.

Subsec. (f). Pub. L. 90-448, §303(c), permitted blanket mortgages to cover four or more family units instead of five or more family units.

Pub. L. 90-301 limited the interest rate on mortgages to such per centum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market.

1967—Pub. L. 90-19, §1(a)(3), substituted "Secretary" for "Commissioner" wherever appearing in subsecs. (b) to (d), (d)(1), (2), (e)(2), (3), (f), and (g).

Subsec. (c). Pub. L. 90-19, §1(a)(4), substituted "Secretary's" for "Commissioner's".

1965—Subsec. (d)(2). Pub. L. 89-117, §1108(o)(1), substituted "General Insurance Fund" for "Apartment Unit Insurance Fund".

Subsec. (e)(3). Pub. L. 89-117, §207(f), substituted "\$18,500 per family unit with three bedrooms, and \$21,000 per family unit with four or more bedrooms" for "and \$18,500 per family unit with three or more bedrooms" and "22,500 per family unit with three bedrooms, and \$25,500 per family unit with four or more bedrooms" for "and \$22,500 per family unit with three or more bedrooms".

Subsec. (g). Pub. L. 89-117, §1108(o)(1), (2), substituted "General Insurance Fund" for "Apartment Unit Insurance Fund".

Subsec. (h). Pub. L. 89-117, §1108(o)(2), struck out reference to subsec. (m) and (p) of section 1713 of this title and provision that references therein to the Housing Insurance Fund or Housing Fund shall be construed to refer to the Apartment Unit Insurance Fund.

Subsecs. (i), (j). Pub. L. 89-117, §1108(o)(3), redesignated subsec. (j) as (i) and repealed former subsec. (i), which created the Apartment Unit Insurance Fund, authorized transfer of funds thereto, and provided for the charging of expenses thereto.

1964—Pub. L. 88-560, §119(a)(1), substituted "Mortgage insurance for condominiums" for "Mortgage insurance for individually owned units in multifamily structures" in section catchline.

Subsec. (a). Pub. L. 88-560, §119(a)(2), substituted "project" for "structure".

Subsec. (b). Pub. L. 88-560, §119(a)(2), (3), substituted "project" for "structure" in two places and "the term 'mortgage' for the purposes of subsection (c)" for "the term 'mortgage' for the purposes of this section", respectively.

Subsec. (c). Pub. L. 88-560, §119(a)(2), (4) to (6), amended provisions as follows.

Section 119(a)(2) substituted "project" for "structure", wherever appearing, and "projects" for "structures" in last sentence;

Section 119(a)(4) substituted "this subsection" for "this section", wherever appearing, and "under any section" for "under another section" in first sentence;

Section 119(a)(5) substituted "section 1715e(a)(1) and (2)" for "section 1715e", in two places; and

Section 119(a)(6) substituted in third sentence: in cl. (A), "amount not to exceed \$30,000" for "amount not to exceed the limits per room and per family dwelling unit provided by section 1713(c)(3) of this title"; in cl. (A)(i), "\$15,000" for "\$13,500"; in cl. (A)(ii), "\$15,000" and "\$20,000" for "\$13,500" and "\$18,000",

respectively; in cl. (A)(iii), "75 per centum" and "\$20,000" for "70 per centum" and "\$18,000", respectively; and in cl. (B), "thirty-five" for "thirty" years.

Subsecs. (d) to (f). Pub. L. 88-560, §119(a)(7), added subsecs. (d) to (f). Former subsecs. (d) to (f) renumbered subsecs. (g), (i), (j).

Subsec. (g). Pub. L. 88-560, §119(a)(7), (8), redesignated former subsec. (d) as (g) and substituted "subsection (c) of this section" for "this section" in three places, respectively.

Subsec. (h). Pub. L. 88-560, §119(a)(9), added subsec. (h).

Subsec. (i). Pub. L. 88-560, §119(a)(7), redesignated former subsec. (e) as (i).

Subsec. (j). Pub. L. 88-560, §119(a)(7), (10), redesignated former subsec. (f) as (j), struck out reference to section 1715t of this title, and substituted "subsection (c) of this section" for "this section".

STATUTORY NOTES AND RELATED SUBSIDIARIES

APPLICABILITY OF 1994 AMENDMENT

Eligibility for loans made under authority granted by amendment by Pub. L. 103-211 limited to persons whose principal residence was damaged or destroyed as a result of the January 1994 earthquake in Southern California, with such amendment effective only for 18-month period following Feb. 12, 1994, see provision of title I of Pub. L. 103-211, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 406(b)(17) of Pub. L. 100-242 applicable only with respect to mortgages insured pursuant to conditional commitment issued on or after Feb. 5, 1988, or in accordance with direct endorsement program (24 CFR 200.163), if approved underwriter of mortgagee signs appraisal report for property on or after Feb. 5, 1988, see section 406(d) of Pub. L. 100-242, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 431(b) of Pub. L. 98-181 not to apply with respect to mortgages insured by the Secretary of Housing and Urban Development before Nov. 30, 1983, see section 431(c) of Pub. L. 98-181, set out as a note under section 1713 of this title.

For effective date of amendment by section 423(b)(4) of Pub. L. 98-181, see section 423(c) of Pub. L. 98-181, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 90-301, §3(e), May 7, 1968, 82 Stat. 114, cited as a credit to this section, was repealed by Pub. L. 98-181, title I [title IV, §404(a)], Nov. 30, 1983, 97 Stat. 1208.

Section 318 of Pub. L. 96-399, cited as a credit to this section, was repealed by Pub. L. 97-35, title III, §339B(d)(2), Aug. 13, 1981, 95 Stat. 417. See 1981 Amendments note for subsec. (c)(2) set out above.

IMPLEMENTATION OF 1982 AMENDMENT

Amendment by Pub. L. 97-253 to be implemented only if Secretary determines that program of advance payment of insurance premiums, considering effect of said amendment, is actuarially sound, see section 201(g) of Pub. L. 97-253, set out as a note under section 1709 of this title.

¹ [*See References in Text note below.*](#)

§1715z. Homeownership or membership in cooperative association for lower income families

(a) Authorization for periodic assistance payments to mortgagees; assistance to manufactured home buyers

(1) For the purpose of assisting lower income families in acquiring homeownership or in acquiring

membership in a cooperative association operating a housing project, the Secretary is authorized to make, and to contract to make, periodic assistance payments on behalf of such homeowners and cooperative members. The assistance shall be accomplished through payments to mortgagees holding mortgages meeting the special requirements specified in this section or which mortgages are assisted under a State or local program providing assistance through loans, loan insurance or tax abatement. In making such assistance available, the Secretary shall give preference to low-income families who, without such assistance, would be likely to be involuntarily displaced (including those who would be likely to be displaced from rental units which are to be converted into a condominium project or a cooperative project). Such assistance may include the acquisition of a condominium or a membership in a cooperative association.

(2)(A) Notwithstanding any other provision of this section, the Secretary is authorized to make periodic assistance payments under this section on behalf of families whose incomes do not exceed the maximum income limits prescribed pursuant to subsection (h)(2) of this section for the purpose of assisting such families in acquiring ownership of a manufactured home consisting of two or more modules and a lot on which such manufactured home is or will be situated, except that periodic assistance payments pursuant to this paragraph shall not be made with respect to more than 20 per centum of the total number of units with respect to which assistance is approved under this section after January 1, 1976. Assistance payments under this section pursuant to this paragraph shall be accomplished through payments on behalf of an owner of lower-income of a manufactured home as described in the preceding sentence to the financial institution which makes the loan, advance of credit, or purchase of an obligation representing the loan or advance of credit to finance the purchase of the manufactured home and the lot on which such manufactured home is or will be situated, but only if insurance under section 1703 of this title covering such loan, advance of credit, or obligation has been granted to such institution.

(B) Notwithstanding the provisions of subsection (c) of this section, assistance payments provided pursuant to this paragraph shall be in an amount not exceeding the lesser of—

(i) the balance of the monthly payment for principal, interest, real and personal property taxes, insurance, and insurance premium chargeable under section 1703 of this title due under the loan or advance of credit remaining unpaid after applying 20 per centum of the manufactured homeowner's income; or

(ii) the difference between the amount of the monthly payment for principal, interest, and insurance premium chargeable under section 1703 of this title which the manufactured homeowner is obligated to pay under the loan or advance of credit and the monthly payment of principal and interest which the owner would be obligated to pay if the loan or advance of credit were to bear interest at a rate derived by subtracting from the interest rate applicable to such loan or advance of credit the interest rate differential between the maximum interest rate plus mortgage insurance premium applicable to mortgages insured under subsection (i) of this section at the time such loan or advance of credit is made and the interest rate which such mortgages are presumed, under regulations prescribed by the Secretary, to bear for purposes of subsection (c)(2) of this section.

(b) Qualifications and eligibility requirements for assistance payments

To qualify for assistance payments, the homeowner or the cooperative member shall be of lower income and satisfy eligibility requirements prescribed by the Secretary, and—

(1) the homeowner shall be a mortgagor under a mortgage which meets the requirements of and is insured under subsection (i) or (j)(4) of this section: *Provided*, That a mortgage meeting the requirements of subsection (i)(3)(A) of this section but insured under section 1715z-2 of this title may qualify for assistance payments if such mortgage was executed by a mortgagor who is determined not to be an acceptable credit risk for mortgage insurance purposes (but otherwise eligible) under subsection (j)(4) of this section or under section 1715l(d)(2) or 1715y(c) of this title and accepted as a reasonably satisfactory credit risk under section 1715z-2 ¹ of this title; or

(2) the cooperative association of which the family is a member shall operate (A) a housing project the construction or substantial rehabilitation of which has been financed with a mortgage insured under section 1715e or section 1715l(d)(3) of this title and which has been completed

within two years prior to the filing of the application for assistance payments and the dwelling unit has had no previous occupant other than the family: *Provided*, That if any cooperative member who has received assistance payments transfers his membership and occupancy rights to another person who satisfies the eligibility requirements prescribed by the Secretary and undertakes the obligation to pay occupancy charges, the new cooperative member may qualify for assistance payments upon the filing of an application with respect to the dwelling unit involved to be occupied by him: *Provided further*, That assistance payments may be made with respect to a dwelling unit in an existing cooperative project which meets such standards as the Secretary may prescribe, if the family qualifies as a displaced family as defined in section 1715l(f) of this title, or a family which includes five or more minor persons, or a family occupying low-rent public housing: *Provided further*, That the amount of the mortgage attributable to the dwelling unit shall involve a principal obligation not in excess of \$40,000 (\$47,500 in any geographical area where the Secretary authorizes an increase on the basis of a finding that costs levels so require), except that with respect to any family with five or more persons the foregoing limits shall be \$47,500 and \$55,000, respectively; or (B) a housing project which is financed under a State or local program providing assistance through loans, loan insurance, or tax abatements, and which prior to completion of construction or rehabilitation is approved for receiving the benefits of this section.

(c) Limitation on payments on behalf of mortgagor; occupancy of property; maximum amount of payment; recapture of amounts; determination, applicability, etc.

(1) Subject to the second sentence of this paragraph, the assistance payments to a mortgagee by the Secretary on behalf of a mortgagor shall be made during such time as the mortgagor shall continue to occupy the property which secures the mortgage: *Provided*, That assistance payments may be made on behalf of a homeowner who assumes a mortgage insured under subsection (i) or (j)(4) with respect to which assistance payments have been made on behalf of the previous owner, if the homeowner is approved by the Secretary as eligible for receiving such assistance: *Provided further*, That the Secretary is authorized to continue making such assistance payments where the mortgage has been assigned to the Secretary. Assistance payments pursuant to any new contract, other than a contract in connection with a refinancing under subsection (r), entered into after September 30, 1983, that utilizes authority approved in appropriation Acts for any fiscal year beginning after such date may not be made for more than a 10-year period. The payment shall be in an amount not exceeding the lesser of—

(A) the balance of the monthly payment for principal, interest, taxes, insurance, and mortgage insurance premium due under the mortgage remaining unpaid after applying 20 per centum of the mortgagor's income; or

(B) the difference between the amount of the monthly payment for principal, interest and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage and the monthly payment for principal and interest which the mortgagor would be obligated to pay if the mortgage were to bear interest at the rate of 1 per centum per annum (4 per centum per annum in the case of a mortgage described in subsection (o)).

(2)(A) Upon disposition by the homeowner of any property assisted pursuant to this section or where the homeowner rents such a property (or the owner's unit in the case of a two- to four-family property) for a period longer than one year, the Secretary shall provide for the recapture of an amount equal to the lesser of (i) the amount of assistance actually received under this section, other than any amount provided under subsection (e), or (ii) an amount equal to at least 50 per centum of the net appreciation of the property, as determined by the Secretary. For the purpose of this paragraph, the term "net appreciation of the property" means any increase in the value of the property over the original purchase price, less the reasonable costs of sale, the reasonable costs of improvements made to the property, and any increase in the mortgage amount as of the time of sale over the original mortgage balance due to the mortgage being insured pursuant to section 1715z-10¹ of this title. Notwithstanding any other provision of law, any such assistance shall constitute a debt secured by the property to the extent that the Secretary may provide for such recapture.

(B) Subparagraph (A) does not apply to any property with respect to which there is assumption in accordance with paragraph (1) of this subsection or to any property which is subject to a mortgage, loan, or other advance of credit insured pursuant to subsection (q).

(3)(A) There hereby is established in the Treasury of the United States a fund, which, to the extent approved in appropriation Acts, may be used by the Secretary for purposes of carrying out subparagraph (B). There shall be deposited into such fund (i) any amount recaptured under paragraph (2); (ii) any authority to make assistance payments under subsection (a) that is committed for use in a contract but is unused because the mortgage, loan, or advance of credit involved is refinanced (except to the extent provided in subsection (r) for mortgages insured under such subsection) or because such assistance payments are terminated or suspended for other reasons before the original termination date of such contract; and (iii) any amount received under subparagraph (C).

(B) In the case of any homeowner whose assistance payments are terminated by reason of the 10-year limitation referred to in paragraph (1), and who is determined by the Secretary to be unable to assume the full payments due under the mortgage, loan, or advance of credit involved, the Secretary shall, to the extent of the availability of amounts in the fund established in subparagraph (A), contract to make, and make, continued assistance payments on behalf of such homeowner. Such continued assistance payments shall be made in an amount determined in accordance with the applicable provisions of paragraph (1) or subsection (a)(2)(B) and for such period as the Secretary determines to be appropriate.

(C) Any amounts in such fund determined by the Secretary to be in excess of the amounts currently required to carry out the provisions of subparagraph (B) shall be invested by the Secretary in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States. Notwithstanding the preceding sentence, any amounts of budget authority or contract authority recaptured from assistance payments contracts relating to mortgages that are being refinanced that are not required for assistance payments contracts relating to mortgages insured under this subsection, shall be rescinded.

(d) Limitation on payments on behalf of family holding membership in cooperative association; occupancy; maximum amount of payment

Assistance payments to a mortgagee by the Secretary on behalf of a family holding membership in a cooperative association operating a housing project shall be made only during such time as the family is an occupant of such project and shall be in amounts computed on the basis of the formula set forth in subsection (c) applying the cooperative member's proportionate share of the obligations under the project mortgage to the items specified in the formula.

(e) Reimbursement for expenses in handling the mortgage

The Secretary may include in the payment to the mortgagee such amount, in addition to the amount computed under subsection (a)(2)(B), (c), (d), (j)(7), or (r), as he deems appropriate to reimburse the mortgagee for its expenses in handling the mortgage.

(f) Adoption of procedures for recertifications of mortgagor's or cooperative member's income

Procedures shall be adopted by the Secretary for recertifications of the mortgagor's (or cooperative member's) income at intervals of two years (or at shorter intervals where the Secretary deems it desirable) for the purpose of adjusting the amount of such assistance payments within the limits of the formula described in subsection (c).

(g) Regulations to assure that sales price or other consideration paid is not increased above appraised value

The Secretary shall prescribe such regulations as he deems necessary to assure that the sales price of, or other consideration paid in connection with, the purchase by a homeowner of the property with respect to which assistance payments are to be made is not increased above the appraised value on which the maximum mortgage which the Secretary will insure is computed.

(h) Authorization of appropriations; aggregate amount of assistance payment contracts; maximum income limits of families; limitation on payments with respect to existing

dwelling units in existing projects and for approved substantial rehabilitation of dwelling units in projects

(1) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, including such sums as may be necessary to make the assistance payments under contracts entered into under this section. The aggregate amount of outstanding contracts to make such payments shall not exceed amounts approved in appropriation Acts, and payments pursuant to such contracts shall not exceed \$75,000,000 per annum prior to July 1, 1969, which maximum dollar amount shall be increased by \$125,000,000 on July 1, 1969, by \$150,000,000 on July 1, 1970, by \$200,000,000 on July 1, 1971, by such sums as may be approved in appropriation Acts after June 30, 1974, and prior to July 1, 1976, and by such sums as may be approved in an appropriation Act on or after October 1, 1983 (from the additional authority to enter into contracts made available on such date under the first sentence of section 1437c(c)(1) of title 42). The aggregate amount that may be obligated over the duration of the contracts entered into with the authority provided on or after October 1, 1983 (other than obligations in connection with mortgages insured under subsection (r)), may not exceed such sums of new budget authority as may be appropriated after November 30, 1983. The Secretary shall begin issuing new commitments and reservations to provide mortgage insurance and assistance payments under this section before the expiration of the 30-day period following the approval in any appropriation Act of budget authority for this section after November 30, 1983. Upon the expiration of one year following August 22, 1974, the Secretary shall not enter into new contracts for assistance payments under this section utilizing authority approved in appropriation Acts prior to July 1, 1974. The Secretary shall not enter into new contracts for assistance payments under this section (except under subsection (r)) after May 20, 1983, utilizing amounts approved in appropriation Acts before November 30, 1983, except (i) pursuant to a firm commitment issued on or before May 20, 1983, (ii) pursuant to other commitments issued by the Secretary prior to June 30, 1981, reserving funds for housing to be assisted under this section where such housing is included in a project pursuant to section 119 of the Housing and Community Development Act of 1974 [42 U.S.C. 5318], or (iii) pursuant to other commitments issued on or before September 30, 1981, where housing under this section is to be developed on land which was municipally owned on September 30, 1981, and where a local government contributes at least \$1,000 per unit of funds obtained under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] and at least \$2,000 per unit of additional funds to assist housing under this section. In no event may the Secretary enter into any new contract for assistance payments under this section (other than a contract in connection with a mortgage insured under subsection (r)) after September 30, 1989.

(2) Assistance payments under this section may be made only with respect to a family whose income at the time of initial occupancy does not exceed 95 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 95 per centum of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low median family incomes, or other factors.

(3) Notwithstanding the provisions of subsections (b)(2) and (i)(3)(A) with respect to the prior construction or rehabilitation of a dwelling, or of the project in which there is a dwelling unit, for which assistance payments may be made, and notwithstanding the provisions of subsection (j)(1) authorizing the purchase of housing which is neither deteriorating nor substandard, not more than—

(A) 25 per centum of the total amount of contracts for assistance payments authorized by appropriation Acts to be made prior to July 1, 1969, and

(B) 30 per centum of the total additional amount of contracts for assistance payments authorized by appropriation Acts to be made on or after July 1, 1969,

may be made with respect to existing dwellings, or dwelling units in existing projects. The preceding sentence shall not apply to contracts in connection with mortgages insured under subsection (r).

(4) At least 10 per centum of the total amount of contracts for assistance payments authorized by

appropriation Acts to be made after June 30, 1971, shall be available for use only with respect to dwellings, or dwelling units in projects, which are approved by the Secretary prior to substantial rehabilitation.

(i) Insurance of mortgages executed by mortgagors meeting eligibility requirements for assistance payments; issuance of commitment; eligibility requirements for insurance

(1) The Secretary is authorized, upon application by the mortgagee, to insure a mortgage (including advances with respect to property construction or rehabilitation pursuant to a self-help program) executed by a mortgagor who meets the eligibility requirements for assistance payments prescribed by the Secretary under subsection (b). Commitments for the insurance of such mortgages may be issued by the Secretary prior to the date of their execution or disbursement thereon, upon such terms and conditions as the Secretary may prescribe.

(2) To be eligible for insurance under this subsection, a mortgage shall meet the requirements of section 1715l(d)(2) or 1715y(c) of this title, except as such requirements are modified by this subsection.

(3) A mortgage to be insured under this subsection shall—

(A) involve a single-family or a two-family dwelling which has been approved by the Secretary prior to the beginning of construction or substantial rehabilitation, or a three-family dwelling which is approved by the Secretary prior to the beginning of substantial rehabilitation, or a one-family unit in a condominium project (together with an undivided interest in the common areas and facilities serving the project) which is released from a multi-family project, the construction or substantial rehabilitation of which has been completed within two years prior to the filing of the application for assistance payments with respect to such family unit and the unit has had no previous occupant other than the mortgagor: *Provided*, That the mortgage may involve an existing dwelling or a family unit in an existing condominium project which meets such standards as the Secretary may prescribe: *Provided further*, That the mortgage may involve an existing dwelling or a family unit in an existing condominium project if assistance payments have been made on behalf of the previous owner of the dwelling or family unit with respect to a mortgage insured under subsection (j)(4): *Provided further*, That the mortgage may involve a dwelling unit in an existing project covered by a mortgage insured under section 1715z-1 of this title or in an existing project receiving the benefits of financial assistance under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s];

(B) where it is to cover a one-family unit in a condominium project, have a principal obligation not exceeding \$40,000 (\$47,500 in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require), except that with respect to any family with five or more persons the foregoing limits shall be \$47,500 and \$55,000, respectively;

(C) involve, in the case of a dwelling unit other than a condominium or cooperative unit, a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed \$40,000 (\$47,500 in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require), except that with respect to any family with five or more persons the foregoing limits shall be \$47,500 and \$55,000, respectively;

(D) involve, in the case of a two-family or three-family dwelling, a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed \$60,000 (\$66,250 in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require);

(E) be executed by a mortgagor who shall have paid in cash or its equivalent, on account of the property, at least an amount equal to 3 per centum of the Secretary's estimate of the cost of acquisition (excluding the mortgage insurance premium paid at the time the mortgage is insured); and

(F) bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary finds necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets.

(4) In insuring eligible mortgages under this subsection, the Secretary may not deny insurance on the basis that a mortgage involves a two- to three-family dwelling or is to be used to finance substantial rehabilitation rather than new construction.

(5) As a condition of insuring a mortgage on a two- to three-family dwelling, the Secretary shall require the mortgagor (A) not to discriminate against prospective tenants on the basis of their receipt of or eligibility for housing assistance under any Federal, State or local housing assistance program and (B) to agree that during the term of the mortgage each of the rental units shall be occupied by, or available for occupancy by, persons and families whose incomes do not exceed 100 per centum of the area median income.

(j) Insurance of mortgages executed by nonprofit organizations or public bodies or agencies; issuance of commitment; eligibility requirements for insurance; insurance of mortgages executed to finance sale of individual dwellings to lower income individuals or families; definitions; assistance payments to mortgagees on behalf of nonprofit organizations or public bodies and agencies

(1) In addition to mortgages insured under the provisions of subsection (i), the Secretary is authorized, upon application by the mortgagee, to insure a mortgage (including advances under such mortgage during rehabilitation) which is executed by a nonprofit organization or public body or agency to finance the purchase of housing, and the rehabilitation of such housing if it is deteriorating or substandard, for subsequent resale to lower income home purchasers who meet the eligibility requirements for assistance payments prescribed by the Secretary under subsection (b).

Commitments for the insurance of such mortgages may be issued by the Secretary prior to the date of their execution or disbursement thereon, upon such terms and conditions as the Secretary may prescribe.

(2) To be eligible for insurance under paragraph (1) of this subsection, a mortgage shall—

(A) be executed by a private nonprofit organization or public body or agency, approved by the Secretary, for the purpose of financing the purchase (with the intention of subsequent resale), and rehabilitation where the housing involved is deteriorating or substandard, of property comprising one or more tracts or parcels, whether or not contiguous, consisting of (i) four or more single-family dwellings of detached, semidetached, or row construction, or (ii) four or more one-family units in a structure or structures for which a plan of family unit ownership approved by the Secretary is established; except that in a case not involving the rehabilitation of deteriorating or substandard housing the property purchased may consist of one or more such dwellings or units;

(B) be in a principal amount not exceeding the appraised value of the property at the time of its purchase under the mortgage plus the estimated cost of any rehabilitation;

(C) bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary determines is necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets;

(D) provide for complete amortization (subject to paragraph (4)(E)) by periodic payments within such term as the Secretary may prescribe; and

(E) provide for the release of individual single-family dwellings from the lien of the mortgage upon their sale in accordance with paragraph (4).

(3) No mortgage shall be insured under paragraph (1) unless the mortgagor shall have demonstrated to the satisfaction of the Secretary that (A) the property involved is located in a neighborhood which is sufficiently stable and contains sufficient public facilities and amenities to support long-term values, or (B) the purchase or rehabilitation of such property plus the mortgagor's related activities and the activities of other owners of housing in the neighborhood, together with actions to be taken by public authorities, will be of such scope and quality as to give reasonable promise that a stable environment will be created in the neighborhood.

(4)(A) No mortgage shall be insured under paragraph (1) unless the mortgagor enters into an agreement, satisfactory to the Secretary, that it will offer to sell the dwellings involved, after purchase and upon completion of any rehabilitation, to lower income individuals or families meeting

the eligibility requirements established by the Secretary under subsection (b).

(B) The Secretary is authorized to insure under this paragraph mortgages executed to finance the sale of individual dwellings to lower income purchasers as provided in subparagraph (A). Any such mortgage shall—

- (i) be in a principal amount not in excess of that portion of the unpaid principal balance of the blanket mortgage covering the property which is allocable to the individual dwelling involved;
- (ii) bear interest at the same rate as the blanket mortgage; and
- (iii) provide for complete amortization by periodic payments within a term equal to the remaining term (determined without regard to subparagraph (E)) of such blanket mortgage.

(C) The price for which any individual dwelling is sold under this paragraph shall be in an amount equal to that portion of the unpaid principal balance of the blanket mortgage covering the property which is allocable to the dwelling plus such additional amount, not less than \$200 (which may be applied in whole or in part toward closing costs and may be paid in cash or its equivalent), as the Secretary may determine to be reasonable.

(D) Upon the sale under this paragraph of any individual dwelling, such dwelling shall be released from the lien of the blanket mortgage. Until all of the individual dwellings in the property covered by the blanket mortgage have been sold, the mortgagor shall hold and operate the dwellings remaining unsold at any given time, in such manner and under such terms as the Secretary may prescribe, as though they constituted rental units.

(E) Upon the sale under this paragraph of all the individual dwellings in the property covered by the blanket mortgage and the release of all individual dwellings from the lien of the blanket mortgage, the insurance of the blanket mortgage shall be terminated and no adjusted premium charge shall be charged by the Secretary upon such termination.

(5) Where the Secretary has approved a plan of family unit ownership the terms "single-family dwelling", "single-family dwellings", "individual dwelling", and "individual dwellings" shall mean a family unit or family units, together with the undivided interest (or interests) in the common areas and facilities.

(6) For purposes of this subsection, the terms "single-family dwelling" and "single-family dwellings" (except for purposes of paragraph (5)) shall include a two- to three-family dwelling which has been approved by the Secretary.

(7) In addition to the assistance payments authorized under subsection (b), the Secretary may make such payments to a mortgagee on behalf of a nonprofit organization or public body or agency which is a mortgagor under the provisions of paragraph (1) in an amount not exceeding the difference between the monthly payment for principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage and the monthly payment for principal and interest such mortgagor would be obligated to pay if the mortgage were to bear interest at the rate of 1 per centum per annum.

(8) A mortgage covering property which is not deteriorating or substandard may be insured under this subsection only if it is situated in an area in which mortgages may be insured under section 1715l(h) of this title.

(9) In insuring eligible mortgages under this subsection, the Secretary may not deny insurance on the basis that a mortgage involves a two- to three-family dwelling or is to be used to finance substantial rehabilitation rather than new construction.

(k) Allocation and transfer of reasonable portion of total authority to contract to make assistance payments to Secretary of Agriculture for use in rural areas and small towns

The Secretary shall from time to time allocate and transfer to the Secretary of Agriculture, for use (in accordance with the terms and conditions of this section) in rural areas and small towns, a reasonable portion of the total authority to contract to make assistance payments as approved in appropriation Acts under subsection (h)(1).

(l) Deductions for minors in determining income limits; exclusion of earnings of minors

In determining the income of any person for the purposes of this section, there shall be deducted

an amount equal to \$300 for each minor person who is a member of the immediate family of such person and living with such family, and the earnings of any such minor person shall not be included in the income of such person or his family.

(m) Termination date for insurance of mortgages

No mortgage (except a mortgage insured under subsection (r)) shall be insured under this section after September 30, 1989, except pursuant to a commitment to insure before that date.

(n) Percentage limitation of mortgage insurance on subdivision units; exceptions

No mortgage may be insured under this section on a unit in a subdivision, after October 12, 1977, which, when added to any other mortgages insured under this section in that subdivision after such date, represents more than 40 per centum of the total number of units in the subdivision, except that the preceding limitation shall not apply with regard to any rehabilitated unit, or to any unit or subdivision located or to be located in an established urban neighborhood or area, where a sound proposal is involved and where an aggregation of subsidized units is essential to a community sponsored overall redevelopment plan, as determined by the Secretary or to a mortgage insured under subsection (r).

(o) Mortgage insurance over maximum limits involving dwellings of community sponsored programs of concentrated redevelopment or revitalization

The Secretary may insure a mortgage under this section involving a principal obligation which exceeds, by not more than 20 per centum, the maximum limits specified under subsection (b)(2) or (i)(3) of this section if the mortgage relates to a dwelling in an urban neighborhood where the Secretary determines that a community sponsored program of concentrated redevelopment or revitalization is being undertaken and the Secretary determines that such action is necessary to enable eligible families residing in the area who occupy substandard housing or are being involuntarily displaced to remain in the area in decent, safe, and sanitary housing.

(p) Mortgage insurance over maximum limits involving dwellings to be occupied by physically handicapped persons; applicability, etc.

The Secretary may insure a mortgage under this section involving a principal obligation which exceeds, by not more than 10 per centum, the maximum limits specified under subsection (b)(2) or (i)(3) of this section, or, if applicable, the maximum principal obligation insurable pursuant to subsection (o) of this section, if the mortgage relates to a dwelling to be occupied by a physically handicapped person and the Secretary determines that such action is necessary to reflect the cost of making such dwelling accessible to and usable by such person.

(q) Periodic assistance payments for emergency stimulation of housing market; contracts, terms and conditions, eligibility, etc., for payments

(1) Notwithstanding any other provision of this section, except subsection (n), if the Secretary determines that there is a substantial need for emergency stimulation of the housing market, the Secretary is authorized to make and enter into contracts to make periodic assistance payments, to the extent of not to exceed 75 per centum of the authority available pursuant to subsection (h)(1), on behalf of homeowners, including owners of manufactured homes, to mortgagees or other lenders holding mortgages, loans, or advances of credit which meet the requirements of this subsection. The Secretary may establish such criteria, terms, and conditions relating to homeowners and mortgages, loans, or advances of credit assisted under this subsection as the Secretary deems appropriate, consistent with the provisions of this subsection. The Secretary is authorized to insure a mortgage which meets the requirements of and is to be assisted under this subsection. The authority to enter into contracts to provide assistance payments and to insure mortgages under this subsection shall terminate on September 30, 1989, or at such earlier date as the Secretary may deem appropriate, upon a determination by the Secretary that the conditions which gave rise to the exercise of authority under this subsection are no longer present, except pursuant to a commitment entered into prior to such date.

(2) Payments under this subsection may be made only on behalf of a homeowner who satisfies

such eligibility requirements as may be prescribed by the Secretary and who—

(A)(i) is a mortgagor under a mortgage which meets the requirements of and is insured under this subsection, or (ii) is the original owner of a new manufactured home consisting of two or more modules and a lot on which the manufactured home is situated, where insurance under section 1703 of this title covering the loan, advance of credit, or purchase of an obligation representing such loan or advance of credit to finance the purchase of such manufactured home and lot has been granted to the lender making such loan, advance of credit, or purchase of an obligation; and

(B) has a family income, at the time of initial occupancy, which does not exceed 130 per centum of the area median income for the area (with adjustments for smaller and larger families, unusually high or low median family income, or other factors), as determined by the Secretary.

(3) Assistance payments to a mortgagee or other lender by the Secretary on behalf of a homeowner shall be made only during such time as the homeowner shall continue to occupy the property which secures the mortgage, loan, or advance of credit. The Secretary may, where a mortgage insured under this subsection has been assigned to the Secretary, continue making such assistance payments.

(4) The amount of the assistance payments in the case of a mortgage shall not at any time exceed the lesser of—

(A) the balance of the monthly payment for principal, interest, taxes, insurance, and any mortgage insurance premium due under the mortgage remaining unpaid after applying a minimum of 25 per centum of the mortgagor's income, except that the Secretary may reduce such per centum of income to the extent he deems necessary, but not lower than 20 per centum of the mortgagor's income; or

(B) the difference between the amount of the monthly payment for principal, interest, and any mortgage insurance premium which would be required if the mortgage were a level payment mortgage bearing interest at a rate equal to the maximum interest rate which is applicable to level payment mortgages insured under section 1709(b) of this title, other than mortgages subject to section 1709–1(2) ¹ of this title, and the monthly payment for principal and interest which the mortgagor would be obligated to pay if the mortgage were a level payment mortgage bearing interest at the rate of at least 9½ per centum per annum.

(5) Assistance payments on behalf of the owner of a manufactured home shall not at any time exceed the lesser of—

(A) the balance of the monthly payment for principal, interest, real and personal property taxes, insurance, and insurance premium chargeable under section 1703 of this title due under the loan or advance of credit remaining unpaid after applying a minimum of 25 per centum of the manufactured homeowner's income, except that the Secretary may reduce such per centum of income to the extent he deems necessary, but not lower than 20 per centum of the mortgagor's income; or

(B) the difference between the amount of the monthly payment for principal, interest, and insurance premium chargeable under section 1703 of this title which the manufactured homeowner is obligated to pay under the loan or advance of credit and the monthly payment of principal and interest which the owner would be obligated to pay if the loan or advance of credit were to bear an interest rate determined by the Secretary which shall not be less than 12 per centum per annum.

(6) The Secretary may include in the payment to the mortgagee or other lender such amount, in addition to the amount computed under paragraph (4) or (5), as the Secretary deems appropriate to reimburse the mortgagee or other lender for its reasonable and necessary expenses in handling the mortgage, loan, or advance of credit.

(7) The Secretary shall prescribe such regulations as the Secretary deems necessary to assure that the sales price of, or other consideration paid in connection with, the purchase by a homeowner of the property with respect to which assistance payments are to be made is not greater than the appraised value as determined by the Secretary.

(8) Assistance payments pursuant to paragraph (5) shall not be made with respect to more than 20 per centum of the total number of units with respect to which assistance is approved under this subsection.

(9) The Secretary may, in addition to mortgages insured under subsection (i) or (j), insure, upon application by the mortgagee, a mortgage executed by a mortgagor who meets the eligibility requirements for assistance payments prescribed by the Secretary under paragraph (2). Commitments for the insurance of such mortgages may be issued by the Secretary prior to the date of their execution or disbursement thereon, upon such terms and conditions as the Secretary may prescribe.

(10) To be eligible for insurance under this subsection, a mortgage shall—

(A) be a first lien on real estate held in fee simple, or on a leasehold under a lease which meets terms and conditions established by the Secretary;

(B) have been made to, and be held by, a mortgagee approved by the Secretary as responsible and able to service the mortgage properly;

(C) involve a one- to four-family dwelling which has been approved by the Secretary prior to the beginning of construction, or if not so approved, has been completed within one year prior to the filing of the application for insurance and which has never been sold other than to the mortgagor;

(D) involve a principal residence the sales price of which does not exceed 82 per centum of the applicable maximum principal obligation of a mortgage which may be insured in the area pursuant to section 1709(b)(2) of this title, determined without regard to the last sentence of such section;

(E) have maturity and amortization provisions satisfactory to the Secretary;

(F) bear interest (exclusive of premium charges for insurance, and service charges if any) at not to exceed the applicable maximum rate for mortgages insured pursuant to section 1709(b) of this title;

(G) be executed by a mortgagor who shall have paid in cash or its equivalent, on account of the property, at least an amount equal to 3 per centum of the Secretary's estimate of the cost of acquisition; and

(H) contain such other terms and conditions as the Secretary may prescribe.

(11) The Secretary shall, to the extent practicable, insure mortgages under this subsection which are secured by properties which contribute to the conservation of land and energy resources.

(12) A mortgage to be assisted under this subsection shall, where the Secretary deems it appropriate, provide for graduated payments pursuant to section 1715z-10 ¹ of this title.

(13) The Secretary shall develop and utilize a system to allocate assistance under this subsection in a manner which assures a reasonable distribution of such assistance among the various regions of the country and which takes into consideration such factors as population, relative decline in building permits, the need for increased housing production, and other factors he deems appropriate.

Assistance provided under this subsection shall not be subject to section 1439 of title 42.

(14) Upon the disposition by the homeowner of any property assisted pursuant to this subsection, or where the homeowner rents the property (or the owner's unit in the case of a two- to four-family residence) for a period longer than one year, the Secretary shall provide for the recapture of an amount equal to the lesser of (A) the amount of assistance actually received under this subsection, other than any amount provided under paragraph (6), or (B) an amount at least equal to 50 per centum of the net appreciation of the property, as determined by the Secretary. For the purpose of this paragraph, the term "net appreciation of the property" means any increase in the value of the property over the original purchase price, less the reasonable costs of sale, the reasonable costs of improvements made to the property, and any increase in the mortgage balance as of the time of sale over the original mortgage balance due to the mortgage being insured pursuant to section 1715z-10 ¹ of this title. In providing for such recapture, the Secretary shall include incentives for the homeowner to maintain the property in a marketable condition. Notwithstanding any other provision of law, any such assistance shall constitute a debt secured by the property to the extent that the Secretary may provide for such recapture.

(15) Procedures shall be adopted by the Secretary for recertification of the homeowner's income at

intervals of two years (or at shorter intervals where the Secretary deems it desirable) for the purpose of adjusting the amount of such assistance payments within the limits of the formula described in paragraph (4) or (5).

(r) Refinancing

(1) The Secretary is authorized, upon application of a mortgagee, to insure under this subsection a mortgage the proceeds of which are used to refinance a mortgage insured under this section.

(2) To be eligible for insurance under this subsection, a mortgage must be executed by a mortgagor meeting the requirements of paragraph (3) and shall—

(A) be a first lien on real estate held in fee simple, or on a leasehold under a lease—

(i) for not less than 99 years which is renewable; or

(ii) having a period of not less than 10 years to run beyond the maturity date of the mortgage;

(B) have been made to, and held by, a mortgagee approved by the Secretary;

(C) be in an amount not exceeding the outstanding principal balance, including any unpaid interest, due on the mortgage being refinanced;

(D) have a maturity not exceeding the unexpired term of the mortgage being refinanced;

(E) bear an interest rate not exceeding such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary finds necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets; to the extent that the amounts described in paragraphs (4)(A) and (B) are not otherwise paid by the Secretary, the foregoing interest rate may be increased, in the discretion of the Secretary, to compensate the mortgagee for its payment to, or on behalf of, the mortgagor of such amounts; and

(F) meet the criteria for refinancing as determined by the Secretary.

(3) Notwithstanding the provisions of subsection (h)(2), assistance payments in connection with mortgages insured under paragraph (2) shall be made only with respect to a family who is eligible for, and receiving assistance payments with respect to, the insured mortgage being refinanced.

(4) The Secretary is authorized and, to the extent provided in appropriation Acts, may pay to the mortgagor (directly, through the mortgagee, or otherwise)—

(A) an amount, as approved by the Secretary, as an incentive to the mortgagor to refinance a mortgage insured under this section; and

(B) an amount as approved by the Secretary for costs incurred in connection with the refinancing, including but not limited to discounts, loan origination fees, and closing costs.

(5) Amounts of budget authority required for assistance payments contracts with respect to mortgages insured under this subsection shall be derived from amounts recaptured from assistance payments contracts relating to mortgages that are being refinanced. For purposes of subsection (c)(3)(A), the amount of recaptured budget authority that the Secretary commits for assistance payments contracts relating to mortgages insured under this subsection shall not be construed as "unused".

(6) The Secretary is authorized to take any actions to identify and communicate with any mortgagor of a mortgage insured under this section to implement the refinancing of such mortgages with insurance under this subsection. The Secretary may take such actions directly, or under contract. Notwithstanding the restriction of section 552a(b) of title 5, upon the request of an approved mortgagee, the Secretary may disclose to such mortgagee the name and address of any mortgagor of a mortgage insured under this section that meets the criteria for refinancing, pursuant to paragraph (2)(F), and the unpaid principal balance and interest rate on such mortgage.

(7) The Secretary shall implement the provisions of this subsection by a notice published in the Federal Register.

(June 27, 1934, ch. 847, title II, §235, as added Pub. L. 90-448, title I, §101(a), Aug. 1, 1968, 82 Stat. 477; amended Pub. L. 91-152, title I, §§101(d), 106, 107(a), 109, 113(i), title IV, §§412(b), 418(a), Dec. 24, 1969, 83 Stat. 379, 381, 385, 398, 402; Pub. L. 91-609, title I, §§101(d), 102(a),

105–107, Dec. 31, 1970, 84 Stat. 1770, 1771; Pub. L. 92–503, §1(d), Oct. 18, 1972, 86 Stat. 906; Pub. L. 93–85, §1(d), Aug. 10, 1973, 87 Stat. 220; Pub. L. 93–117, §1(d), Oct. 2, 1973, 87 Stat. 421; Pub. L. 93–383, title II, §211, Aug. 22, 1974, 88 Stat. 671; Pub. L. 94–375, §3(a)–(c), (e), (f), Aug. 3, 1976, 90 Stat. 1068, 1069; Pub. L. 95–128, title II, §205, title III, §§301(d), 303(f), Oct. 12, 1977, 91 Stat. 1130, 1131, 1132; Pub. L. 95–406, §1(d), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95–557, title III, §301(d), Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96–71, §1(d), Sept. 28, 1979, 93 Stat. 501; Pub. L. 96–105, §1(d), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96–153, title II, §213, title III, §301(d), Dec. 21, 1979, 93 Stat. 1111; Pub. L. 96–372, §1(d), Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96–399, title II, §§206(a), (b)(1), 207, title III, §§301(d), 308(c)(1), (2), Oct. 8, 1980, 94 Stat. 1630, 1631, 1638, 1640; Pub. L. 97–35, title III, §§328, 331(d), Aug. 13, 1981, 95 Stat. 407, 412; Pub. L. 97–110, title III, §304, Dec. 26, 1981, 95 Stat. 1515; Pub. L. 97–185, May 24, 1982, 96 Stat. 100; Pub. L. 97–253, title II, §201(f), Sept. 8, 1982, 96 Stat. 790; Pub. L. 97–289, §1(d), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 98–35, §1(d), May 26, 1983, 97 Stat. 197; Pub. L. 98–109, §1(d), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98–181, title I [title II, §226, title IV, §§401(d), 404(b)(12), 423(b)(5)], Nov. 30, 1983, 97 Stat. 1194, 1207, 1209, 1217; Pub. L. 98–479, title I, §§102(a)(1), 104(a)(3), title II, §204(a)(8), Oct. 17, 1984, 98 Stat. 2221, 2224, 2232; Pub. L. 99–120, §1(d), Oct. 8, 1985, 99 Stat. 502; Pub. L. 99–156, §1(d), Nov. 15, 1985, 99 Stat. 815; Pub. L. 99–219, §1(d), Dec. 26, 1985, 99 Stat. 1730; Pub. L. 99–267, §1(d), Mar. 27, 1986, 100 Stat. 73; Pub. L. 99–272, title III, §3007(d), Apr. 7, 1986, 100 Stat. 104; Pub. L. 99–289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, §§170(a), 401(c), 406(b)(18), (19), Feb. 5, 1988, 101 Stat. 1867, 1898, 1901; Pub. L. 101–144, title II, Nov. 9, 1989, 103 Stat. 852; Pub. L. 101–235, title I, §125(a)–(c), Dec. 15, 1989, 103 Stat. 2022–2024.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1715z–2 of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 110–289, div. B, title I, §2120(a)(6), July 30, 2008, 122 Stat. 2835.

Section 1715z–10 of this title, referred to in subsecs. (c)(2)(A) and (q)(12), (14), was repealed by Pub. L. 110–289, div. B, title I, §2120(a)(7), July 30, 2008, 122 Stat. 2835.

The Housing and Community Development Act of 1974, referred to in subsec. (h)(1), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§5301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42 and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in subsec. (i)(3)(A), is section 101 of Pub. L. 89–117, title I, Aug. 10, 1965, 79 Stat. 451, which enacted section 1701s of this title and amended sections 1451 and 1465 of Title 42.

Section 1709–1 of this title, referred to in subsec. (q)(4)(B), was repealed by Pub. L. 98–181, title I [title IV, §404(a)], Nov. 30, 1983, 97 Stat. 1208.

AMENDMENTS

1989—Subsec. (c)(1). Pub. L. 101–235, §125(c)(1), inserted ", other than a contract in connection with a refinancing under subsection (r)," after "any new contract" in second sentence.

Subsec. (c)(3)(A). Pub. L. 101–235, §125(c)(2), which directed the insertion of "(except to the extent provided in subsection (r) for mortgages insured under such subsection)" after "refinanced," in second sentence, was executed by making the insertion after "refinanced" as the probable intent of Congress.

Subsec. (c)(3)(C). Pub. L. 101–235, §125(b), inserted at end "Notwithstanding the preceding sentence, any amounts of budget authority or contract authority recaptured from assistance payments contracts relating to mortgages that are being refinanced that are not required for assistance payments contracts relating to mortgages insured under this subsection, shall be rescinded."

Subsec. (e). Pub. L. 101–235, §125(c)(3), inserted reference to subsec. (r).

Subsec. (h)(1). Pub. L. 101–235, §125(c)(4), inserted "(other than obligations in connection with mortgages

insured under subsection (r))" in third sentence, "(except under subsection (r))" in sixth sentence, and "(other than a contract in connection with a mortgage insured under subsection (r))" in seventh sentence.

Subsec. (h)(3). Pub. L. 101-235, §125(c)(5), inserted sentence at end providing that the preceding sentence shall not apply to contracts in connection with mortgages insured under subsec. (r).

Subsec. (m). Pub. L. 101-235, §125(c)(6), inserted "(except a mortgage insured under subsection (r))" after "No mortgage".

Subsec. (n). Pub. L. 101-235, §125(c)(7), inserted "or to a mortgage insured under subsection (r)" before period at end.

Subsec. (r). Pub. L. 101-235, §125(a), amended subsec. (r) generally. Prior to amendment, subsec. (r) read as follows:

"(1) REVIEW OF ASSISTANCE PAYMENTS CONTRACTS.—

"(A) The Secretary shall periodically review each contract under which the Secretary is making assistance payments under this section to determine if a refinancing of the mortgage, loan, or advance of credit involved will result in a sufficient reduction in assistance payments to warrant such refinancing.

"(B) In the case of assistance payments contracts in effect on November 9, 1989, the Secretary shall complete such review within 60 days in order to permit the refinancing to be completed during fiscal year 1990.

"(2) REFINANCING ASSISTANCE.—In any case in which the Secretary determines that refinancing is warranted, the Secretary shall offer financial assistance appropriate to encourage the refinancing. The assistance may include the following:

"(A) For lenders and mortgagees providing refinancing, the payment of reasonable mortgage or loan origination fees, discount points, and other expenses required to refinance; and

"(B) For the homeowner or cooperative member involved, the payment of an amount that does not exceed 1 percent of the principal amount refinanced.

"(3) METHOD OF PAYMENT OF REFINANCING ASSISTANCE.—In any case in which the Secretary determines that refinancing is warranted, the Secretary shall provide incentives in a manner that does not increase total expenditures in fiscal year 1990. The Secretary shall structure refinancings as follows:

"(A) Lenders and mortgagees providing refinancings under this subsection may charge an interest rate for refinancing that is not greater than 0.5 percent higher than the prevailing market rate for refinancing.

"(B) Payments to the homeowner or cooperative member to encourage refinancing shall be paid through a reduction in the monthly payment of the homeowner or cooperative member under the mortgage, loan, or advance of credit.

"(4) REVISION OF CONTRACTS AND RESCISSION OF EXCESS AMOUNTS.—

"(A) The Secretary shall make such revisions in any assistance payments contract (including the amount of assistance payments made under the contract) as are necessary to reflect a refinancing obtained pursuant to this subsection. A revised assistance payments contract under this paragraph shall not be considered to be a new contract under this section.

"(B) Any contract authority that becomes available as a result of the revision of an assistance payments contract under this paragraph shall be rescinded."

Pub. L. 101-144 added subsec. (r).

1988—Subsec. (h)(1). Pub. L. 100-242, §401(c), substituted "September 30, 1989" for "March 15, 1988".

Subsec. (i)(3)(A). Pub. L. 100-242, §406(b)(18), struck out "one of the units of which is to be occupied by the owner and" after "three-family dwelling".

Subsec. (i)(3)(C). Pub. L. 100-242, §170(a), substituted "(including" for "including".

Subsec. (j)(6). Pub. L. 100-242, §406(b)(19), struck out "if one of the units is to be occupied by the owner" after "Secretary".

Subsecs. (m), (q)(1). Pub. L. 100-242, §401(c), substituted "September 30, 1989" for "March 15, 1988".

1987—Subsecs. (h)(1), (m), (q)(1). Pub. L. 100-200 substituted "March 15, 1988" for "December 16, 1987".

Pub. L. 100-179 substituted "December 16, 1987" for "December 2, 1987".

Pub. L. 100-170 substituted "December 2, 1987" for "November 15, 1987".

Pub. L. 100-154 substituted "November 15, 1987" for "October 31, 1987".

Pub. L. 100-122 substituted "October 31, 1987" for "September 30, 1987".

1986—Subsecs. (h)(1), (m), (q)(1). Pub. L. 99-430 substituted "September 30, 1987" for "September 30, 1986".

Pub. L. 99-345 substituted "September 30, 1986" for "June 6, 1986".

Pub. L. 99-289 substituted "June 6, 1986" for "April 30, 1986".

Pub. L. 99-272 made amendment identical to Pub. L. 99-219. See 1985 Amendment note below.

Pub. L. 99-267 substituted "April 30, 1986" for "March 17, 1986".

1985—Subsecs. (h)(1), (m), (q)(1). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1984—Subsec. (h)(1). Pub. L. 98-479, §102(a)(1), inserted "utilizing amounts approved in appropriation Acts before November 30, 1983," before "except (i)" and substituted "September 30, 1985" for "November 30, 1983" in last sentence.

Subsec. (i)(3)(C). Pub. L. 98-479, §204(a)(8), substituted "Secretary" for "Seretary" before "authorizes an increase".

Subsec. (j)(2)(C). Pub. L. 98-479, §104(a)(3), substituted "bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary determines is necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets" for "bear interest (exclusive of premium charges for insurance and service charge, if any) at not to exceed such per centum per annum (not in excess of 6 per centum), on the amount of the principal obligation outstanding at any time, as the Secretary finds necessary to meet the mortgage market".

1983—Subsec. (c)(1). Pub. L. 98-181, §226(a), substituted "Subject to the second sentence of this paragraph, the" for "The", and inserted provision limiting to a 10-year period assistance payments pursuant to any new contract entered into after Sept. 30, 1983, utilizing authority approved in appropriation Acts for any fiscal year beginning after such date.

Subsec. (c)(3). Pub. L. 98-181, §226(b), added par. (3).

Subsec. (h)(1). Pub. L. 98-181, §226(c), struck out "and" after "on July 1, 1971", and inserted ", and by such sums as may be approved in an appropriation Act on or after October 1, 1983 (from the additional authority to enter into contracts made available on such date under the first sentence of section 1437c(c)(1) of title 42). The aggregate amount that may be obligated over the duration of the contracts entered into with the authority provided on or after October 1, 1983, may not exceed such sums of new budget authority as may be appropriated after November 30, 1983. The Secretary shall begin issuing new commitments and reservations to provide mortgage insurance and assistance payments under this section before the expiration of the 30-day period following the approval in any appropriation Act of budget authority for this section after November 30, 1983."

Pub. L. 98-109, §1(d)(1), substituted "November 30, 1983" for "September 30, 1983".

Subsec. (i)(3)(A). Pub. L. 98-181, §226(d)(1), substituted "three-family" for "two-family", and "involve a single-family or a two-family" for "involve a single-family".

Subsec. (i)(3)(B), (C). Pub. L. 98-181, §423(b)(5)(A), (B), struck out ": *Provided*, That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured" after "\$55,000, respectively".

Subsec. (i)(3)(D). Pub. L. 98-181, §423(b)(5)(C), struck out ": *Provided*, That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured" after "cost levels so require)".

Pub. L. 98-181, §226(d)(2), inserted "or three-family" and substituted "\$60,000" for "\$55,000" and "\$66,250" for "\$61,250".

Subsec. (i)(3)(F). Pub. L. 98-181, §404(b)(12), added subpar. (F).

Subsec. (i)(4), (5). Pub. L. 98-181, §226(d)(3), added pars. (4) and (5).

Subsec. (j)(6). Pub. L. 98-181, §226(e)(1), substituted "two- to three-family" for "two-family".

Subsec. (j)(9). Pub. L. 98-181, §226(e)(2), added par. (9).

Subsec. (m). Pub. L. 98-181, §401(d)(1), substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109, §1(d)(2), substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35, §1(d)(1), substituted "September 30, 1983" for "May 20, 1983".

Subsec. (q)(1). Pub. L. 98-181, §401(d)(2), substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109, §1(d)(3), substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35, §1(d)(2), substituted "September 30, 1983" for "May 20, 1983".

1982—Subsec. (h)(1). Pub. L. 97-289, §1(d)(1), substituted "May 20, 1983" for "September 30, 1982" in two places.

Subsec. (i)(3)(B). Pub. L. 97-253, §201(f)(1), inserted provision that the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured.

Subsec. (i)(3)(C). Pub. L. 97-253, §201(f)(2), inserted provision that the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured.

Subsec. (i)(3)(D). Pub. L. 97-253, §201(f)(3), inserted provision that the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured.

Subsec. (i)(3)(E). Pub. L. 97-253, §201(f)(4), inserted "(excluding the mortgage insurance premium paid at the time the mortgage is insured)" after "cost of acquisition".

Subsec. (m). Pub. L. 97-289, §1(d)(2), substituted "May 20, 1983" for "September 30, 1982".

Subsec. (q)(1). Pub. L. 97-289, §1(d)(3), substituted "May 20, 1983" for "September 30, 1982".

1981—Subsec. (c)(2)(A). Pub. L. 97-35, §328(a), struck out provisions relating to homeowner ceasing to make payments for a period of 90 continuous days or more under the mortgage, etc.

Subsec. (h)(1). Pub. L. 97-110 expanded enumeration of exceptions to provision that the Secretary not enter into new contracts for assistance payments under this section after March 31, 1982, by designating the two existing exceptions as cls. (i) and (ii) and by adding cl. (iii).

Pub. L. 97-35, §328(b), inserted provisions prohibiting new contracts for assistance under this section after Mar. 1, 1982, except pursuant to specified exceptions.

Subsec. (m). Pub. L. 97-35, §331(d)(1), substituted "1982" for "1981".

Subsec. (q)(1). Pub. L. 97-35, §331(d)(2), substituted "September 30, 1982" for "June 1, 1981".

Subsec. (q)(14). Pub. L. 97-35, §328(c), struck out provisions relating to homeowner ceasing to make payments for a period of 90 continuous days or more under the mortgage, etc.

1980—Subsec. (a)(2)(A). Pub. L. 96-399, §308(c)(1), substituted "manufactured home" for "mobile home" wherever appearing.

Subsec. (a)(2)(B). Pub. L. 96-399, §308(c)(2), substituted "manufactured homeowner" and "manufactured homeowner's" for "mobile homeowner" and "mobile homeowner's", respectively.

Subsec. (b)(2). Pub. L. 96-399, §206(a)(1), substituted in last proviso "\$40,000" for "\$32,000", "\$47,500" for "\$38,000" in two places, and "\$55,000" for "\$44,000".

Subsec. (c). Pub. L. 96-399, §206(b)(1), designated existing provisions as par. (1), redesignated existing pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (i)(3)(B) to (D). Pub. L. 96-399, §206(a)(2), (3), substituted "\$40,000" for "\$32,000", "\$47,500" for "\$38,000", "\$55,000" for "\$44,000", and "\$61,250" for "\$49,000".

Subsec. (m). Pub. L. 96-399, §301(d), substituted "September 30, 1981" for "October 15, 1980".

Pub. L. 96-372 substituted "October 15, 1980" for "September 30, 1980".

Subsec. (p). Pub. L. 96-399, §206(a)(4), added subsec. (p).

Subsec. (q). Pub. L. 96-399, §207, added subsec. (q).

1979—Subsec. (a)(1). Pub. L. 96-153, §213(a), inserted provision that the Secretary give preference to low-income families who are likely to be displaced without assistance and that the assistance may include the acquisition of a condominium or membership in a cooperative association.

Subsec. (c)(2). Pub. L. 96-153, §213(c)(2), inserted parenthetical reference to 4 per centum per annum rate in the case of a mortgage described in subsec. (o) of this section.

Subsec. (i)(3)(A). Pub. L. 96-153, §213(b), substituted "standards as the Secretary may prescribe:" for "standards as the Secretary may prescribe, if the mortgagor qualifies as a displaced family as defined in section 17151(f) of this title, or a family which includes five or more minor persons, or a family occupying low-rent public housing:".

Subsec. (m). Pub. L. 96-153, §301(d), substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96-105 substituted "November 30, 1979" for "October 31, 1979".

Pub. L. 96-71 substituted "October 31, 1979" for "September 30, 1979".

Subsec. (o). Pub. L. 96-153, §213(c)(1), added subsec. (o).

1978—Subsec. (m). Pub. L. 95-557 substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Subsec. (b)(2). Pub. L. 95-128, §§205, 303(f)(1), inserted reference to section 17151(d)(3) of this title and substituted in last proviso "\$32,000" for "\$25,000", "\$38,000" for "\$29,000" in two places, and "\$44,000" for "\$33,000".

Subsec. (i)(3)(B) to (E). Pub. L. 95-128, §303(f)(2)-(4), substituted in subpar. (B) "\$32,000" for "\$25,000", "\$38,000" for "\$29,000" in two places, and "\$44,000" for "\$33,000", added subpars. (C) and (D), and redesignated former subpar. (C) as (E).

Subsec. (m). Pub. L. 95-128, §301(d), substituted "September 30, 1978" for "September 30, 1977".

Subsec. (n). Pub. L. 95-128, §303(f)(5), added subsec. (n).

1976—Subsec. (a). Pub. L. 94-375, §3(f)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(2). Pub. L. 94-375, §3(b), substituted "\$25,000" for "\$21,600", "\$29,000" for "\$25,200" in two places, and "\$33,000" for "\$28,800".

Subsec. (e). Pub. L. 94-375, §3(f)(2), inserted "(a)(2)(B)," after "computed under subsection".

Subsec. (h)(2). Pub. L. 94-375, §3(e), substituted "95 per centum" for "80 per centum" wherever appearing.

Subsec. (i)(3)(B). Pub. L. 94-375, §3(c), substituted "\$25,000" for "\$21,600", "\$29,000" for "\$25,200" in two places, and "\$33,000" for "\$28,800".

Subsec. (m). Pub. L. 94-375 §3(a), substituted "September 30, 1977" for "June 30, 1976".

1974—Subsec. (a). Pub. L. 93-383, §211(b), inserted provisions relating to mortgages assisted under a State or local program providing assistance through loans, etc.

Subsec. (b)(2). Pub. L. 93-383, §211(c)(1), substituted "\$21,600" for "\$18,000", "\$25,200" for "\$21,000" in two places, and "\$28,800" for "\$24,000".

Subsec. (h)(1). Pub. L. 93-383, §211(a)(1), (2), inserted provisions relating to increases by such sums as may be approved in appropriations Acts after June 30, 1974, and prior to July 1, 1976, and provisions prohibiting new contracts for assistance payments upon the expiration of one year following Aug. 22, 1974.

Subsec. (h)(2). Pub. L. 93-383, §211(a)(3), substituted provisions setting forth requirements for assistance payments for families for provisions setting forth maximum income limits of families receiving assistance payments under contracts and provisions relating to annual report to Congressional Committees with respect to income levels of families.

Subsec. (h)(3)(B). Pub. L. 93-383, §211(a)(4), substituted "on or after July 1, 1969" for "prior to July 1, 1972".

Subsec. (i)(1). Pub. L. 93-383, §211(a)(5), inserted provisions authorizing insurance of advances for property construction or rehabilitation pursuant to self-help programs.

Subsec. (i)(3)(B). Pub. L. 93-383, §211(c)(2), substituted "\$21,600" for "\$18,000", "\$25,200" for "\$21,000" in two places, and "\$28,800" for "\$24,000".

Subsec. (i)(3)(C). Pub. L. 93-383, §211(a)(6), struck out provisions relating to execution by a mortgagor in the case of a family whose income is not in excess of 135 per centum of the maximum income limits established in the area pursuant to specified limitations or any other family.

Subsec. (m). Pub. L. 93-383, §211(a)(7), substituted "June 30, 1976" for "October 1, 1974".

1973—Subsec. (m). Pub. L. 93-117 substituted "October 1, 1974" for "October 1, 1973".

Pub. L. 93-85 substituted "October 1, 1973" for "June 30, 1973".

1972—Subsec. (m). Pub. L. 92-503 substituted "June 30, 1973" for "October 1, 1972".

1970—Subsec. (b)(2). Pub. L. 91-609, §107, designated existing provisions as cl. (A) and added cl. (B).

Subsec. (h)(1). Pub. L. 91-609, §102(a), in second sentence, inserted "outstanding" before "contracts" where first appearing and substituted "\$150,000,000 on July 1, 1970" and "\$200,000,000 on July 1, 1971" for "\$125,000,000 on July 1, 1970" and "\$170,000,000 on July 1, 1971".

Subsec. (h)(3)(B). Pub. L. 91-609, §105(1), substituted "July 1, 1972" for "July 1, 1971".

Subsec. (h)(4). Pub. L. 91-609, §105(2), added par. (4).

Subsec. (i)(3)(A). Pub. L. 91-609, §106, substituted "and which is approved by the Secretary" for "if the dwelling is purchased with the assistance of a nonprofit organization and is approved by the Secretary".

Subsec. (m). Pub. L. 91-609, §101(d), substituted "October 1, 1972" for "October 1, 1971".

1969—Subsec. (b)(2). Pub. L. 91-152, §§106(b), 113(i), substituted provisions qualifying for assistance payments the transferee of any cooperative member who has received assistance payments, provided that such transferee undertakes the obligation to pay occupancy charges, for provisions qualifying for assistance payments the transferee of the initial cooperative member receiving assistance payments, and substituted "\$18,000" for "\$15,000", "\$21,000" for "\$17,500" wherever appearing, and "\$24,000" for "\$20,000".

Subsec. (c). Pub. L. 91-152, §§106(a), 418(a), inserted reference to subsection (i) of this section, and inserted the further proviso authorizing the Secretary to continue making assistance payments.

Subsec. (h)(1). Pub. L. 91-152, §107(a), substituted "\$125,000,000 on July 1, 1969, by \$125,000,000 on July 1, 1970, and by \$170,000,000 on July 1, 1971" for "\$100,000,000 on July 1, 1969, and by \$125,000,000 on July 1, 1970".

Subsec. (h)(2). Pub. L. 91-152, §412(b), required the Secretary to report semiannually instead of annually to the respective Committees on Banking and Currency of the Senate and House of Representatives.

Subsec. (h)(3)(A). Pub. L. 91-152, §109(1), inserted "and" after "July 1, 1969".

Subsec. (h)(3)(B). Pub. L. 91-152, §109(2), substituted "30 per centum" for "15 per centum" and "July 1, 1971," for "July 1, 1970, and".

Subsec. (h)(3)(C). Pub. L. 91-152, §109(2), struck out subsec. (h)(3)(C) which limited the amount available for home-ownership assistance payments to 10 per centum of the total additional amount of contracts for assistance payments authorized by appropriation Acts made prior to July 1, 1971.

Subsec. (i)(3)(B). Pub. L. 91-152, §113(i), substituted "\$18,000" for "\$15,000", "\$21,000" for "\$17,500" wherever appearing, and "\$24,000" for "\$20,000".

Subsec. (m). Pub. L. 91-152, §101(d), added subsec. (m).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 406(b)(18), (19) of Pub. L. 100-242 applicable only with respect to mortgages insured pursuant to conditional commitment issued on or after Feb. 5, 1988, or in accordance with direct endorsement program (24 CFR 200.163), if approved underwriter of mortgagee signs appraisal report for property on or after Feb. 5, 1988, see section 406(d) of Pub. L. 100-242, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by section 423(b)(5) of Pub. L. 98-181, see section 423(c) of Pub. L. 98-181, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-399, title II, §206(b)(2), Oct. 8, 1980, 94 Stat. 1631, provided: "The amendment made by paragraph (1) [amending this section] does not apply to any assistance contract under section 235 of the National Housing Act [this section] entered into pursuant to a commitment issued within 6 months following the date of enactment of this Act [Oct. 8, 1980]."

TERMINATION OF PROGRAM; SAVINGS PROVISION

Pub. L. 101-235, title I, §125(d), Dec. 15, 1989, 103 Stat. 2024, provided that: "Notwithstanding the termination of the program under section 235 [this section] pursuant to section 401(d) of the Housing and Community Development Act of 1987 [Pub. L. 100-242, set out below], the Secretary of Housing and Urban Development shall have authority to insure mortgages under section 235(r), to make assistance payments with respect to such insured mortgages, and to make any other payment or take any other action related to the refinancing of mortgages insured under section 235."

Pub. L. 100-242, title IV, §401(d), Feb. 5, 1988, 101 Stat. 1899, provided that:

"(1) IN GENERAL.—Effective on October 1, 1989, the program under section 235 of the National Housing Act [this section] shall terminate.

"(2) SAVINGS PROVISION.—The provisions of paragraph (1) shall not affect—

"(A) any mortgage insurance commitment issued; or

"(B) any assistance pursuant to a reservation of funds made;

under section 235 of the National Housing Act prior to October 1, 1989."

IMPLEMENTATION OF 1982 AMENDMENT

Amendment by Pub. L. 97-253 to be implemented only if the Secretary determines that the program of advance payment of insurance premiums, considering the effect of said amendment, is actuarially sound, see section 201(g) of Pub. L. 97-253, set out as a note under section 1709 of this title.

STUDY AND REPORT RESPECTING APPLICATION OF SUBSECTION (N) TO SUBSECTIONS (A) AND (Q) PROGRAMS

Pub. L. 96-399, title II, §206(c), Oct. 8, 1980, 94 Stat. 1631, directed Secretary of Housing and Urban Development to conduct a study of effects which application of subsec. (n) of this section has had or is likely to have on program established by subsec. (a). If program established by subsec. (q) was implemented, Secretary was to include in study an analysis of effects on subsec. (q) program of application of subsec. (n) to such program. Secretary to transmit to Congress, not later than Jan. 1, 1982, a report containing findings and conclusions of study.

FINANCING PURCHASE OF DWELLING FROM NONPROFIT ORGANIZATION AFTER AUGUST 1, 1968

Pub. L. 90-448, title I, §101(c)(4), Aug. 1, 1968, 82 Stat. 484, provided that: "The purchase of any individual dwelling, sold by a nonprofit organization pursuant to the provisions of section 221(h)(5) of the National Housing Act [12 U.S.C. 1715l(h)(5)] after the date of enactment of this section [Aug. 1, 1968], may

be financed with a mortgage insured under the provisions of section 235(j)(4) of such Act [12 U.S.C. 1715z(j)(4)], but such mortgage shall bear interest at the rate provided in section 235(j)(2)(C) of such Act."

CEILING ON TOTAL HOMEOWNERSHIP ASSISTANCE PAYMENTS IN ANY FISCAL YEAR

Pub. L. 90-608, ch. IV, §401, Oct. 21, 1968, 82 Stat. 1193, provided in part that the total payments that may be required in any fiscal year by all contracts entered into under section 235 of the National Housing Act [this section] shall not exceed \$25,000,000.

Pub. L. 91-47, title II, §201, July 22, 1969, 83 Stat. 53, increased by \$45,000,000 the limitation on total payments that may be required in any fiscal year by all contracts entered into under section 235 of the National Housing Act, as amended (82 Stat. 477) [this section].

¹ See References in Text note below.

§1715z-1. Rental and cooperative housing for lower income families

(a) Authorization for periodic interest reduction payments on behalf of owner of rental housing project

For the purpose of reducing rentals for lower income families, the Secretary is authorized to make, and to contract to make, periodic interest reduction payments on behalf of the owner of a rental housing project designed for occupancy by lower income families, which shall be accomplished through payments to mortgagees ¹ holding mortgages meeting the special requirements specified in this section.

(b) Restrictions on payments; payments with respect to projects financed under State or local programs; mortgage insurance premium

Interest reduction payments with respect to a project shall only be made during such time as the project is operated as a rental housing project and is subject to a mortgage which meets the requirements of, and is insured under, subsection (j) of this section: *Provided*, That the Secretary is authorized to continue making such interest reduction payments where the mortgage has been assigned to the Secretary: *Provided further*, That interest reduction payments may be made with respect to a mortgage or part thereof on a rental or cooperative housing project owned by a private nonprofit corporation or other private nonprofit entity, a limited dividend corporation or other limited dividend entity, public ² entity, or a cooperative housing corporation, which is financed under a State or local program providing assistance through loans, loan insurance, or tax abatements, and which may involve either new or existing construction and which is approved for receiving the benefits of this section. The term "mortgage insurance premium", when used in this section in relation to a project financed by a loan under a State or local program, means such fees and charges, approved by the Secretary, as are payable by the mortgagor to the State or local agency mortgagee to meet reserve requirements and administrative expenses of such agency.

(c) Amount of payments

The interest reduction payments to a mortgagee by the Secretary on behalf of a project owner shall be in an amount not exceeding the difference between the monthly payment for principal, interest, and mortgage insurance premium which the project owner as a mortgagor is obligated to pay under the mortgage and the monthly payment for principal and interest such project owner would be obligated to pay if the mortgage were to bear interest at the rate of 1 per centum per annum.

(d) Mortgage handling expenses

The Secretary may include in the payment to the mortgagee such amount, in addition to the amount computed under subsection (c), as he deems appropriate to reimburse the mortgagee for its expenses in handling the mortgage.

(e) Operation of project in accordance with requirements respecting tenant eligibility and rents prescribed by Secretary

(1) As a condition for receiving the benefits of interest reduction payments, the project owner shall operate the project in accordance with such requirements with respect to tenant eligibility and rents as the Secretary may prescribe. Procedures shall be adopted by the Secretary for review of tenant incomes at intervals of one year (or at shorter intervals where the Secretary deems it desirable).

(2) A project for which interest reduction payments are made under this section and for which the mortgage on the project has been refinanced shall continue to receive the interest reduction payments under this section under the terms of the contract for such payments, but only if the project owner enters into such binding commitments as the Secretary may require (which shall be applicable to any subsequent owner) to ensure that the owner will continue to operate the project in accordance with all low-income affordability restrictions for the project in connection with the Federal assistance for the project for a period having a duration that is not less than the term for which such interest reduction payments are made plus an additional 5 years.

(f) Establishment of basic and fair market rental charges; rental for dwelling units; separate utility metering; additional assistance payments for low-income tenants; limitations; amounts; approval of payments

(1)(A)(i) For each dwelling unit there shall be established, with the approval of the Secretary, a basic rental charge and fair market rental charge.

(ii) The basic rental charge shall be—

(I) the amount needed to operate the project with payments of principal and interest due under a mortgage bearing interest at the rate of 1 percent per annum; or

(II) an amount greater than that determined under clause (ii)(I), but not greater than the market rent for a comparable unassisted unit, reduced by the value of the interest reduction payments subsidy.

(iii) The fair market rental charge shall be—

(I) the amount needed to operate the project with payments of principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage covering the project; or

(II) an amount greater than that determined under clause (iii)(I), but not greater than the market rent for a comparable unassisted unit.

(iv) The Secretary may approve a basic rental charge and fair market rental charge for a unit that exceeds the minimum amounts permitted by this subparagraph for such charges only if—

(I) the approved basic rental charge and fair market rental charges each exceed the applicable minimum charge by the same amount; and

(II) the project owner agrees to restrictions on project use or mortgage prepayment that are acceptable to the Secretary.

(v) The Secretary may approve a basic rental charge and fair market rental charge under this paragraph for a unit with assistance under section 1437f of title 42 that differs from the basic rental charge and fair market rental charge for a unit in the same project that is similar in size and amenities but without such assistance, as needed to ensure equitable treatment of tenants in units without such assistance.

(B)(i) The rental charge for each dwelling unit shall be at the basic rental charge or such greater amount, not exceeding the fair market rental charge determined pursuant to subparagraph (A), as represents 30 percent of the tenant's adjusted income, except as otherwise provided in this subparagraph.

(ii) In the case of a project which contains more than 5000 units, is subject to an interest reduction payments contract, and is financed under a State or local project, the Secretary may reduce the rental charge ceiling, but in no case shall the rental charge be below the basic rental charge set forth in subparagraph (A)(ii)(I).

(iii) For plans of action approved for capital grants under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.] or the Emergency Low Income

Housing Preservation Act of 1987, the rental charge for each dwelling unit shall be at the minimum basic rental charge set forth in subparagraph (A)(ii)(I) or such greater amount, not exceeding the lower of: (I) the fair market rental charge set forth in subparagraph (A)(iii)(I); or (II) the actual rent paid for a comparable unit in comparable unassisted housing in the market area in which the housing assisted under this section is located, as represents 30 percent of the tenant's adjusted income.

(C) With respect to those projects which the Secretary determines have separate utility metering paid by the tenants for some or all dwelling units, the Secretary may—

(i) permit the basic rental charge and the fair market rental charge to be determined on the basis of operating the project without the payment of the cost of utility services used by such dwelling units; and

(ii) permit the charging of a rental for such dwelling units at such an amount less than 30 percent of a tenant's adjusted income as the Secretary determines represents a proportionate decrease for the utility charges to be paid by such tenant, but in no case shall rental be lower than 25 percent of a tenant's adjusted income.

(2) With respect to 20 per centum of the dwelling units in any project made subject to a contract under this section after August 22, 1974, the Secretary shall make, and contract to make, additional assistance payments to the project owner on behalf of tenants whose incomes are too low for them to afford the basic rentals (including the amount allowed for utilities in the case of a project with separate utility metering) with 30 per centum of their adjusted income. The additional assistance payments authorized by this paragraph with respect to any dwelling unit shall be the amount required to reduce the rental payment (including the amount allowed for utilities in the case of a project with separate utility metering) by the tenant to the highest of the following amounts, rounded to the nearest dollar:

(A) 30 per centum of the tenant's monthly adjusted income;

(B) 10 per centum of the tenant's monthly income; or

(C) if the family is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated.

Notwithstanding the foregoing provisions of this paragraph, the Secretary may—

(A) reduce such 20 per centum requirement in the case of any project if he determines that such action is necessary to assure the economic viability of the project; or

(B) increase such 20 per centum requirement in the case of any project if he determines that such action is necessary and feasible in order to assure, insofar as is practicable, that there is in the project a reasonable range in the income levels of tenants, or that such action is to be taken to meet the housing needs of elderly or handicapped families.

(3) The Secretary shall utilize amounts credited to the fund described in subsection (g) for the sole purpose of carrying out the purposes of section 201 of the Housing and Community Development Amendments of 1978. No payments may be made from such fund unless approved in an appropriation Act. No amount may be so approved for any fiscal year beginning after September 30, 1994.

(4) To ensure that eligible tenants occupying that number of units with respect to which assistance was being provided under this subsection immediately prior to November 30, 1983, receive the benefit of assistance contracted for under paragraph (2), the Secretary shall offer annually to amend contracts entered into under this subsection with owners of projects assisted but not subject to mortgages insured under this section to provide sufficient payments to cover 100 percent of the necessary rent increases and changes in the incomes of eligible tenants, subject to the availability of authority for such purpose under section 1437c(c) of title 42. The Secretary shall take such actions as

may be necessary to ensure that payments, including payments that reflect necessary rent increases and changes in the incomes of tenants, are made on a timely basis for all units covered by contracts entered into under paragraph (2).

(5)(A) In order to induce advances by owners for capital improvements (excluding any owner contributions that may be required by the Secretary as a condition for assistance under section 201 of the Housing and Community Development Amendments of 1978) to benefit projects assisted under this section, in establishing basic rental charges and fair market rental charges under paragraph (1) the Secretary may include an amount that would permit a return of such advances with interest to the owner out of project income, on such terms and conditions as the Secretary may determine. Any resulting increase in rent contributions shall be—

(i) to a level not exceeding the lower of 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;

(ii) phased in equally over a period of not less than 3 years, if such increase is 30 percent or more; and

(iii) limited to not more than 10 percent per year if such increase is more than 10 percent but less than 30 percent.

(B) Assistance under section 1437f of title 42 shall be provided, to the extent available under appropriations Acts, if necessary to mitigate any adverse effects on income-eligible tenants.

(6) Repealed. Pub. L. 104–99, title IV, §405(d)(2), Jan. 26, 1996, 110 Stat. 45.

(7) The Secretary shall determine whether and under what conditions the provisions of this subsection shall apply to mortgages sold by the Secretary on a negotiated basis.

(g) Collection of excess rental charges; credit to reserve for additional assistance payments; retention by project owner

(1) The project owner shall, as required by the Secretary, accumulate, safeguard, and periodically pay the Secretary or such other entity as determined by the Secretary and upon such terms and conditions as the Secretary deems appropriate, all rental charges collected on a unit-by-unit basis in excess of the basic rental charges. Unless otherwise directed by the Secretary, such excess charges shall be credited to a reserve used by the Secretary to make additional assistance payments as provided in paragraph (3) of subsection (f).

(2) Notwithstanding any other requirements of this subsection, a project owner may retain some or all of such excess charges for project use if authorized by the Secretary. Such excess charges shall be used for the project and upon terms and conditions established by the Secretary, unless the Secretary permits the owner to retain funds for non-project use after a determination that the project is well-maintained housing in good condition and that the owner has not engaged in material adverse financial or managerial actions or omissions as described in section 516 of the Multifamily Assisted Housing Reform and Affordability Act of 1997. In connection with the retention of funds for non-project use, the Secretary may require the project owner to enter into a binding commitment (which shall be applicable to any subsequent owner) to ensure that the owner will continue to operate the project in accordance with all low-income affordability restrictions for the project in connection with the Federal assistance for the project for a period having a duration of not less than the term of the existing affordability restrictions plus an additional 5 years.

(3) The Secretary shall not withhold approval of the retention by the owner of such excess charges because of the existence of unpaid excess charges if such unpaid amount is being remitted to the Secretary over a period of time in accordance with a workout agreement with the Secretary, unless the Secretary determines that the owner is in violation of the workout agreement.

(h) Rules and regulations

In addition to establishing the requirements specified in subsection (e), the Secretary is authorized to make such rules and regulations, to enter into such agreements, and to adopt such procedures as he may deem necessary or desirable to carry out the provisions of this section.

(i) Authorization of appropriations; aggregate amount of contracts; contracts for assistance

payments; income limitations; availability of amounts for projects approved prior to rehabilitation and projects for occupancy by elderly or handicapped families; definitions

(1) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, including such sums as may be necessary to make interest reduction payments under contracts entered into by the Secretary under this section. The aggregate amount of outstanding contracts to make such payments shall not exceed amounts approved in appropriation Acts, and payments pursuant to such contracts shall not exceed \$75,000,000 per annum prior to July 1, 1969, which maximum dollar amount shall be increased by \$125,000,000 on July 1, 1969, by \$150,000,000 on July 1, 1970, by \$200,000,000 on July 1, 1971 and by \$75,000,000 on July 1, 1974. The Secretary shall utilize, to the extent necessary after September 30, 1984, any authority under this section that is recaptured either as the result of the conversion of housing projects covered by assistance under subsection (f)(2) to contracts for assistance under section 1437f of title 42 or otherwise for the purpose of making assistance payments, including amendments as provided in subsection (f)(4), with respect to housing projects assisted, but not subject to mortgages insured, under this section that remain covered by assistance under subsection (f)(2).

(2) Contracts for assistance payments under this section may be entered into only with respect to tenants whose incomes do not exceed 80 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low family incomes, or other factors.

(3) Not less than 10 per centum of the total amount of contracts for assistance payments authorized by appropriation Acts to be made after June 30, 1974, shall be available for use only with respect to dwellings, or dwelling units in projects, which are approved by the Secretary prior to rehabilitation.

(4) At least 20 per centum of the total amount of contracts for assistance payments authorized in appropriation Acts to be made after June 30, 1974, shall be available for use only with respect to projects which are planned in whole or in part for occupancy by elderly or handicapped families. As used in this paragraph, the term "elderly families" means families which consist of two or more persons the head of which (or his spouse) is sixty-two years of age or over or is handicapped. Such term also means a single person who is sixty-two years of age or over or is handicapped. A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions.

(j) Insurance of mortgages; definitions; eligibility for insurance; mortgage requirements; property or project requirements; sale of individual dwelling units; release of mortgagor from liability or release of property from lien of mortgage

(1) The Secretary is authorized, upon application by the mortgagee, to insure a mortgage (including advances on such mortgage during construction) which meets the requirements of this subsection. Commitments for the insurance of such mortgages may be issued by the Secretary prior to the date of their execution or disbursement thereon, upon such terms and conditions as he may prescribe.

(2) As used in this subsection—

(A) the terms "family" and "families" shall have the same meaning as in section 1715l of this title;

(B) the term "elderly or handicapped families" shall have the same meaning as in section 1701q³ of this title; and

(C) the terms "mortgage", "mortgagee", and "mortgagor" shall have the same meaning as in section 1707 of this title.

(3) To be eligible for insurance under this subsection, a mortgage shall meet the requirements

specified in subsections (d)(1) and (d)(3) of section 17151 of this title, except as such requirements are modified by this subsection. In the case of a project financed with a mortgage insured under this subsection which involves a mortgagor other than a cooperative or a private nonprofit corporation or association and which is sold to a cooperative or a nonprofit corporation or association, the Secretary is further authorized to insure under this subsection a mortgage given by such purchaser in an amount not exceeding the appraised value of the property at the time of purchase, which value shall be based upon a mortgage amount on which the debt service can be met from the income of the property when operated on a nonprofit basis, after payment of all operating expenses, taxes, and required reserves.

(4) A mortgage to be insured under this subsection shall—

(A) be executed by a mortgagor eligible under subsection (d)(3) or (e) of section 17151 of this title;

(B) bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary determines is necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets; and

(C) provide for complete amortization by periodic payments within such term as the Secretary may prescribe.

(5) The property or project shall—

(A) comply with such standards and conditions as the Secretary may prescribe to establish the acceptability of the property for mortgage insurance and may include such nondwelling facilities as the Secretary deems adequate and appropriate to serve the occupants and the surrounding neighborhood: *Provided*, That the project shall be predominantly residential and any nondwelling facility included in the mortgage shall be found by the Secretary to contribute to the economic feasibility of the project, and the Secretary shall give due consideration to the possible effect of the project on other business enterprises in the community: *Provided further*, That, in the case of a project designed primarily for occupancy by elderly or handicapped families, the project may include related facilities for use by elderly or handicapped families, including cafeterias or dining halls, community rooms, workshops, infirmaries, or other inpatient or outpatient health facilities, and other essential service facilities;

(B) include five or more dwelling units, but such units, in the case of a project designed primarily for occupancy by displaced, elderly, or handicapped families, need not, with the approval of the Secretary, contain kitchen facilities; and

(C) be designed primarily for use as a rental project to be occupied by lower income families or by elderly or handicapped families: *Provided*, That lower income persons who are less than sixty-two years of age shall be eligible for occupancy in such a project.

In any case in which it is determined in accordance with regulations of the Secretary that facilities in existence or under construction on December 31, 1970, which could appropriately be used for classroom purposes are available in any such property or project and that public schools in the community are overcrowded due in part to the attendance at such schools of residents of the property or project, such facilities may be used for such purposes to the extent permitted in such regulations (without being subject to any of the requirements of the first proviso in subparagraph (A) except the requirement that the project be predominantly residential).

(6) With the approval of the Secretary, the mortgagor may sell the individual dwelling units to lower income or elderly or handicapped purchasers. The Secretary may consent to the release of the mortgagor from his liability under the mortgage and the credit instrument secured thereby, or consent to the release of parts of the mortgaged property from the lien of the mortgage, upon such terms and conditions as he may prescribe, and the mortgage may provide for such release.

(k) Definitions

As used in this section the term "tenant" includes a member of a cooperative; the term "rental housing project" includes a cooperative housing project; and the terms "rental" and "rental charge"

mean, with respect to members of a cooperative, the charges under the occupancy agreements between such members and the cooperative.

(l) Allocation and transfer of reasonable portion of total authority to contract to make payments to Secretary of Agriculture for use in rural areas and small towns

The Secretary shall from time to time allocate and transfer to the Secretary of Agriculture, for use (in accordance with the terms and conditions of this section) in rural areas and small towns, a reasonable portion of the total authority to contract to make periodic interest reduction payments as approved in appropriation Acts under subsection (i).

(m) "Income" defined

For the purpose of this section the term "income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, except that any amounts not actually received by the family may not be considered as income under this subsection. In determining amounts to be excluded from income, the Secretary may, in the Secretary's discretion, take into account the number of minor children in the household and such other factors as the Secretary may determine are appropriate.

(n) Termination date for insurance of mortgages; exception

No mortgage shall be insured under this section after November 30, 1983, except pursuant to a commitment to insure before that date. A mortgage may be insured under this section after the date in the preceding sentence in order to refinance a mortgage insured under this section or to finance pursuant to subsection (j)(3) the purchase, by a cooperative or nonprofit corporation or association, of a project assisted under this section.

(o) State funding of interest reduction payments

The Secretary is authorized to enter into agreements with any State or agency thereof under which such State or agency thereof contracts to make interest reduction payments, subject to all the terms and conditions specified in this section and in rules, regulations and procedures adopted by the Secretary under this section, with respect to all or a part of a project covered by a mortgage insured under this section. Any funds provided by a State or agency thereof for the purpose of making interest reduction payments shall be administered, disbursed and accounted for by the Secretary in accordance with the agreements entered into by the Secretary with the State or agency thereof and for such fees as shall be specified therein. Before entering into any agreements pursuant to this subsection the Secretary shall require assurances satisfactory to him that the State or agency thereof is able to provide sufficient funds for the making of interest reduction payments for the full period specified in the interest reduction contract.

(p) Contracts with State or local agencies for monitoring and supervision of management by private sponsors of assisted projects

The Secretary is authorized to enter into contracts with State or local agencies approved by him to provide for the monitoring and supervision by such agencies of the management by private sponsors of projects assisted under this section. Such contracts shall require that such agencies promptly report to the Secretary any deficiencies in the management of such projects in order to enable the Secretary to take corrective action at the earliest practicable time.

(q) Assistance to residents of covered projects; contracting authority; applicability

The Secretary may provide assistance under section 1437f of title 42 with respect to residents of units in a project assisted under this section. In entering into contracts under section 1437c(c) of title 42 with respect to the additional authority provided on October 1, 1980, the Secretary shall not utilize more than \$20,000,000 of such additional authority to provide assistance for elderly or handicapped families which, at the time of applying for assistance under such section 1437f of title 42, are residents of a project assisted under this section and are expending more than 50 percent of their income on rental payments.

(r) Payments for benefit of certain projects having mortgages made by State or local housing

finance or government agencies

The Secretary shall, not later than 45 days after receipt of an application by the mortgagee, provide interest reduction and rental assistance payments for the benefit of projects assisted under this section whose mortgages were made by State or local housing finance agencies or State or local government agencies for a term equal to the remaining mortgage term to maturity on projects assisted under this section to the extent of—

- (1) unexpended balances of amounts of authority as set forth in certain letter agreements between the Department of Housing and Urban Development and such State or local housing finance agencies or State or local government agencies, and
- (2) existing allocation under section 236 contracts on projects whose mortgages were made by State or local housing finance agencies or State or local government agencies which are not being funded, to the extent of such excess allocation, for any purposes permitted under the provisions of this section, including without limitation rent supplement and rental assistance payment unit increases and mortgage increases for any eligible purpose under this section, including without limitation operating deficit loans.

An application shall be eligible for assistance under the previous sentence only if the mortgagee submits the application within 548 days after February 5, 1988, along with a certification of the mortgagee that amounts hereunder are to be utilized only for the purpose of either (A) reducing rents or rent increases to tenants, or (B) making repairs or otherwise increasing the economic viability of a related project. Unexpended balances referred to in the first sentence of this subsection which remain after disposition of all such applications is favorably concluded shall be rescinded. The calculation of the amount of assistance to be provided under an interest reduction contract pursuant to this subsection shall be made on the basis of an assumed mortgage term equal to the lesser of a 40-year amortization period or the term of that part of the mortgage which relates to the additional assistance provided under this subsection, even though the additional assistance may be provided for a shorter period. The authority conferred by this subsection to provide interest reduction and rental assistance payments shall be available only to the extent approved in appropriation Acts.

(s) Grants and loans for rehabilitation of multifamily projects

(1) In general

The Secretary may make grants and loans for the capital costs of rehabilitation to owners of projects that meet the eligibility and other criteria set forth in, and in accordance with, this subsection.

(2) Project eligibility

A project may be eligible for capital assistance under this subsection under a grant or loan only—

(A) if—

- (i) the project is or was insured under any provision of subchapter II of this chapter;
- (ii) the project was assisted under section 1437f of title 42 on October 27, 1997; and
- (iii) the project mortgage was not held by a State agency as of October 27, 1997;

(B) if the project owner agrees to maintain the housing quality standards as required by the Secretary;

(C) the project owner enters into such binding commitments as the Secretary may require (which shall be applicable to any subsequent owner) to ensure that the owner will continue to operate the project in accordance with all low-income affordability restrictions for the project in connection with the Federal assistance for the project for a period having a duration that is not less than the period referred to in paragraph (5)(C);

(D)(i) if the Secretary determines that the owner or purchaser of the project has not engaged in material adverse financial or managerial actions or omissions with regard to such project; or
(ii) if the Secretary elects to make such determination, that the owner or purchaser of the

project has not engaged in material adverse financial or managerial actions or omissions with regard to other projects of such owner or purchaser that are federally assisted or financed with a loan from, or mortgage insured or guaranteed by, an agency of the Federal Government;

(iii) material adverse financial or managerial actions or omissions, as the terms are used in this subparagraph, include—

(I) materially violating any Federal, State, or local law or regulation with regard to this project or any other federally assisted project, after receipt of notice and an opportunity to cure;

(II) materially breaching a contract for assistance under section 1437f of title 42, after receipt of notice and an opportunity to cure;

(III) materially violating any applicable regulatory or other agreement with the Secretary or a participating administrative entity, after receipt of notice and an opportunity to cure;

(IV) repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the property;

(V) materially failing to maintain the property according to housing quality standards after receipt of notice and a reasonable opportunity to cure; or

(VI) committing any act or omission that would warrant suspension or debarment by the Secretary; and

(iv) the term "owner" as used in this subparagraph, in addition to it having the same meaning as in section 1437f(f) of title 42, also means an affiliate of the owner; the term "purchaser" as used in this subsection means any private person or entity, including a cooperative, an agency of the Federal Government, or a public housing agency, that, upon purchase of the project, would have the legal right to lease or sublease dwelling units in the project, and also means an affiliate of the purchaser; the terms "affiliate of the owner" and "affiliate of the purchaser" means any person or entity (including, but not limited to, a general partner or managing member, or an officer of either) that controls an owner or purchaser, is controlled by an owner or purchaser, or is under common control with the owner or purchaser; the term "control" means the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial or other interests of the owner or purchaser; and

(E) if the project owner demonstrates to the satisfaction of the Secretary—

(i) using information in a comprehensive needs assessment, that capital assistance under this subsection from a grant or loan (as appropriate) is needed for rehabilitation of the project; and

(ii) that project income is not sufficient to support such rehabilitation.

(3) Eligible uses

Amounts from a grant or loan under this subsection may be used only for projects eligible under paragraph (2) for the purposes of—

(A) payment into project replacement reserves;

(B) debt service payments on non-Federal rehabilitation loans; and

(C) payment of nonrecurring maintenance and capital improvements, under such terms and conditions as are determined by the Secretary.

(4) Grant and loan agreements

(A) In general

The Secretary shall provide in any grant or loan agreement under this subsection that the grant or loan shall be terminated if the project fails to meet housing quality standards, as applicable on October 27, 1997, or any successor standards for the physical conditions of projects, as are determined by the Secretary.

(B) Affordability and use clauses

The Secretary shall include in a grant or loan agreement under this subsection a requirement

for the project owners to maintain such affordability and use restrictions as the Secretary determines to be appropriate and consistent with paragraph (2)(C).

(C) Other terms

The Secretary may include in a grant or loan agreement under this subsection such other terms and conditions as the Secretary determines to be necessary.

(5) Loan terms

A loan under this subsection—

(A) shall provide amounts for the eligible uses under paragraph (3) in a single loan disbursement of loan principal;

(B) shall be repaid, as to principal and interest, on behalf of the borrower using amounts recaptured from contracts for interest reduction payments pursuant to clause (i) or (ii) of paragraph (7)(A);

(C) shall have a term to maturity of a duration not shorter than the remaining period for which the interest reduction payments for the insured mortgage or mortgages that fund repayment of the loan would have continued after extinguishment or writedown of the mortgage (in accordance with the terms of such mortgage in effect immediately before such extinguishment or writedown);

(D) shall bear interest at a rate, as determined by the Secretary of the Treasury, that is based upon the current market yields on outstanding marketable obligations of the United States having comparable maturities; and

(E) shall involve a principal obligation of an amount not exceeding the amount that can be repaid using amounts described in subparagraph (B) over the term determined in accordance with subparagraph (C), with interest at the rate determined under subparagraph (D).

(6) Delegation

(A) In general

In addition to the authorities set forth in subsection (p), the Secretary may delegate to State and local governments the responsibility for the administration of grants under this subsection. Any such government may carry out such delegated responsibilities directly or under contracts.

(B) Administration costs

In addition to other eligible purposes, amounts of grants under this subsection may be made available for costs of administration under subparagraph (A).

(7) Funding

(A) In general

For purposes of carrying out this subsection, the Secretary may make available amounts that are unobligated amounts for contracts for interest reduction payments—

(i) that were previously obligated for contracts for interest reduction payments under this section until the insured mortgage under this section was extinguished;

(ii) that become available as a result of the outstanding principal balance of a mortgage having been written down;

(iii) that are uncommitted balances within the limitation on maximum payments that may have been, before October 27, 1997, permitted in any fiscal year; or

(iv) that become available from any other source.

(B) Liquidation authority

The Secretary may liquidate obligations entered into under this subsection under section 1305(10) of title 31.

(C) Capital grants

In making capital grants under the terms of this subsection, using the amounts that the Secretary has recaptured from contracts for interest reduction payments, the Secretary shall

ensure that the rates and amounts of outlays do not at any time exceed the rates and amounts of outlays that would have been experienced if the insured mortgage had not been extinguished or the principal amount had not been written down, and the interest reduction payments that the Secretary has recaptured had continued in accordance with the terms in effect immediately prior to such extinguishment or write-down.

(D) Loans

In making loans under this subsection using the amounts that the Secretary has recaptured from contracts for interest reduction payments pursuant to clause (i) or (ii) of paragraph

(7)(A)—

(i) the Secretary may use such recaptured amounts for costs (as such term is defined in section 661a of title 2) of such loans; and

(ii) the Secretary may make loans in any fiscal year only to the extent or in such amounts that amounts are used under clause (i) to cover costs of such loans.

(June 27, 1934, ch. 847, title II, §236, as added Pub. L. 90–448, title II, §201(a), Aug. 1, 1968, 82 Stat. 498; amended Pub. L. 91–152, title I, §§101(e), 107(b), 108, title IV, §§412(c), 418(b), Dec. 24, 1969, 83 Stat. 379, 381, 398, 402; Pub. L. 91–609, title I, §§101(e), 102(b), 108, 114(b), 114[115](b), 117(c), 118(a), 121, Dec. 31, 1970, 84 Stat. 1770, 1772–1776; Pub. L. 92–503, §1(e), Oct. 18, 1972, 86 Stat. 906; Pub. L. 93–85, §1(e), Aug. 10, 1973, 87 Stat. 220; Pub. L. 93–117, §1(e), Oct. 2, 1973, 87 Stat. 421; Pub. L. 93–383, title II, §212, Aug. 22, 1974, 88 Stat. 672; Pub. L. 94–173, §4(b), Dec. 23, 1975, 89 Stat. 1027; Pub. L. 94–375, §4, Aug. 3, 1976, 90 Stat. 1070; Pub. L. 95–128, title II, §206(a)–(c), title III, §301(e), Oct. 12, 1977, 91 Stat. 1130, 1131; Pub. L. 95–406, §1(e), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95–557, title II, §201(k), formerly (i), title III, §301(e), Oct. 31, 1978, 92 Stat. 2087, 2096, as renumbered Pub. L. 97–35, title III, §321(f)(2)(A), Aug. 13, 1981, 95 Stat. 400; Pub. L. 96–71, §1(e), Sept. 28, 1979, 93 Stat. 501; Pub. L. 96–105, §1(e), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96–153, title II, §§203(b), 205(b), title III, §301(e), Dec. 21, 1979, 93 Stat. 1107, 1108, 1111; Pub. L. 96–372, §1(e), 2, Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96–399, title II, §204(b), 211, title III, §301(e), Oct. 8, 1980, 94 Stat. 1629, 1636, 1638; Pub. L. 97–35, title III, §§321(f)(3), 322(f), 331(e), Aug. 13, 1981, 95 Stat. 400, 403, 413; Pub. L. 97–289, §1(e), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 98–35, §1(e), May 26, 1983, 97 Stat. 197; Pub. L. 98–109, §1(e), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98–181, title I [title II, §§217(c), 218], Nov. 30, 1983, 97 Stat. 1186, 1187; Pub. L. 98–479, title I, §§102(a)(2), 104(a)(4), title II, §204(a)(9), Oct. 17, 1984, 98 Stat. 2221, 2225, 2232; Pub. L. 100–242, title I, §§167(a)(1), (b), 170(b), 186(a), title IV, §§429(f), 430(a), Feb. 5, 1988, 101 Stat. 1864, 1867, 1877, 1919; Pub. L. 101–235, title II, §203(a)(1), title III, §301, Dec. 15, 1989, 103 Stat. 2037, 2043; Pub. L. 101–625, title V, §578(a), title VI, §§611(a), (b)(1), 612(a), Nov. 28, 1990, 104 Stat. 4244, 4278, 4279; Pub. L. 102–550, title III, §331, title IV, §408(b), Oct. 28, 1992, 106 Stat. 3773, 3778; Pub. L. 104–99, title IV, §405(d), Jan. 26, 1996, 110 Stat. 44; Pub. L. 104–134, title I, §101(e) [title II, §228], Apr. 26, 1996, 110 Stat. 1321–257, 1321–292; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–204, title II, §221, Sept. 26, 1996, 110 Stat. 2906; Pub. L. 105–65, title V, §531, Oct. 27, 1997, 111 Stat. 1409; Pub. L. 105–276, title II, §227, Oct. 21, 1998, 112 Stat. 2490; Pub. L. 106–74, title V, §§532(a)–(d), 533, Oct. 20, 1999, 113 Stat. 1116, 1117, 1119; Pub. L. 106–377, §1(a)(1) [title II, §216], Oct. 27, 2000, 114 Stat. 1441, 1441A–28; Pub. L. 106–569, title VIII, §861(a), Dec. 27, 2000, 114 Stat. 3025.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Low-Income Housing Preservation and Resident Homeownership Act of 1990, referred to in subsec. (f)(1)(B)(iii), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, which is classified principally to chapter 42 (§4101 et seq.) of this title. 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. (f)(1)(B)(iii), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, which, as amended by Pub. L. 101–625, is known as the

Low-Income Housing Preservation and Resident Homeownership Act of 1990. Subtitles A and B of title II, which were formerly set out as a note under section 1715l of this title and which amended section 1715z-6 of this title, were amended generally by Pub. L. 101-625 and are classified to subchapter I (§4101 et seq.) of chapter 42 of this title. Subtitles C and D of title II amended section 1715z-15 of this title and sections 1437f, 1472, 1485, and 1487 of Title 42, The Public Health and Welfare. Another subtitle C of title II of Pub. L. 100-242, as added by Pub. L. 102-550, is classified generally to subchapter II (§4141 et seq.) of chapter 42 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

Section 201 of the Housing and Community Development Amendments of 1978, referred to in subsec. (f)(3), (5)(A), 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 this section.

Section 516 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, referred to in subsec. (g)(2), is section 516 of Pub. L. 105-65, which is set out as a note under section 1437f of Title 42, The Public Health and Welfare.

Section 1701q of this title, referred to in subsec. (j)(2)(B), was amended generally by Pub. L. 101-625, title VIII, §801(a), Nov. 28, 1990, 104 Stat. 4297, and, as so amended, no longer defines the term "elderly or handicapped families".

Section 236 contracts, referred to in subsec. (r)(2), refer to contracts under this section.

CODIFICATION

Subsec. (o), added as subsec. (n) by Pub. L. 91-609, §121(a), designated subsec. (o) in the Code as a prior subsec. (n) was added by Pub. L. 91-152, and amended by Pub. L. 91-609, §101(e).

AMENDMENTS

2000—Subsec. (g)(2). Pub. L. 106-569, §861(a)(1), substituted "Notwithstanding" for "Subject to paragraph (3) and notwithstanding".

Subsec. (g)(3). Pub. L. 106-569, §861(a)(2), redesignated par. (4) as (3) and struck out former par. (3) which related to authority under par. (2) to retain and use excess charges.

Subsec. (g)(3)(A). Pub. L. 106-377 substituted "fiscal years 2000 and 2001" for "fiscal year 2000".

Subsec. (g)(4). Pub. L. 106-569, §861(a)(2), redesignated par. (4) as (3).

1999—Subsec. (e). Pub. L. 106-74, §532(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (f)(1). Pub. L. 106-74, §532(d), added par. (1) and struck out former par. (1) which required that basic and fair market rental charges be established with the approval of the Secretary and that the rental charge for each dwelling unit be within the basic and fair market charges, subject to certain exceptions and refinements.

Subsec. (g). Pub. L. 106-74, §532(b), (c), designated existing provisions as par. (1), struck out at end "Notwithstanding any other requirements of this subsection, an owner of a project with a mortgage insured under this section, or a project previously assisted under subsection (b) of this section but without a mortgage insured under this section if the project mortgage was insured under section 1713 of this title before July 30, 1998 pursuant to section 1715n(f) of this title and assisted under subsection (b) of this section, may retain some or all of such excess charges for project use if authorized by the Secretary and upon such terms and conditions as established by the Secretary.", and added pars. (2) to (4).

Subsec. (s). Pub. L. 106-74, §533(a)(1), substituted "Grants and loans for rehabilitation of multifamily projects" for "Grant authority" in heading.

Subsec. (s)(1). Pub. L. 106-74, §533(a)(2), inserted "and loans" after "grants".

Subsec. (s)(2). Pub. L. 106-74, §533(a)(3)(A), substituted "capital assistance under this subsection under a grant or loan only" for "capital grant assistance under this subsection" in introductory provisions.

Subsec. (s)(2)(C). Pub. L. 106-74, §533(b)(1)(B), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (s)(2)(D). Pub. L. 106-74, §533(b)(1)(A), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Subsec. (s)(2)(D)(i). Pub. L. 106-74, §533(a)(3)(B), substituted "capital assistance under this subsection from a grant or loan (as appropriate)" for "capital grant assistance".

Subsec. (s)(2)(E). Pub. L. 106-74, §533(b)(1)(A), redesignated subpar. (D) as (E).

Subsec. (s)(3). Pub. L. 106-74, §533(a)(4), in par. heading, substituted "Eligible uses" for "Eligible purposes" and in introductory provisions, substituted "Amounts from a grant or loan under this subsection may be used only for projects eligible under paragraph (2) for the purposes of—" for "The Secretary may make grants to the owners of eligible projects for the purposes of—".

Subsec. (s)(4). Pub. L. 106-74, §533(a)(5)(A), substituted "Grant and loan agreements" for "Grant

agreement" in heading.

Subsec. (s)(4)(A). Pub. L. 106-74, §533(a)(5)(B), inserted "or loan" after "grant" in two places.

Subsec. (s)(4)(B). Pub. L. 106-74, §533(a)(5)(B), (b)(2), inserted "or loan" after "grant" and "and consistent with paragraph (2)(C)" before period at end.

Subsec. (s)(4)(C). Pub. L. 106-74, §533(a)(5)(B), inserted "or loan" after "grant".

Subsec. (s)(5). Pub. L. 106-74, §533(a)(9), added par. (5). Former par. (5) redesignated (6).

Pub. L. 106-74, §533(a)(6), which directed the insertion of "or loan" after "grant" each place it appeared, could not be executed because the word "grant" did not appear.

Subsec. (s)(6). Pub. L. 106-74, §533(a)(8), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (s)(6)(D). Pub. L. 106-74, §533(a)(7), added subpar. (D).

Subsec. (s)(7). Pub. L. 106-74, §533(a)(8), redesignated par. (6) as (7).

1998—Subsec. (g). Pub. L. 105-276 amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "The project owner shall, as required by the Secretary, accumulate, safeguard, and periodically pay the Secretary or such other entity as determined by the Secretary and upon such terms and conditions as the Secretary deems appropriate, all rental charges collected on a unit-by-unit basis in excess of the basic rental charges. Unless otherwise directed by the Secretary, such excess charges shall be credited to a reserve fund to be used by the Secretary to make additional assistance payments as provided in paragraph (3) of subsection (f) of this section. However, a project owner with a mortgage insured under this section may retain some or all of such excess charges for project use if authorized by the Secretary and upon such terms and conditions as established by the Secretary."

1997—Subsec. (s). Pub. L. 105-65 added subsec. (s).

1996—Subsec. (f)(1). Pub. L. 104-204, §221(a)(2), which directed the amendment of second sentence by striking "or (ii) the fair market rental established under section 1437f(c) of title 42 for the market area in which the housing is located, or (iii) the actual rent (as determined by the Secretary) paid for a comparable unit in comparable unassisted housing in the market area in which the housing assisted under this section is located," after "pursuant to this paragraph," was executed by striking language which did not include word "or" before "(ii)" to reflect the probable intent of Congress and the amendment by Pub. L. 104-134, §101(e) [title II, §228(a)]. See below.

Pub. L. 104-204, §221(a)(1), (3), struck out "the lower of (i)" after "amount, not exceeding", and inserted after second sentence "However, in the case of a project which contains more than 5,000 units, is subject to an interest reduction payments contract, and is financed under a State or local program, the Secretary may reduce the rental charge ceiling, but in no case shall the rent be below basic rent. For plans of action approved for Capital Grants under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRA) or the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA), the rental charge for each dwelling unit shall be at the basic rental charge or such greater amount, not exceeding the lower of (i) the fair market rental charge determined pursuant to this paragraph, or (ii) the actual rent paid for a comparable unit in comparable unassisted housing in the market area in which the housing assisted under this section is located, as represents 30 percent of the tenant's adjusted income, but in no case shall the rent be below basic rent."

Pub. L. 104-134, §101(e) [title II, §228(a)], in second sentence, struck out "or" before "(ii)" and substituted "located, or (iii) the actual rent (as determined by the Secretary) paid for a comparable unit in comparable unassisted housing in the market area in which the housing assisted under this section is located," for "located,".

Pub. L. 104-99, §405(d)(1), substituted "The rental charge for each dwelling unit shall be at the basic rental charge or such greater amount, not exceeding the lower of (i) the fair market rental charge determined pursuant to this paragraph, or (ii) the fair market rental established under section 1437f(c) of title 42 for the market area in which the housing is located, as represents 30 per centum of the tenant's adjusted income." for "The rental for each dwelling unit shall be at the basic rental charge or such greater amount, not exceeding the fair market rental charge, as represents 30 per centum of the tenant's adjusted income."

Subsec. (f)(6). Pub. L. 104-99, §405(d)(2), struck out par. (6) which read as follows:

"(6)(A) Notwithstanding paragraph (1), tenants whose incomes exceed 80 percent of area median income shall pay as rent the lower of the following amounts: (A) 30 percent of the family's adjusted monthly income; or (B) the relevant fair market rental established under section 1437f(b) of title 42 for the jurisdiction in which the housing is located.

"(B) An owner shall phase in any increase in rents for current tenants resulting from subparagraph (A). Rental charges collected in excess of the basic rental charges shall continue to be credited to the reserve fund described in subsection (g)(1) of this section."

Subsec. (f)(7). Pub. L. 104-204, §221(b), added par. (7).

Subsec. (g). Pub. L. 104-204, §221(c), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "The project owner shall, as required by the Secretary, accumulate, safeguard, and periodically pay to the Secretary all rental charges collected on a unit-by-unit basis in excess of the basic rental charges. Such excess charges shall be credited to a reserve fund to be used by the Secretary to make additional assistance payments as provided in paragraph (3) of subsection (f) of this section."

Pub. L. 104-134, §101(e) [title II, §228(b)], inserted "on a unit-by-unit basis" after "collected".

1992—Subsec. (f)(3). Pub. L. 102-550, §408(b), substituted "September 30, 1994" for "September 30, 1992".

Subsec. (j)(4)(A). Pub. L. 102-550, §331, struck out "private" before "mortgagor".

1990—Subsec. (f)(3). Pub. L. 101-625, §578(a), substituted "September 30, 1992" for "September 30, 1991".

Subsec. (f)(5). Pub. L. 101-625, §611(b)(1), added par. (5).

Subsec. (f)(6). Pub. L. 101-625, §612(a), added par. (6).

Subsec. (m). Pub. L. 101-625, §611(a), inserted before period at end of first sentence ", except that any amounts not actually received by the family may not be considered as income under this subsection".

1989—Subsec. (b). Pub. L. 101-235, §203(a)(1), inserted "public entity," after "dividend entity,".

Subsec. (f)(3). Pub. L. 101-235, §301, substituted "September 30, 1991" for "September 30, 1989".

1988—Subsec. (f)(3). Pub. L. 100-242, §186(a), substituted "September 30, 1989" for "September 30, 1985".

Subsec. (f)(4). Pub. L. 100-242, §167(a)(1), substituted "100 percent" for "90 per centum".

Subsec. (i)(1). Pub. L. 100-242, §§170(b), 429(f), amended par. (1) identically, substituting "subsection (f)(4)" for "subsection (h)".

Subsec. (n). Pub. L. 100-242, §167(b), inserted at end "A mortgage may be insured under this section after the date in the preceding sentence in order to refinance a mortgage insured under this section or to finance pursuant to subsection (j)(3) the purchase, by a cooperative or nonprofit corporation or association, of a project assisted under this section."

Subsec. (r). Pub. L. 100-242, §430(a), added subsec. (r).

1984—Subsec. (f)(4). Pub. L. 98-479, §102(a)(2), struck out "up to" before "90 per centum".

Subsec. (j)(4)(B). Pub. L. 98-479, §104(a)(4), substituted "bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary determines is necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets" for "bear interest (exclusive of premium charges for insurance and service charges, if any) at not to exceed such per centum per annum (not in excess of 6 per centum), on the amount of the principal obligation outstanding at any time, as the Secretary finds necessary to meet the mortgage market".

Subsec. (j)(5). Pub. L. 98-479, §204(a)(9), substituted "of residents" for "or residents" in provision following subpar. (C).

1983—Subsec. (f)(3). Pub. L. 98-181, §217(c), substituted "September 30, 1985" for "September 30, 1982".

Subsec. (f)(4). Pub. L. 98-181, §218(a), added par. (4).

Subsec. (i)(1). Pub. L. 98-181, §218(b), inserted provision relating to utilization by the Secretary of any authority under this section that it recaptured.

Subsec. (n). Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

1982—Subsec. (n). Pub. L. 97-289 substituted "May 20, 1983" for "September 30, 1982".

1981—Subsec. (e). Pub. L. 97-35, §322(f)(1), substituted "one year" for "two years".

Subsec. (f)(1). Pub. L. 97-35, §322(f)(2), (3), substituted provisions respecting applicability of specific percentage of tenant's adjusted income, for provisions respecting applicability of specific percentage of tenant's income.

Subsec. (f)(2). Pub. L. 97-35, §322(f)(4)-(6), substituted provisions respecting applicability of specific percentage of tenant's adjusted income, for provisions respecting applicability of specific percentage of tenant's income, and struck out provisions relating to reduction of rental payment.

Subsec. (f)(3). Pub. L. 97-35, §§321(f)(3), 322(f)(7), struck out subpar. (A) which related to establishment of an initial operating expense level, redesignated subpar. (B) as entire provision and substituted "1982" for "1981".

Subsec. (m). Pub. L. 97-35, §322(f)(8), substituted provisions defining "income" as income from all sources of each member of the household, subject to certain exclusions, for provisions defining term "income" as income determined under section 1437f of title 42.

Subsec. (n). Pub. L. 97-35, §331(e), substituted "1982" for "1981".

1980—Subsec. (f)(3)(B). Pub. L. 96-399, §204(b), substituted "September 30, 1981" for "October 15, 1980" in third sentence, and struck out "on or after October 1, 1978, or credited to such fund prior to October 1, 1978, but remaining unobligation on October 31, 1978," in first sentence.

Pub. L. 96-372, §2, substituted "October 15, 1980" for "September 30, 1980".

Subsec. (n). Pub. L. 96-399, §301(e), substituted "September 30, 1981" for "October 15, 1980".

Pub. L. 96-372, §1(e), substituted "October 15, 1980" for "September 30, 1980".

Subsec. (q). Pub. L. 96-399, §211, added subsec. (q).

1979—Subsec. (f)(3)(B). Pub. L. 96-153, §205(b), substituted "after October 1, 1978, or credited to such fund prior to October 1, 1978, but remaining unobligated on October 31, 1978," for "after October 1, 1978," and in provision relating to the restriction on approval of funds, substituted "September 30, 1980" for "September 30, 1979".

Subsec. (m). Pub. L. 96-153, §203(b), substituted definition of "income" by reference to section 1437f of title 42 for provisions requiring deduction of \$300 for each minor member of the family in determining the income and further providing that the earnings of a minor not be included in the income of person or family.

Subsec. (n). Pub. L. 96-153, §301(e), substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96-105 substituted "November 30, 1979" for "October 31, 1979".

Pub. L. 96-71 substituted "October 31, 1979" for "September 30, 1979."

1978—Subsec. (f)(3). Pub. L. 95-557, §201(k)(1), formerly §201(i)(1), designated existing provisions as par. (A), substituted "For each fiscal year prior to the fiscal year 1979, the" for "The", and added par. (B).

Subsec. (g). Pub. L. 95-557, §201(k)(2), formerly §201(i)(2), struck out provisions authorizing, that if during any period the balance in reserve fund was adequate to meet additional assistance payments, such excess charges be credited to the appropriation authorized by subsec. (i), and be available until the end of the next fiscal year for purpose of making assistance payments with respect to rental housing projects, and that for purpose of this subsection and par. (3) of subsec. (f), initial operating expense level for any project assisted under a contract entered into prior to Oct. 12, 1977, be established by the Secretary not later than 180 days after Oct. 12, 1977.

Subsec. (n). Pub. L. 95-557, §301(e), substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Subsec. (f)(3). Pub. L. 95-128, §206(a), (b), substituted "The Secretary is authorized to make, and shall contract to make to the extent of the moneys in the reserve fund established under subsection (g) of this section and to the further extent of funds authorized in appropriation Acts, an additional monthly assistance payment to the project owner up to the amount by which the sum of the cost of utilities and local property taxes exceeds the initial operating expense level." for "At any time subsequent to the establishment of an initial operating expense level, the Secretary is authorized to make, and contract to make, additional assistance payments to the project owner in an amount up to the amount by which the sum of the cost of utilities and local property taxes exceeds the initial operating expense level, but not to exceed the amount required to maintain the basic rentals of any units at levels not in excess of 30 per centum or such lower per centum not less than 25 per centum as shall reflect the reduction permitted in clause (ii) of the last sentence of paragraph (1), of the income of tenants occupying such units.", inserted sentence "Such payment shall be used by the project owner solely to effect, and there shall be, a reduction in the basic rental charges established for the project.", and substituted "Any contract to make additional monthly assistance payments shall be for a one-year period and shall be adjusted periodically to provide, to the extent approved in appropriation Acts, for continuation of the payments and for an appropriate adjustment in the amount of the assistance payments." for "Any contract to make additional assistance payments may be amended periodically to provide for appropriate adjustments in the amount of the assistance payments."; and substituted in last sentence "unless the Secretary finds that the increase in the cost of utilities or local property taxes is not reasonable or not" for "only if the Secretary finds that the increase in the cost of utilities or local property taxes, is reasonable and is".

Subsec. (g). Pub. L. 95-128, §206(c), substituted date of enactment of Pub. L. 95-128, which is October 12, 1977, for date of enactment of Pub. L. 93-383, which was August 22, 1974.

Subsec. (n). Pub. L. 95-128, §301(e), substituted "September 30, 1978" for "September 30, 1977".

1976—Subsec. (f)(2). Pub. L. 94-375, §4(b), inserted "(including the amount allowed for utilities in the case of a project with separate utility metering)" after "basic rentals" and "reduce the rental payment", and struck out "or such lower per centum as may be established pursuant to the provisions of clause (ii) of the last sentence of paragraph (1)" after "25 per centum of their income" and "25 per centum of the tenant's income".

Subsec. (n). Pub. L. 94-375, §4(a), substituted "September 30, 1977" for "June 30, 1976".

1975—Subsec. (j)(5)(C). Pub. L. 94-173 struck out provision limiting to 10 per centum the number of dwelling units available to lower income persons under the age of 62.

1974—Subsec. (f). Pub. L. 93-383, §212(1), (2), redesignated existing subsec. (f) as (f)(1) and cls. (1) and

(2) as (A) and (B), respectively, and inserted provisions relating to separate utility metering and pars. (2) and (3).

Subsec. (g). Pub. L. 93-383, §212(3), substituted provisions authorizing the creation of a reserve fund of excess rental charges and providing for use of such fund for making additional assistance payments, for provisions authorizing the Secretary to deposit excess charges in a revolving fund used for making interest reduction payments to any housing project receiving assistance, and authorizing investment of monies in United States obligations.

Subsec. (i)(1). Pub. L. 93-383, §212(4), inserted authorization for increase by \$75,000,000 on July 1, 1974.

Subsec. (i)(2). Pub. L. 93-383, §212(5), substituted provisions relating to contracts for assistance payments and income limitations with respect to families involved in such contracts, for provisions relating to contracts for interest reduction payments, income limitations with respect to families involved in such contracts, and semiannual reports to Congressional Committees on income levels of families living in assisted projects.

Subsec. (i)(3). Pub. L. 93-383, §212(5), substituted provisions relating to availability of not less than 10 per centum of the total amount of contracts for assistance payments, for provisions relating to contracts for not more than 10 per centum of the total amount of interest reduction payments.

Subsec. (i)(4). Pub. L. 93-383, §212(5), added par. (4).

Subsec. (n). Pub. L. 93-383, §212(6), substituted "June 30, 1976" for "October 1, 1974".

Subsec. (p). Pub. L. 93-383, §212(7), added subsec. (p).

1973—Subsec. (n). Pub. L. 93-117 substituted "October 1, 1974" for "October 1, 1973".

Pub. L. 93-85 substituted "October 1, 1973" for "June 30, 1973".

1972—Subsec. (n). Pub. L. 92-503 substituted "June 30, 1973" for "October 1, 1972".

1970—Subsec. (b). Pub. L. 91-609, §§108, 118(a), inserted definition of "mortgage insurance premium" and substituted "which may involve either new or existing construction and which" for "which prior to completion of construction or rehabilitation" before "is approved", respectively.

Subsec. (g). Pub. L. 91-609, §117(c), provided for guarantee as to principal and interest by any agency of the United States and for investment of moneys in bonds or other obligations the proceeds of which will be used to directly support the residential mortgage market.

Subsec. (i)(1). Pub. L. 91-609, §§102(b), 121(b), in second sentence inserted "outstanding" before "contracts" where first appearing and substituted "\$150,000,000 on July 1, 1970" and "\$200,000,000 on July 1, 1971" for "\$125,000,000 on July 1, 1970" and "\$170,000,000 on July 1, 1971", respectively, and in first sentence inserted "by the Secretary" after "entered into".

Subsec. (i)(3). Pub. L. 91-609, §114[115](b)(2), added par. (3).

Subsec. (j)(5). Pub. L. 91-609, §§114(b), 114[115](b)(1), provided for use of certain housing facilities for classroom purposes where public schools in the community are overcrowded due in part to attendance of residents of the property or project, but dispensed with need for kitchen facilities in dwelling units in projects for displaced, elderly, or handicapped families.

Subsec. (n). Pub. L. 91-609, §101(e), substituted "October 1, 1972" for "October 1, 1971".

Subsec. (o). Pub. L. 91-609, §121(a), added subsec. (o). See Codification note above.

1969—Subsec. (b). Pub. L. 91-152, §§108, 418(b), inserted proviso authorizing the Secretary to continue making interest reduction payments where the mortgage has been assigned to him, and inserted "mortgage or part thereof on a" after "with respect to a".

Subsec. (i)(1). Pub. L. 91-152, §107(b), substituted "\$125,000,000 on July 1, 1969, by \$125,000,000 on July 1, 1970, and by \$170,000,000 on July 1, 1971" for "\$100,000,000 on July 1, 1969, and by \$125,000,000 on July 1, 1970".

Subsec. (i)(2). Pub. L. 91-152, §412(c), required the Secretary to report semiannually instead of annually to the respective Committees on Banking and Currency of the Senate and House of Representatives.

Subsec. (n). Pub. L. 91-152, §101(e), added subsec. (n).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-569 effective Dec. 27, 2000, unless effectiveness or applicability upon another date certain is specifically provided for, with provisions relating to effect of regulatory authority, see section 803 of Pub. L. 106-569, set out as a note under section 1701q of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-74, title V, §532(f), Oct. 20, 1999, 113 Stat. 1119, provided that: "This section [amending this section and enacting provisions set out as a note below] shall take effect, and the amendments made by this

section are made and shall apply, on the date of the enactment of this Act [Oct. 20, 1999]."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 106–74, title V, §532(e), Oct. 20, 1999, 113 Stat. 1118, provided that: "Section 236(g) of the National Housing Act (12 U.S.C. 1715z–1(g)), as amended by section 227 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Public Law 105–276; 112 Stat. 2490) shall be effective on the date of the enactment of such Public Law 105–276 [Oct. 21, 1998], and any excess rental charges referred to in such section that have been collected since such date of the enactment with respect to projects with mortgages insured under section 207 of the National Housing Act (12 U.S.C. 1713) may be retained by the project owner unless the Secretary of Housing and Urban Development specifically provides otherwise. The Secretary may return any excess charges remitted to the Secretary since such date of the enactment."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by section 203(b) of Pub. L. 96–153 effective Dec. 21, 1979, and maximum amount of tenant contribution applicable, see section 203(c) of Pub. L. 96–153, formerly set out as a note under section 1701s of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–557, title II, §201(k), formerly (i), Oct. 31, 1978, 92 Stat. 2087, as redesignated by Pub. L. 97–35, title III, §321(f)(2)(A), Aug. 13, 1981, 95 Stat. 400, provided that the amendment made by that section is effective Oct. 1, 1978.

EFFECTIVE DATE OF 1977 AMENDMENT; APPLICABILITY

Pub. L. 95–128, title II, §206(d), Oct. 12, 1977, 91 Stat. 1130, provided that: "The amendments made by this section [amending this section] shall become effective on October 1, 1977, and shall apply to assistance payments pursuant to section 236(f)(3) of the National Housing Act [12 U.S.C. 1715z–1(f)(3)] with respect only to periods commencing on or after such date."

UNCOMMITTED BALANCES OF EXCESS RENTAL CHARGES

Pub. L. 110–161, div. K, title II, Dec. 26, 2007, 121 Stat. 2425, which provided in part for transfer from the Rental Housing Assistance Fund of all uncommitted balances of excess rental charges as of Sept. 30, 2007, and any collections made during fiscal year 2008 and all subsequent fiscal years, to the Flexible Subsidy Fund, was repealed by Pub. L. 113–76, div. L, title II, §232, Jan. 17, 2014, 128 Stat. 634.

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 109–115, div. A, title III, Nov. 30, 2005, 119 Stat. 2453, repealed by Pub. L. 112–55, div. C, title II, §235, Nov. 18, 2011, 125 Stat. 702.

Pub. L. 108–447, div. I, title II, Dec. 8, 2004, 118 Stat. 3308, repealed by Pub. L. 112–55, div. C, title II, §235, Nov. 18, 2011, 125 Stat. 702.

Pub. L. 108–199, div. G, title II, Jan. 23, 2004, 118 Stat. 385.

Pub. L. 108–7, div. K, title II, Feb. 20, 2003, 117 Stat. 494.

Pub. L. 107–73, title II, Nov. 26, 2001, 115 Stat. 669.

Pub. L. 106–377, §1(a)(1) [title II], Oct. 27, 2000, 114 Stat. 1441, 1441A–19.

Pub. L. 106–74, title II, Oct. 20, 1999, 113 Stat. 1064.

Pub. L. 105–276, title II, Oct. 21, 1998, 112 Stat. 2480.

Pub. L. 105–65, title II, Oct. 27, 1997, 111 Stat. 1361.

Pub. L. 104–134, title I, §101(e) [title II], Apr. 26, 1996, 110 Stat. 1321–257, 1321–270.

SUBMISSION OF ELECTRONIC INVOICES

Pub. L. 109–115, div. A, title III, §325, Nov. 30, 2005, 119 Stat. 2466, provided that: "Notwithstanding any other provision of law, for fiscal year 2006 and thereafter, all mortgagees receiving interest reduction payments under section 236 of the National Housing Act (12 U.S.C. 1715z–1) shall submit only electronic invoices to the Department of Housing and Development in order to receive such payments. The mortgagees shall comply with this requirement no later than 90 days from the date of enactment of this provision [Nov. 30, 2005]."

TREATMENT OF EXCESS CHARGES PREVIOUSLY COLLECTED

Pub. L. 106-569, title VIII, §861(b), Dec. 27, 2000, 114 Stat. 3025, provided that: "Any excess charges that a project owner may retain pursuant to the amendments made by subsections (b) and (c) of section 532 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Public Law 106-74; 113 Stat. 1116) [amending this section] that have been collected by such owner since the date of the enactment of such appropriations Act [Oct. 20, 1999] and that such owner has not remitted to the Secretary of Housing and Urban Development may be retained by such owner unless such Secretary otherwise provides. To the extent that a project owner has remitted such excess charges to the Secretary since such date of the enactment, the Secretary may return to the relevant project owner any such excess charges remitted. Notwithstanding any other provision of law, amounts in the Rental Housing Assistance Fund, or heretofore or subsequently transferred from the Rental Housing Assistance Fund to the Flexible Subsidy Fund, shall be available to make such return of excess charges previously remitted to the Secretary, including the return of excess charges referred to in section 532(e) of such appropriations Act [see Effective Date of 1998 Amendment note above]."

RENTAL HOUSING ASSISTANCE; EXTENSION OF TIME WITHIN WHICH TO SUBMIT APPLICATION

Pub. L. 101-45, title II, June 30, 1989, 103 Stat. 127, provided: "That notwithstanding the second sentence of such section 236(r) [12 U.S.C. 1715z-1(r)], an application shall be eligible for assistance under such section if the mortgagee submits an application within five hundred and forty-eight days after the effective date of this Act [June 30, 1989]."

DIRECT FINANCING STUDY BY SECRETARY OF HOUSING AND URBAN DEVELOPMENT AND SECRETARY OF THE TREASURY; REPORT TO CONGRESS; TRANSMITTAL NOT LATER THAN ONE YEAR AFTER AUGUST 22, 1974

Pub. L. 93-383, title VIII, §822, Aug. 22, 1974, 88 Stat. 740, directed Secretary of Housing and Urban Development and Secretary of the Treasury to study feasibility of financing programs authorized under section 236 of the National Housing Act [this section] and section 802 of this Act [42 U.S.C. 1440] through various financing methods, including direct loans from Federal Financing Bank, with a view to determining whether there was any method that would result in net savings to Federal Government (after taking into account direct and indirect effects of such method) and to transmit to Congress a report on study not later than one year after Aug. 22, 1974.

TRANSFER OF INSURANCE OF MORTGAGES NOT FINALLY ENDORSED FOR INSURANCE UNDER SECTION 1715L(D)(3) OF THIS TITLE

Pub. L. 90-448, title II, §201(c), Aug. 1, 1968, 82 Stat. 502, provided that: "The Secretary of Housing and Urban Development is authorized, upon such terms and conditions as he may prescribe, to transfer to section 236(j) of the National Housing Act [12 U.S.C. 1715z-1(j)] the insurance of a mortgage which has not be [sic] finally endorsed for insurance under section 221(d)(3) of such Act [12 U.S.C. 1715l(d)(3)] and which has been approved for the below-market interest rate prescribed in the proviso of section 221(d)(5) of such Act [12 U.S.C. 1715l(d)(5)]."

INSURANCE OF MORTGAGES GIVEN TO REFINANCE MORTGAGE LOANS MADE UNDER SECTION 1701Q OF THIS TITLE

Pub. L. 90-448, title II, §201(d), Aug. 1, 1968, 82 Stat. 502, provided that: "The Secretary of Housing and Urban Development is authorized, upon such terms and conditions as he may prescribe, to insure under section 236(j) of the National Housing Act [12 U.S.C. 1715z-1(j)] a mortgage meeting the requirements of such section which is given to refinance a mortgage loan made under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q]: *Provided*, That the application for such insurance is filed with the Secretary on or before the date of project completion, or within such reasonable time thereafter as the Secretary may permit."

CEILING ON TOTAL INTEREST REDUCTION PAYMENTS IN ANY FISCAL YEAR

Pub. L. 90-608, ch. IV, §401, Oct. 21, 1968, 82 Stat. 1193, provided in part that the total payments that may be required in any fiscal year by all contracts entered into under section 236 of the National Housing Act [this section] shall not exceed \$25,000,000.

Pub. L. 91-47, title II, §201, July 22, 1969, 83 Stat. 53, increased by \$45,000,000 the limitation on total payments that may be required in any fiscal year by all contracts entered into under section 236 of the National Housing Act (82 Stat. 498) [this section].

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

² So in original. Probably should be preceded by "a".

³ See References in Text note below.

§1715z–1a. Assistance for troubled multifamily housing projects

(a) Purpose

The purposes of this section are to provide assistance to restore or maintain the financial soundness, to assist in the improvement of the management, to permit capital improvements to be made to maintain certain projects as decent, safe, and sanitary housing, and to maintain the low- to moderate-income character of certain projects assisted or approved for assistance under the National Housing Act [12 U.S.C. 1701 et seq.], the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the Housing Act of 1959, or the Housing and Urban Development Act of 1965, without regard to whether such projects are insured under the National Housing Act.

(b) Availability of financial assistance

The Secretary of Housing and Urban Development (hereinafter referred to in this section as the "Secretary") may make available, and contract to make available, to such extent and in such amounts as may be approved in appropriation Acts, financial assistance to owners of rental or cooperative housing projects meeting the requirements of this section. Such assistance shall be made on an annual basis and in accordance with the provisions of this section, without regard to whether such projects are insured under the National Housing Act [12 U.S.C. 1701 et seq.].

(c) Eligibility for financial assistance

A rental or cooperative housing project is eligible for assistance under this section only if such project—

(1)(A) is assisted under section 236 [12 U.S.C. 1715z–1] or the proviso of section 221(d)(5) of the National Housing Act [12 U.S.C. 1715l(d)(5)], or under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], or received a loan under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q] more than 15 years before the date on which assistance is made available under this section;

(B) is assisted under section 23 of the United States Housing Act of 1937 [42 U.S.C. 1421b], as in effect immediately before January 1, 1975, section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] following conversion to such assistance from assistance under section 236 of the National Housing Act [12 U.S.C. 1715z–1] or section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s]; or

(C) met the criteria specified in subparagraph (A) of this paragraph before the acquisition of such project by the Secretary and has been sold by the Secretary, subject to a mortgage insured or held by the Secretary and subject to an agreement (in effect during the period of assistance under this section) which provides that the low- and moderate-income character of the project will be maintained; except that, with respect to projects sold after October 1, 1978, assistance shall be available for a period not to exceed three years; and

(2) meets such other requirements consistent with the purposes of this section as the Secretary may prescribe.

(d) Criteria for granting financial assistance

No assistance may be made available under this section unless the Secretary has determined that—

(1) such assistance, when considered with other resources available to the project, is necessary and, in the determination of the Secretary, will restore or maintain the financial or physical

soundness of the project and maintain the low- and moderate-income character of the project, and the owner has agreed to maintain the low- and moderate-income character of such project for a period at least equal to the remaining term of the project mortgage;

(2) the assistance which could reasonably be expected to be provided over the useful life of the project will be less costly to the Federal Government than other reasonable alternatives by which the Secretary could maintain the low- and moderate-income character of the project;

(3) the owner of the project, together with the mortgagee in the case of a project not insured under the National Housing Act [12 U.S.C. 1701 et seq.], has provided or has agreed to provide assistance to the project in such manner as the Secretary may determine;

(4) the project is or can reasonably be made structurally sound, as determined on the basis of information obtained as a result of an onsite inspection of the project;

(5) the management of the project is being conducted by persons who meet minimum levels of competency and experience prescribed by the Secretary;

(6) the project is being operated and managed in accordance with a management-improvement-and-operating plan which is designed to reduce the operating costs of the project, which has been approved by the Secretary, and which includes the following: (A) a detailed maintenance schedule; (B) a schedule for correcting past deficiencies in maintenance, repairs, and replacements; (C) a plan to upgrade the project to meet cost-effective energy efficiency standards prescribed by the Secretary; (D) a plan to improve financial and management control systems; (E) a detailed annual operating budget taking into account such standards for operating costs in the area as may be determined by the Secretary; and (F) such other requirements as the Secretary may determine; except that the Secretary may excuse an owner from compliance with the plan requirement set forth in this paragraph in any case in which such owner seeks only assistance for capital improvements under this section; and except that the Secretary shall review and approve or disapprove each plan not later than the expiration of the 30-day period beginning upon the date of submission of the plan to the Secretary by the owner, but if the Secretary fails to inform the owner of approval or disapproval of the plan within such period the plan shall be considered to have been approved;

(7) all reasonable attempts have been made to take all appropriate actions and provide suitable housing for project residents;

(8) the project has a feasible plan to involve the residents in project decisions;

(9) the affirmative fair housing marketing plan meets applicable requirements; and

(10) the owner certifies that it will comply with various equal opportunity statutes.

(e) Consultation with local officials

Prior to making assistance available to a project, the Secretary shall consult with the appropriate officials of the unit of local government in which such project is located and seek assurances that—

(1) the community in which the project is located is or will provide essential services to the project in keeping with the community's general level of such services;

(2) the real estate taxes on the project are or will be no greater than would be the case if the property were assessed in a manner consistent with normal property assessment procedures for the community; and

(3) assistance to the project under this section would not be inconsistent with local plans and priorities.

(f) Amount of financial assistance

(1) The Secretary may, with respect to any year, provide assistance under this section, and make commitments to provide such assistance, with respect to any project (except a project assisted only for capital improvements) in any amount which the Secretary determines is consistent with the project's management-improvement-and-operating plan described in subsection (d)(6) and which does not exceed the sum of—

(A) an amount determined by the Secretary to be necessary to correct deficiencies in the project which exist at the beginning of the first year with respect to which assistance is made available for the project under this section, which were caused by the deferral of regularly scheduled

maintenance and repairs or the failure to make necessary and timely replacements of equipment and other components of the project, and for which payment has not previously been made;

(B) an amount determined by the Secretary to be necessary to maintain the low- and moderate-income character of the project by reducing deficiencies, which exist at the beginning of the first year with respect to which assistance is made available for the project under this section and for which payment has not previously been made, in the reserve funds established by the project owner for the purpose of replacing capital items;

(C) an amount not greater than the amount by which the estimated operating expenses (as described in paragraph (2) of this subsection) for the year with respect to which such assistance is made available exceeds the estimated revenues to be received (as described in paragraph (2) of this subsection) by the project during such year; and

(D) an amount determined by the Secretary to be necessary to carry out a plan to upgrade the project to meet cost-effective energy efficiency standards prescribed by the Secretary.

(2) The estimated revenues for any project under paragraph (1)(C) of this subsection with respect to any year shall be equal to the sum of—

(A) the estimated amount of rent which is to be expended by the tenants of such project during such year, as determined by the Secretary without regard to section 236(f)(1) of the National Housing Act [12 U.S.C. 1715z-1(f)(1)];

(B) the estimated amount of rental assistance payments to be made on behalf of such tenants during such year, other than assistance made under this section;

(C) the estimated amount of assistance payments to be made on behalf of the owner of such project under section 221(d)(5) or section 236 of the National Housing Act [12 U.S.C. 1715l(d)(5) or 1715z-1] during such year; and

(D) other income attributable to the project as determined by the Secretary;

except that—

(E) in computing the estimated amount of rent to be expended by tenants, the Secretary shall provide that (i) at least 25 percent (or such lesser percentage as is provided for under any other Federal housing assistance program in which such tenant is participating) of the income of each such tenant is included, or (ii) in the case of a tenant paying his or her own utilities, a percentage of income which is less than 25 percent and which takes into account the reasonable costs of such utilities; except that no amount shall be provided for any tenant under clause (i) or (ii) which exceeds the fair market rental charge as determined pursuant to section 236(f)(1) of the National Housing Act [12 U.S.C. 1715z-1(f)(1)] for such tenant; and

(F) in computing the estimated amount of rent to be expended by tenants and the estimated amount of rental assistance payments to be made on behalf of such tenants, the Secretary may permit a delinquency-and-vacancy allowance of not more than 6 per centum of the estimated amount of such rent and payments computed without regard to such allowance; except that, with respect to the first three years in which assistance is provided to a project under this section, the Secretary may permit such allowance for such project to exceed such 6 percent by an amount which the Secretary determines is appropriate to carry out the purposes of this section.

For purposes of computing estimated operating expenses of any such project with respect to any year, the Secretary shall include all estimated operating costs which the Secretary determines to be necessary and consistent with the management-improvement-and-operating plan for the project for such year, including, but not limited to, taxes, utilities, maintenance and repairs (except for maintenance and repairs which should have been performed in previous years), management, insurance, debt service, and payments made by the owner for the purpose of establishing or maintaining a reserve fund for replacement costs. The Secretary may not include in such estimated operating expenses any return on the equity investment of the owner in such project.

(3) In order to carry out the purposes of this section, the Secretary may, notwithstanding the provisions of section 236(f)(1) of the National Housing Act [12 U.S.C. 1715z-1(f)(1)], provide that,

for purposes of establishing a rental charge under such section, there may be excluded from the computation of the cost of operating a project an amount equivalent to the amount of assistance payments made for the project under this section.

(4) Any assistance payments made pursuant to this section with respect to any project shall be made on an annual basis, payable at such intervals, but at least quarterly, as the Secretary may determine, and may be in any amount (which the Secretary determines to be consistent with the purpose of this section), except that the sum of such assistance payments for any year for a project (other than a project receiving assistance only for capital improvements) may not exceed the amount computed pursuant to paragraph (1) of this subsection. The Secretary shall review the operations of the project at the time of such payments to determine that such operations are consistent with the management-improvement-and-operating plan.

(g) Rules and regulations

The Secretary is authorized to issue such rules and regulations as may be necessary to carry out the provisions and purposes of this section, including regulations requiring the establishment of a project reserve or such other safeguards as the Secretary determines to be necessary for the financial soundness of any project for which assistance payments are provided, to the extent applicable.

(h) Limitation on use of financial assistance

The Secretary may not use any of the assistance available under this section during any fiscal year beginning on or after October 1, 1981, to supplement any contract to make rental assistance payments which was made pursuant to section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s].

(i) Repealed. Pub. L. 103–233, title I, §103(b)(1), Apr. 11, 1994, 108 Stat. 359

(j) Flexible Subsidy Fund

(1) For purposes of carrying out the provisions of this section, there is hereby established in the Treasury of the United States a revolving fund, to be known as the Flexible Subsidy Fund. The Fund shall, to the extent approved in appropriation Acts, be available to the Secretary to provide assistance under this section (including assistance for capital improvements) and shall not (except as provided in Public Law 100–4–4 ¹ (102 Stat. 1018), as in effect on October 1, 1988) be available for any other purpose.

(2) The Fund shall consist of (A) any amount appropriated to carry out the purposes of this section; (B) any amount repaid on any assistance provided under this section; (C) any amounts credited to the reserve fund described in section 236(g) of the National Housing Act [12 U.S.C. 1715z–1(g)]; (D) any other amount received by the Secretary under this section (including any amount realized under paragraph (3)),² and (E) any amount received by the Secretary pursuant to section 537 of the National Housing Act [12 U.S.C. 1735f–15] and section 202a of the Housing Act of 1959 [12 U.S.C. 1701q–1].

(3) Any amounts in the Fund determined by the Secretary to be in excess of the amounts currently required to carry out the provisions of this section shall be invested by the Secretary in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States.

(4) The Secretary shall, to the extent of approvable applications and subject to paragraph (1), use not less than \$30,000,000 or 40 percent (whichever is less) of the amounts available from the Fund in any fiscal year for purposes of providing assistance for capital improvements in accordance with this section. Any amount reserved under this paragraph for assistance for capital improvements that is not used before the last 60 days of a fiscal year shall become available for other assistance under this section.

(5) There is authorized to be appropriated for assistance under the flexible subsidy fund not to exceed \$52,200,000 for fiscal year 1993 and \$54,392,400 for fiscal year 1994.

(k) Assistance for capital improvements; loans as medium of assistance; owner contributions; priority of projects

(1) Assistance for capital improvements under this section shall include assistance for any major repair or replacement of a capital item in a multifamily housing project, including any such repair or replacement required as a result of deferred or inadequate maintenance. Capital improvements do not include maintenance of any such item. Assistance for capital improvements under this section shall be in the form of a loan.

(2) The owner of a project receiving assistance for capital improvements shall agree to contribute assistance to such project in such amounts, from such sources, and in such manner as the Secretary determines to be appropriate.

(3) The Secretary may provide assistance for capital improvements under this section if the Secretary finds that the reserve funds established by the owner of a project for the purpose of making capital improvements are insufficient to finance both the capital improvements for which such assistance is to be used and other capital improvements that are reasonably expected to be required in the near future, and such insufficiency is not the result of the failure of such owner to comply with any standard established by the Secretary for management of such reserve funds.

(l) Amount of assistance for capital improvements; term of loan; rate of interest; allowance for administrative costs and probable program losses; nondischargeable liability; other forms for loans

(1) The principal amount of any assistance for capital improvements under this section that is provided to the owner of a project shall not exceed the difference between the contribution made by the owner in accordance with subsection (k)(2) and the sum of—

(A) the amount determined by the Secretary to be necessary for such owner to make capital improvements with respect to capital items that have failed, or are likely to deteriorate seriously or fail in the near future, in such projects;

(B) the amount determined by the Secretary to be necessary to carry out a plan to upgrade the capital items being improved, and any other capital items determined by the Secretary to be associated with such capital items being improved and to require upgrading, to meet cost-effective energy efficiency standards prescribed by the Secretary; and

(C) the amount determined by the Secretary to be necessary to comply with the requirements of section 794 of title 29.

(2)(A) The term of any assistance for capital improvements in the form of a loan under this section shall not exceed the remaining term of the mortgage of the project with respect to which such loan is provided.

(B) Each loan for capital improvements provided under this section shall bear interest at a rate determined by the Secretary to be appropriate, except that—

(i) such rate shall not be more than 3 percentage points below a rate determined by the Secretary of the Treasury taking into consideration the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt, computed at the end of the fiscal year next preceding date on which the loan is made, adjusted to the nearest 1/8 of 1 percent, plus an allowance adequate in the judgment of the Secretary of Housing and Urban Development to cover administrative costs and probable losses under the program; and

(ii) such interest rate plus such allowance shall not exceed 6 percent per annum nor be less than 3 percent per annum.

(C) Each loan for capital improvements provided under this section shall be considered to be a liability of the project involved, and shall not be dischargeable in any bankruptcy proceeding under section 727, 1141, or 1328(b) of title 11.

(D) The Secretary may establish such additional conditions on loans provided under this section as the Secretary determines to be appropriate. The Secretary may require owners receiving assistance for capital improvements under this section to retain the housing 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 the housing. For purposes of this section, the term "remaining useful life" means, with respect to housing assisted under this section, 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.

(E) The Secretary may provide more than one loan or assistance in any other form to any project under this section, if each loan or other assistance complies with the provisions of this section.

(m) Rental payment increases; minimization of increases

(1) Increases in rental payments that may occur as a result of the debt service and other expenses of a loan for capital improvements provided under this section for a project subject to a plan of action approved under subtitle B of the Emergency Low Income Housing Preservation Act of 1987 shall be governed by the rent agreements entered into under such subtitle.

(2) In order to minimize any increases in rental payments that may occur as a result of the debt service and other expenses of a loan for capital improvements provided under this section for a project and that would be incurred by lower income residents of the project involved whose rental payments are, or would as a result of such expenses be, in excess of the amount allowable if section 3(a) of the United States Housing Act of 1937 [42 U.S.C. 1437a(a)] were applicable to such residents, or where appropriate to implement a plan of action under subtitle B of the Emergency Low Income Housing Preservation Act of 1987, the Secretary may take any or all of the following actions:

(A) Provide assistance with respect to such project under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], to the extent amounts are available for such assistance and without regard to section 16 of such Act [42 U.S.C. 1437n].

(B) Notwithstanding subsection (1)(2)(B), reduce the rate of interest charged on such loan to a rate of not less than 1 percent.

(C) Increase the term of such loan to a term that does not exceed the remaining term of the mortgage on such project.

(D) Increase the amount of assistance to be provided by the owner of such project under subsection (k)(2), if applicable, to an amount not to exceed 30 percent of the total estimated cost of the capital improvements involved.

(E) Permit repayment of the debt service to be deferred as long as the low and moderate income character of the project is maintained in accordance with subsection (d).

(n) Allocation of assistance

(1) Set-aside

In providing, and contracting to provide, assistance for capital improvements under this section, in each fiscal year the Secretary shall set aside an amount, as determined by the Secretary, for projects that are eligible for incentives under section 224(b) of the Emergency Low Income Housing Preservation Act of 1987, as such section existed before November 28, 1990. The Secretary may make such assistance available on a noncompetitive basis.

(2) General rules for allocation

Except as provided in paragraph (3), with respect to assistance under this section not set aside for projects under paragraph (1), the Secretary—

(A) may award assistance on a noncompetitive basis; and

(B) shall award assistance to eligible projects on the basis of—

(i) the extent to which the project is physically or financially troubled, as evidenced by the comprehensive needs assessment submitted in accordance with title IV of the Housing and Community Development Act of 1992; and

(ii) the extent to which such assistance is necessary and reasonable to prevent the default of federally insured mortgages.

(3) Exceptions

The Secretary may make exceptions to selection criteria set forth in paragraph (2)(B) to permit the provision of assistance to eligible projects based upon—

(A) the extent to which such assistance is necessary to prevent the imminent foreclosure or default of a project whose owner has not submitted a comprehensive needs assessment pursuant to title IV of the Housing and Community Development Act of 1992;

(B) the extent to which the project presents an imminent threat to the life, health, and safety of project residents; or

(C) such other criteria as the Secretary may specify by regulation or by notice printed in the Federal Register.

(4) Considerations

In providing assistance under this section, the Secretary shall take into consideration—

(A) the extent to which there is evidence that there will be significant opportunities for residents (including a resident council or resident management corporation, as appropriate) to be involved in the management of the project (except that this paragraph shall have no application to projects that are owned as cooperatives); and

(B) the extent to which there is evidence that the project owner has provided competent management and complied with all regulatory and administrative requirements.

(o) Coordination of assistance

The Secretary shall coordinate the allocation of assistance under this section with assistance made available under section 8(v) of the United States Housing Act of 1937 [42 U.S.C. 1437f(v)] and section 1701z–11 of this title to enhance the cost effectiveness of the Federal response to troubled multifamily housing.

(p) Enhanced voucher eligibility

Notwithstanding any other provision of law, any project that receives or has received assistance under this section and which is the subject of a transaction under which the project is preserved as affordable housing, as determined by the Secretary, shall be considered eligible low-income housing under section 229 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4119) for purposes of eligibility of residents of such project for enhanced voucher assistance provided under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)) (pursuant to section 223(f) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4113(f))).

(Pub. L. 95–557, title II, §201, Oct. 31, 1978, 92 Stat. 2084; Pub. L. 96–153, title II, §§205(a), 211(c), Dec. 21, 1979, 93 Stat. 1108, 1110; Pub. L. 96–399, title II, §204(a), Oct. 8, 1980, 94 Stat. 1629; Pub. L. 97–35, title III, §§321(f)(1), (2), 329C, Aug. 13, 1981, 95 Stat. 399, 400, 409; Pub. L. 98–181, title I [title II, §217(a), (b)], Nov. 30, 1983, 97 Stat. 1186; Pub. L. 98–479, title II, §204(n)(1), (2), Oct. 17, 1984, 98 Stat. 2234; Pub. L. 100–242, title I, §§185, 186(b), Feb. 5, 1988, 101 Stat. 1873, 1877; Pub. L. 100–628, title X, §1011(a), Nov. 7, 1988, 102 Stat. 3268; Pub. L. 101–235, title I, §109(c), title II, §203(a)(2), Dec. 15, 1989, 103 Stat. 2011, 2037; Pub. L. 101–625, title V, §578(b), (c), Nov. 28, 1990, 104 Stat. 4244, 4245; Pub. L. 102–550, title IV, §§405, 406, 408(a), Oct. 28, 1992, 106 Stat. 3776, 3778; Pub. L. 103–233, title I, §103(b), Apr. 11, 1994, 108 Stat. 359; Pub. L. 105–276, title V, §550(g), Oct. 21, 1998, 112 Stat. 2610; Pub. L. 106–74, title V, §536, Oct. 20, 1999, 113 Stat. 1121.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Housing Act, as amended, referred to in subsecs. (a), (b), (c)(1)(A), and (d)(3), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (a), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The Housing Act of 1959, referred to in subsec. (a), is Pub. L. 86–372, Sept. 23, 1959, 73 Stat. 654. For

complete classification of this Act to the Code, see Short Title of 1959 Amendment note set out under section 1701 of this title and Tables.

The Housing and Urban Development Act of 1965, as amended, referred to in subsecs. (a), (c)(1)(A), (B), and (h), is Pub. L. 89-117, Aug. 10, 1965, 79 Stat. 451. Section 101 of the Act enacted section 1701s of this title and amended sections 1451 and 1465 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1965 Amendment note set out under section 1701 of this title and Tables.

Section 23 of the United States Housing Act of 1937, referred to in subsec. (c)(1)(B), was classified to section 1421b of Title 42 and was omitted in the general revision of the United States Housing Act of 1937 by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653.

Public Law 100-4-4 (102 Stat. 1018), referred to in subsec. (j)(1), probably means Pub. L. 100-404, Aug. 19, 1988, 102 Stat. 1014, known as the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989. Provisions appearing on 102 Stat. 1018 of Pub. L. 100-404 relating to transfer of funds from the "Flexible subsidy fund" for carrying out community development grants programs are not classified to the Code.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsecs. (m) and (n)(1), is title II of Pub. L. 100-242, Feb. 5, 1988, 101 Stat. 1877, which, as amended by Pub. L. 101-625, is known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, and is classified principally to chapter 42 (§4101 et seq.) of this title. Section 224(b) and subtitle B of title II, which were formerly set out as a note under section 1715l of this title and which amended section 1715z-6 of this title, were amended generally by Pub. L. 101-625 on Nov. 28, 1990, and are classified generally to subchapter I (§4101 et seq.) of chapter 42 of this title. For provisions similar to those contained in former section 224(b), see section 4109(b) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Housing and Community Development Act of 1992, referred to in subsec. (n)(2)(B)(i), (3)(A), is Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3672. Title IV of the Act amended this section, section 1715z-1 of this title, and section 12710 of Title 42, The Public Health and Welfare, and enacted provisions set out as a note below. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42 and Tables.

CODIFICATION

Another subsec. (k) of section 201 of Pub. L. 95-557 amended section 1715z-1 of this title.

Section was enacted as part of the Housing and Community Development Amendments of 1978, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1999—Subsec. (p). Pub. L. 106-74 added subsec. (p).

1998—Subsec. (m)(2)(A). Pub. L. 105-276 substituted "section 8" for "section 8(b)(1)".

1994—Subsec. (i). Pub. L. 103-233, §103(b)(1), struck out subsec. (i) which read as follows:
"Notwithstanding any other provision of law, in exercising any authority relating to the approval or disapproval of rentals charged tenants residing in projects which are eligible for assistance under this section, the Secretary—

"(1) shall consider whether the mortgagor could control increases in utility costs by securing more favorable utility rates, by undertaking energy conservation measures which are financially feasible and cost effective, or by taking other financially feasible and cost-effective actions to increase energy efficiency or to reduce energy consumption; and

"(2) may, in his discretion, adjust the amount of a proposed rental increase where he finds the mortgagor could exercise such control."

Subsec. (k)(2). Pub. L. 103-233, §103(b)(2), substituted a period for ", except that—

"(A) such contribution shall not be less than 20 percent of the total estimated cost of the capital improvements involved, unless the Secretary, upon application of the owner, determines that such contribution is financially infeasible and waives or reduces such contribution to the extent necessary;

"(B) the Secretary may not require an amount to be contributed, from the reserve funds established by the owner of such projects for the purpose of making capital improvements, in excess of 50 percent of the amount of such reserve funds on the date of such loan;

"(C) The Secretary shall waive the requirements of this paragraph if such owner is a private nonprofit corporation or an association; and

"(D) the Secretary shall give owners credit for advances made to the project during a 3-year period

prior to the application for assistance."

Subsec. (n). Pub. L. 103-233, §103(b)(3), amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows:

"(n)(1) The Secretary shall award assistance under this section to eligible projects on the basis of the following selection criteria:

"(A) The extent to which the project presents an imminent threat to the life, health, and safety of project residents.

"(B) The extent to which the project is financially troubled.

"(C) The extent of physical improvements needed by the project as evidenced by the comprehensive needs assessment submitted in accordance with title IV of the Housing and Community Development Act of 1992.

"(D) The extent to which there is evidence that there will be significant opportunities for residents (including a resident council or resident management corporation, as appropriate) to be involved in management of the project (except that this paragraph shall have no application to projects that are owned as cooperatives).

"(E) The extent to which there is evidence that the project owner has provided competent management and complied with all regulatory and administrative instructions (including such instructions with respect to the comprehensive servicing of multifamily projects as the Secretary may issue).

"(F) Such other criteria as the Secretary may specify by regulation or in a Federal Register notice of fund availability.

"(2) Eligible projects that have federally insured mortgages in force are to be selected for award of assistance under this section before any other eligible project."

Subsecs. (o), (p). Pub. L. 103-233, §103(b)(4) redesignated subsec. (p) as (o) and struck out former subsec. (o) which read as follows: "Projects receiving assistance under this section are not eligible for prepayment incentives under the Emergency Low-Income Housing Preservation Act of 1987 or the Low-Income Housing Preservation and Resident Homeownership Act of 1990. Projects receiving financial assistance under such Acts are not eligible for assistance under this section."

1992—Subsec. (d)(5). Pub. L. 102-550, §405(a)(1), struck out "and" at end.

Subsec. (d)(6). Pub. L. 102-550, §406, which directed insertion, before period at end, of "; and except that the Secretary shall review and approve or disapprove each plan not later than the expiration of the 30-day period beginning upon the date of submission of the plan to the Secretary by the owner, but if the Secretary fails to inform the owner of approval or disapproval of the plan within such period the plan shall be considered to have been approved", was executed by making the insertion before the concluding semicolon to reflect the probable intent of Congress and the intervening amendment by Pub. L. 102-550, §405(a)(2). See below.

Pub. L. 102-550, §405(a)(2), substituted semicolon for period at end.

Subsec. (d)(7) to (10). Pub. L. 102-550, §405(a)(3), added pars. (7) to (10).

Subsec. (j)(5). Pub. L. 102-550, §408(a), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "There are authorized to be appropriated for assistance under the flexible subsidy fund not to exceed \$50,000,000 for fiscal year 1991 and \$52,200,000 for fiscal year 1992."

Subsec. (k)(2)(D). Pub. L. 102-550, §405(e), added subpar. (D).

Subsec. (k)(4). Pub. L. 102-550, §405(b)(1), struck out par. (4) which read as follows: "In providing, and contracting to provide, assistance for capital improvements under this section, the Secretary shall—

"(A) give priority to projects that are eligible for incentives under section 224(b) of the Emergency Low Income Housing Preservation Act of 1987; and

"(B) with respect to any amounts not required for projects under subparagraph (A), give priority among other projects based on the extent to which—

"(i) the capital improvements for which such assistance is requested are immediately required;

"(ii) the projects serve as the residences of lower income families, and the extent which other suitable housing is unavailable for such families in the areas in which such projects are located;

"(iii) the capital improvements for which such assistance is requested involve the life, safety, or health of the residents of the project or involve major capital improvements in the projects; and

"(iv) the projects demonstrate the greatest financial distress, while continuing to meet the requirements of subsection (d)(1) of this section."

Subsec. (l)(2)(D). Pub. L. 102-550, §405(c), inserted at end "The Secretary may require owners receiving assistance for capital improvements under this section to retain the housing 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 the housing. For purposes of this section, the term 'remaining useful life' means,

with respect to housing assisted under this section, 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."

Subsec. (n). Pub. L. 102-550, §405(b)(2), added subsec. (n).

Subsec. (o). Pub. L. 102-550, §405(d), added subsec. (o).

Subsec. (p). Pub. L. 102-550, §405(f), added subsec. (p).

1990—Subsec. (j)(1). Pub. L. 101-625, §578(c), inserted before period at end "and shall not (except as provided in Public Law 100-4-4 (102 Stat. 1018), as in effect on October 1, 1988) be made available for any other purpose".

Subsec. (j)(5). Pub. L. 101-625, §578(b), added par. (5).

1989—Subsec. (j)(2). Pub. L. 101-235, §109(c), added cl. (E).

Subsec. (m)(2). Pub. L. 101-235, §203(a)(2)(B)(i), (ii), struck out "not subject to paragraph (1)" after "for a project" and inserted ", or where appropriate to implement a plan of action under subtitle B of the Emergency Low Income Housing Preservation Act of 1987" after second reference to "residents".

Subsec. (m)(2)(B). Pub. L. 101-235, §203(a)(2)(A), substituted "Notwithstanding subsection (l)(2)(B), reduce" for "Reduce".

Subsec. (m)(2)(E). Pub. L. 101-235, §203(a)(2)(B)(iii), added subpar. (E).

1988—Pub. L. 100-242, §185(h), struck out "Operating" before "assistance" in section catchline.

Subsec. (a). Pub. L. 100-242, §185(a), inserted "to permit capital improvements to be made to maintain certain projects as decent, safe, and sanitary housing," after "management,".

Pub. L. 100-242, §186(b)(1), inserted reference to Housing Act of 1959.

Subsec. (c)(1)(A). Pub. L. 100-242, §186(b)(2), inserted before semicolon at end ", or received a loan under section 202 of the Housing Act of 1959 more than 15 years before the date on which assistance is made available under this section".

Subsec. (c)(1)(B). Pub. L. 100-242, §185(b), inserted "section 23 of the United States Housing Act of 1937, as in effect immediately before January 1, 1975," after "is assisted under".

Subsec. (d)(1). Pub. L. 100-242, §185(c)(1), inserted "or physical" after "maintain the financial".

Subsec. (d)(6). Pub. L. 100-242, §185(c)(2), inserted at end "; except that the Secretary may excuse an owner from compliance with the plan requirement set forth in this paragraph in any case in which such owner seeks only assistance for capital improvements under this section".

Subsec. (f)(1). Pub. L. 100-242, §185(d)(1), inserted parenthetical exception relating to projects assisted only for capital improvements.

Subsec. (f)(4). Pub. L. 100-242, §185(d)(2), substituted "payments for any year for a project (other than a project receiving assistance only for capital improvements) may not exceed" for "payments for any year may not exceed".

Subsec. (g). Pub. L. 100-242, §185(e), inserted ", to the extent applicable" after "provided".

Subsec. (j). Pub. L. 100-242, §185(f), in amending subsec. (j) generally, substituted provisions relating to the establishment, contents, and use of a revolving fund to be known as the Flexible Subsidy Fund, for provisions authorizing appropriations under this section for fiscal years 1979 through 1982.

Subsec. (j)(4). Pub. L. 100-628 substituted "shall, to the extent of approvable applications and subject to paragraph (1), use not less than \$30,000,000 or 40 percent (whichever is less) of the amounts available" for "may use not more than \$50,000,000"; and inserted at end "Any amount reserved under this paragraph for assistance for capital improvements that is not used before the last 60 days of a fiscal year shall become available for other assistance under this section."

Subsecs. (k) to (m). Pub. L. 100-242, §185(g), added subsecs. (k) to (m).

1984—Subsec. (c). Pub. L. 98-479, §204(n)(1), substituted "A" for "a" in provisions before subpar. (A).

Subsec. (j). Pub. L. 98-479, §204(n)(2), substituted "section 236(f)(3)" for "section 236(f)(3)(B)".

1983—Subsec. (a). Pub. L. 98-181, §217(a)(1), (b)(1), inserted "without regard to whether such projects are insured under the National Housing Act", and substituted ", the United States Housing Act of 1937, or" for "or under".

Subsec. (b). Pub. L. 98-181, §217(a)(2), inserted ", without regard to whether such projects are insured under the National Housing Act".

Subsec. (c)(1)(A). Pub. L. 98-181, §217(a)(3), struck out "; except that, in the case of any such project which is not insured under the National Housing Act such assistance may not be provided before October 1, 1979" after "Act of 1965".

Subsec. (c)(1)(B), (C). Pub. L. 98-181, §217(b)(2), added subpar. (B) and redesignated former subpar. (B) as (C).

1981—Subsec. (f)(1)(D). Pub. L. 97-35, §329C(1), added subpar. (D).

Subsec. (h). Pub. L. 97-35, §321(f)(2), added subsec. (h). Former subsec. (h) redesignated (j).

Subsec. (i). Pub. L. 97-35, §329C(2), added subsec. (i).

Subsec. (j). Pub. L. 97-35, §321(f)(1), (2)(A), redesignated former subsec. (h) as (j) and authorized appropriation for fiscal year 1982.

1980—Subsec. (h). Pub. L. 96-399 authorized appropriations for fiscal year 1981.

1979—Subsec. (d)(1). Pub. L. 96-153, §211(c), inserted requirement that the owner agree to maintain the low- and moderate-income character of such project for a period at least equal to the remaining term of the project mortgage.

Subsec. (h). Pub. L. 96-153, §205(a), authorized appropriations for fiscal year 1980.

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-233, title I, §103(c), Apr. 11, 1994, 108 Stat. 360, provided that:

"(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [amending this section and provisions set out below] shall apply with respect to amounts made available for fiscal year 1994 and fiscal years thereafter.

"(2) **EXCEPTION.**—Section 201(n)(1) of the Housing and Community Development Amendments of 1978 [subsec. (n)(1) of this section] (as added by the amendment made by subsection (b)(3) of this section) shall take effect on the date of enactment of this Act [Apr. 11, 1994].

"(3) **NOTICE.**—The Secretary shall, by notice published in the Federal Register, establish any requirements necessary to implement the amendments made by subsections (a) and (b). The notice shall invite public comments and, not later than 12 months after the date on which the notice is published, the Secretary shall issue final regulations based on the initial notice, taking into consideration any public comments received."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of this title.

ALTERNATIVE USES FOR PREVENTION OF DEFAULT

Pub. L. 103-233, title I, §103(h), Apr. 11, 1994, 108 Stat. 362, provided that:

"(1) **IN GENERAL.**—Subject to notice to and comment by existing tenants, to prevent the imminent default of a multifamily housing project subject to a mortgage insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.], the Secretary may authorize the mortgagor to use the project for purposes not contemplated by or permitted under the regulatory agreement, if—

"(A) such other uses are acceptable to the Secretary;

"(B) such other uses would be otherwise insurable under title II of the National Housing Act;

"(C) the outstanding principal balance on the mortgage covering such project is not increased;

"(D) any financial benefit accruing to the mortgagor shall, subject to the discretion of the Secretary, be applied to project reserves or project rehabilitation; and

"(E) such other use serves a public purpose.

"(2) **DISPLACEMENT PROTECTION.**—The Secretary may take actions under paragraph (1) only if—

"(A) tenant-based rental assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] is made available to each eligible family residing in the project that is displaced as a result of such actions; and

"(B) the Secretary determines that sufficient habitable, affordable (as such term is defined in section 203(b) of the Housing and Community Development Amendments of 1978 [12 U.S.C. 1701z-11(b)]) rental housing is available in the market area in which the project is located to ensure use of such assistance.

"(3) **IMPLEMENTATION.**—The Secretary shall, by notice published in the Federal Register, which shall take effect upon publication, establish such requirements as may be necessary to implement the amendments

made by this subsection. The notice shall invite public comments and, not later than 12 months after the date on which the notice is published, the Secretary shall issue final regulations based on the initial notice, taking into account any public comments received."

MULTIFAMILY HOUSING PLANNING AND INVESTMENT STRATEGIES

Pub. L. 102-550, title IV, §§401-404, Oct. 28, 1992, 106 Stat. 3773-3775, as amended by Pub. L. 103-233, title I, §103(a)(1)-(5), Apr. 11, 1994, 108 Stat. 358, 359, provided that:

"SEC. 401. DEFINITIONS.

"For purposes of this title [amending this section, section 1715z-1 of this title and section 12710 of Title 42, The Public Health and Welfare]:

"(1) **COVERED MULTIFAMILY HOUSING PROPERTY.**—The term 'covered multifamily housing property' means any housing—

"(A) that is—

"(i) reserved for occupancy by very low-income elderly persons pursuant to section 202(d)(1) of the Housing Act of 1959 [12 U.S.C. 1701q(d)(1)];

"(ii) assisted under the provisions of section 202 of the Housing Act of 1959 (as such section existed before the effectiveness of the amendment made by section 801(a) of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101-625]);

"(iii) financed by a loan or mortgage insured, assisted, or held by the Secretary or a State or State agency under section 236 of the National Housing Act [12 U.S.C. 1715z-1]; or

"(iv) financed by a loan or mortgage insured or held by the Secretary pursuant to section 221(d)(3) of the National Housing Act [12 U.S.C. 1715l(d)(3)]; and

"(B) that is not eligible for assistance under—

"(i) the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.];

"(ii) the provisions of the Emergency Low Income Housing Preservation Act of 1987 [see References in Text note above] (as in effect immediately before the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act [Nov. 28, 1990]); or

"(iii) the HOME Investment Partnerships Act [42 U.S.C. 12721 et seq.].

"(2) **COVERED MULTIFAMILY HOUSING PROPERTY FOR THE ELDERLY.**—The term 'covered multifamily housing property for the elderly' means any multifamily housing project that was designed or designated to serve, or is serving, elderly persons or families and is assisted under a program administered by the Secretary.

"(3) **SECRETARY.**—The term 'Secretary' means the Secretary of Housing and Urban Development.

"SEC. 402. REQUIRED SUBMISSION.

"(a) **IN GENERAL.**—The owner of each covered multifamily housing property, and the owner of each covered multifamily housing property for the elderly, shall submit to the Secretary of Housing and Urban Development a comprehensive needs assessment of the property under this title. The assessment shall be prepared by an entity that does not have an identity of interest with the owner.

"(b) **TIMING.**—To ensure that assessments for all covered multifamily housing properties will be submitted on or before the conclusion of fiscal year 1997, the Secretary shall require the owners of such properties, including covered multifamily housing properties for the elderly, to submit the assessments for the properties in accordance with the following schedule:

"(1) For fiscal year 1994, 10 percent of the aggregate number of such properties.

"(2) For each of fiscal years 1995, 1996, and 1997, an additional 30 percent of the aggregate number of such properties.

"SEC. 403. CONTENTS.

"(a) **IN GENERAL.**—Each comprehensive needs assessment submitted under this title for a covered multifamily housing property or a covered multifamily housing property for the elderly shall contain the following information with respect to the property:

"(1) A description of any financial or other assistance currently needed for the property to ensure that the property is maintained in a livable condition and to ensure the financial viability of the project.

"(2) A description of any financial or other assistance for the property that, at the time of the assessment, is reasonably foreseeable as necessary to ensure that the property is maintained in a livable condition and to ensure the financial viability of the project, during the remaining useful life of the property.

"(3) A description of any resources available for meeting the current and future needs of the property

described under paragraphs (1) and (2) and the likelihood of obtaining such resources.

"(4) A description of any assistance needed for the property under programs administered by the Secretary.

"(b) PROJECTS FOR THE ELDERLY.—Each comprehensive needs assessment for a covered multifamily housing property for the elderly shall include, in addition to the information required under subsection (a), the following information with respect to the property:

"(1) A description of the supportive service needs of such residents and any supportive services provided to elderly residents of the property.

"(2) A description of any modernization needs and activities for the property.

"(3) A description of any personnel needs for the property.

"SEC. 404. SUBMISSION AND REVIEW.

"(a) FORM.—The Secretary shall establish the form and manner of submission of the comprehensive needs assessments under this title.

"(b) RESIDENT REVIEW.—The Secretary shall require each owner of a covered multifamily housing property and each owner of a covered multifamily housing property for the elderly to make available to the residents of the property the comprehensive needs assessment that is to be submitted to the Secretary. The Secretary shall require each owner to provide for such residents to submit comments and opinions regarding the assessment to the owner before the submission of the assessment.

"(c) STATE HOUSING FINANCE AGENCY REVIEW.—To the extent that a covered multifamily housing property or a covered multifamily housing property for the elderly is financed or assisted by a State housing finance agency (as such term is defined in section 802 of the Housing and Community Development Act of 1974 [42 U.S.C. 1440]), the Secretary shall require the owner of the property to submit the comprehensive needs assessment for the property to the State housing finance agency upon submitting the assessment to the Secretary.

"(d) REVIEW.—

"(1) IN GENERAL.—The Secretary shall review each comprehensive needs assessment for completeness and adequacy before the expiration of the 90-day period beginning on the receipt of the assessment and shall notify the owner of the property for which the assessment was submitted of the findings of such review.

"(2) INCOMPLETE OR INADEQUATE ASSESSMENTS.—If the Secretary determines that the assessment is substantially incomplete or inadequate, the Secretary shall—

"(A) notify the owner of the portion or portions of the assessment requiring completion or other revision; and

"(B) require the owner to submit an amended assessment to the Secretary not later than 30 days after such notification.

"(e) COST OF PREPARATION OF STRATEGY.—The Secretary shall consider any costs relating to preparing a comprehensive needs assessment under this title for a covered multifamily housing property that do not exceed \$5,000 for the property as an eligible project expense for the property. The Secretary shall provide that an owner may not increase the rental charge for any unit in a covered multifamily housing property to provide for the cost of preparing a comprehensive needs assessment.

"(f) PUBLICATION OF METHOD FOR RECEIVING CAPITAL NEEDS ASSESSMENT.—The Secretary shall cause to be published in the Federal Register the method by which the Secretary determines which capital needs assessments will be received each year in accordance with section 402(b) and subsection (d) of this section.

"(g) ANNUAL REVIEW AND REPORT OF FUNDING AND TARGETING FOR COVERED MULTIFAMILY PROPERTIES FOR THE ELDERLY.—

"(1) REVIEW.—The Secretary shall annually conduct a comprehensive review of—

"(A) the funding levels required to fully address the needs of covered multifamily housing properties for the elderly identified in the comprehensive needs assessments under section 403(b), specifically identifying any expenses necessary to make substantial repairs and add features (such as congregate dining facilities and commercial kitchens) resulting from development of a property in compliance with cost-containment requirements established by the Secretary;

"(B) the adequacy of the geographic targeting of resources provided under programs of the Department with respect to covered multifamily housing properties for the elderly, based on information acquired pursuant to section 403(b); and

"(C) local housing markets throughout the United States, with respect to the need, availability, and cost of housing for elderly persons and families, which shall include review of any information and plans relating to housing for elderly persons and families included in comprehensive housing

affordability strategies submitted by jurisdictions pursuant to section 105 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12705].

"(2) REPORT.—The Secretary of Housing and Urban Development shall submit a report to the Congress annually describing the results of the annual comprehensive needs assessments under section 402 for covered multifamily housing properties for the elderly and the annual review conducted under paragraph (1) of this subsection, which shall contain a description of the methods used by project owners and by the Secretary to acquire the information described in section 402(b) and any findings and recommendations of the Secretary pursuant to the review."

[For termination, effective May 15, 2000, of reporting provisions in section 404(g)(2) of Pub. L. 102–550, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 104 of House Document No. 103–7.]

FUNDING OF MULTIFAMILY HOUSING PROJECTS; OPERATING, CAPITAL IMPROVEMENT AND LOAN MANAGEMENT ASSISTANCE; AMOUNTS

Pub. L. 102–550, title IV, §409, as added by Pub. L. 103–233, title I, §103(a)(6), Apr. 11, 1994, 108 Stat. 359, provided that:

"(a) ALLOCATION OF ASSISTANCE.—Based upon needs identified in comprehensive needs assessments, and subject to otherwise applicable program requirements, including selection criteria, the Secretary may allocate the following assistance to owners of covered multifamily housing projects and may provide such assistance on a noncompetitive basis:

"(1) Operating assistance and capital improvement assistance for troubled multifamily housing projects pursuant to section 201 of the Housing and Community Development Amendments of 1978 [Pub. L. 95–557, enacting this section, amending section 1715z–1 of this title, and enacting provisions set out as a note under section 1715z–1 of this title], except for assistance set aside under section 201(n)(1) [subsec. (n)(1) of this section].

"(2) Loan management assistance available pursuant to section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f].

"(b) OPERATING ASSISTANCE AND CAPITAL IMPROVEMENT ASSISTANCE.—In providing assistance under subsection (a) the Secretary shall use the selection criteria set forth in section 201(n) of the Housing and Community Development Amendments of 1978.

"(c) AMOUNT OF ASSISTANCE.—The Secretary may fund all or only a portion of the needs identified in the capital needs assessment of an owner selected to receive assistance under this section."

CAPITAL ASSESSMENT STUDY

Pub. L. 101–235, title II, §204(c), Dec. 15, 1989, 103 Stat. 2040, as amended by Pub. L. 101–625, title V, §583, Nov. 28, 1990, 104 Stat. 4249, directed Secretary of Housing and Urban Development to conduct a study to determine physical renovation needs of Nation's federally-assisted multifamily housing inventory that is distressed, to estimate cost of correcting deficiencies and subsequently maintaining that inventory in adequate physical condition, and to establish criteria to determine what housing qualifies as distressed, with such criteria to include factors such as serious deficiencies in original design, deferred maintenance, physical deterioration or obsolescence of major systems and other serious deficiencies in physical plant of a project, such study to examine and assess adequacy of existing tools that are available to the Secretary for modernization efforts including mortgage insurance for rehabilitation loans, operating assistance and capital improvement loans under the Flexible Subsidy Program, with a detailed examination and assessment of Flexible Subsidy Program required, and rental assistance, and not later than Mar. 1, 1992, to submit to Congress a detailed report setting forth findings as a result of the study.

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Pub. L. 101–235, title V, Dec. 15, 1989, 103 Stat. 2048, as amended by Pub. L. 102–550, title I, §127(a), Oct. 28, 1992, 106 Stat. 3710, established a National Commission on Severely Distressed Public Housing to identify those public housing projects in the Nation that are in a severe state of distress, to assess most promising strategies to improve condition of severely distressed public housing projects that have been implemented by public housing authorities, other Government agencies at Federal, State and local level, public housing tenants, and private sector, and to develop national action plan to eliminate by year 2000 unfit living conditions in public housing projects determined by Commission to be most severely distressed, provided for membership, functions, and powers of the Commission, directed that, not later than 12 months after Commission is established, Commission submit a final report to Secretary and to Congress containing

information, evaluations, and recommendations, authorized appropriations for Commission of not to exceed \$2,000,000 for fiscal year 1990 and \$1,000,000 for fiscal year 1991, and terminated Commission at the end of Sept. 30, 1992.

MULTIFAMILY HOUSING CAPITAL IMPROVEMENTS ASSISTANCE; REGULATIONS FOR IMPLEMENTATION OF PROGRAM

Pub. L. 100-628, title X, §1011(b), Nov. 7, 1988, 102 Stat. 3268, provided that: "To implement the amendments made by section 185 of the Housing and Community Development Act of 1987 [Pub. L. 100-242, amending this section], the Secretary of Housing and Urban Development shall issue regulations that become effective not later than February 5, 1989."

¹ *See References in Text note below.*

² *So in original. The comma probably should be a semicolon.*

§1715z-1b. Tenant participation in multifamily housing projects

(a) Purpose; definitions

The purpose of this section is to recognize the importance and benefits of cooperation and participation of tenants in creating a suitable living environment in multifamily housing projects and in contributing to the successful operation of such projects, including their good physical condition, proper maintenance, security, energy efficiency, and control of operating costs. For the purpose of this section, the term "multifamily housing project" means a project which is eligible for assistance as described in section 1715z-1a(c) of this title or section 1701q of this title, or a project which receives project-based assistance under section 1437f of title 42 or enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.], the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997.

(b) Rights of tenants

The Secretary shall assure that—

(1) where the Secretary's written approval is required with respect to an owner's request for rent increase, conversion of residential rental units to any other use (including commercial use or use as a unit in any condominium or cooperative project), partial release of security, or major physical alterations or where the Secretary proposes to sell a mortgage secured by a multifamily housing project, tenants have adequate notice of, reasonable access to relevant information about, and an opportunity to comment on such actions (and in the case of a project owned by the Secretary, any proposed disposition of the project) and that such comments are taken into consideration by the Secretary;

(2) project owners not interfere with the efforts of tenants to obtain rent subsidies or other public assistance;

(3) leases approved by the Secretary provide that tenants may not be evicted without good cause or without adequate notice of the reasons therefor and do not contain unreasonable terms and conditions; and

(4) project owners do not impede the reasonable efforts of resident tenant organizations to represent their members or the reasonable efforts of tenants to organize.

(c) Regulations

The Secretary shall promulgate regulations to carry out the provisions of this section not later than 90 days after October 31, 1978.

(Pub. L. 95-557, title II, §202, Oct. 31, 1978, 92 Stat. 2088; Pub. L. 97-35, title III, §329F, Aug. 13, 1981, 95 Stat. 410; Pub. L. 100-242, title I, §183(a), (b), Feb. 5, 1988, 101 Stat. 1872; Pub. L. 105-276, title V, §599(a), Oct. 21, 1998, 112 Stat. 2660.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Low-Income Housing Preservation and Resident Homeownership Act of 1990, referred to in subsec. (a), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, which is classified principally to chapter 42 (§4101 et seq.) of this title. 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. (a), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, which, as amended by Pub. L. 101–625, is known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990. Subtitles A and B of title II, which were formerly set out as a note under section 1715l of this title and which amended section 1715z–6 of this title, were amended generally by Pub. L. 101–625 and are classified to subchapter I (§4101 et seq.) of chapter 42 of this title. Subtitles C and D of title II amended section 1715z–15 of this title and sections 1437f, 1472, 1485, and 1487 of Title 42, The Public Health and Welfare. Another subtitle C of title II of Pub. L. 100–242, as added by Pub. L. 102–550, is classified generally to subchapter II (§4141 et seq.) of chapter 42 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Multifamily Assisted Housing Reform and Affordability Act of 1997, referred to in subsec. (a), is title V of Pub. L. 105–65, Oct. 27, 1997, 111 Stat. 1384. For complete classification of this Act to the Code, see Short Title of 1997 Amendment note set out under section 1701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Housing and Community Development Amendments of 1978, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–276 inserted before period at end ", or a project which receives project-based assistance under section 1437f of title 42 or enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997".

1988—Subsec. (a). Pub. L. 100–242, §183(a), inserted reference to section 1701q of this title.

Subsec. (b)(1). Pub. L. 100–242, §183(b), substituted "or where the Secretary proposes to sell a mortgage secured by a multifamily housing project" for "and the Secretary deems it appropriate".

1981—Subsec. (b)(1). Pub. L. 97–35 substituted provisions relating to request by the owner for rent increases, etc., for provisions relating to action by the owner.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, §599(b), Oct. 21, 1998, 112 Stat. 2660, provided that: "The amendment made by this section [amending this section] is made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998]."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

§1715z–1c. Regulation of rents in insured projects

After December 1, 1987, the Secretary of Housing and Urban Development shall control rents and charges as they were controlled prior to April 19, 1983, for any multifamily housing project insured under the National Housing Act [12 U.S.C. 1701 et seq.] if—

(1) during the period of April 19, 1983, through December 1, 1987, the project owner and the Secretary have not executed, and the project owner has not filed a written request with the

Secretary to enter into, an amendment to the regulatory agreement pursuant to regulations published by the Secretary on April 19, 1983, or June 4, 1986, electing to deregulate rents or utilize an alternative formula for determining the maximum allowable rents pursuant to regulations published by the Secretary on April 19, 1983, or June 4, 1986; and

(2)(A) the project was, as of December 1, 1987, receiving a housing assistance payment under a contract pursuant to section 1437f of title 42 (other than under the existing housing certificate program of section 1437f(b)(1) of title 42); or

(B) not less than 50 percent of the units in the project are occupied by lower income families (as defined in section 1437a(a)(2) ¹ of title 42).

(Pub. L. 100–242, title IV, §425, Feb. 5, 1988, 101 Stat. 1915.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Housing Act, as amended, referred to in text, is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1987, and not as part of the National Housing Act which comprises this chapter.

¹ *Probably should be a reference to section 1437a(b)(2).*

§1715z–2. Repealed. Pub. L. 110–289, div. B, title I, §2120(a)(6), July 30, 2008, 122 Stat. 2835

Section, act June 27, 1934, ch. 847, title II, §237, as added Pub. L. 90–448, title I, §102(a), Aug. 1, 1968, 82 Stat. 485; amended Pub. L. 91–152, title I, §§110, 113(j), Dec. 24, 1969, 83 Stat. 382, 385; Pub. L. 105–276, title V, §599F(a), Oct. 21, 1998, 112 Stat. 2665, related to special mortgage insurance assistance.

§1715z–3. Special Risk Insurance Fund

(a) Entitlement to benefits; computation and payment of benefits to mortgagee

(1) Any mortgagee under a mortgage insured under section 1715z(i), (j)(4), 1715z–2, or 1715z–8 of this title shall be entitled to receive the benefits of the insurance as provided in section 1710(a) of this title with respect to mortgages insured under section 1709 of this title. The provisions of subsections (b), (c), (d), (g), (j), and (k) ¹ of section 1710 of this title shall be applicable to mortgages insured under section 1715z(i), (j)(4), 1715z–2, ¹ or 1715z–8 of this title, except that all references therein to the "Mutual Mortgage Insurance Fund" shall be construed to refer to the "Special Risk Insurance Fund", and all references therein to section 1709 of this title shall be construed to refer to section 1715z(i), (j)(4), 1715z–2, or 1715z–8 of this title, as may be appropriate.

(2) Any mortgagee under a mortgage insured under section 1715z(j)(1) or 1715z–1 of this title shall be entitled to receive the benefits of insurance as provided in section 1713(g) of this title with respect to mortgages insured under section 1713 of this title. The provisions of subsections (d), (e), (h), (i), (j), (k), (l), and (n) of section 1713 of this title shall be applicable to mortgages insured under section 1715z(j)(1) or 1715z–1 of this title, except that all references therein to the "General Insurance Fund" shall be construed to refer to the "Special Risk Insurance Fund" and the premium charge provided in section 1713(d) of this title shall be payable only in cash or debentures of the Special Risk Insurance Fund.

(3) In lieu of the amount of insurance benefits computed pursuant to paragraph (1) or (2) of this

subsection the Secretary, in his discretion and in accordance with such regulations as he may prescribe, may (with respect to any mortgage loan acquired by him) compute and pay insurance benefits to the mortgagee in a total amount equal to the unpaid principal balance of the loan plus any accrued interest and any advances approved by the Secretary and made previously by the mortgagee under the provisions of the mortgage.

(b) Creation of fund; authorization for advancements; repayment; crediting of charges and fees; payments from fund; authorization of appropriations for losses; deposits to fund; open-market purchases of debentures which are obligations of fund

There is hereby created a Special Risk Insurance Fund (hereinafter referred to as the "fund") which shall be used by the Secretary as a revolving fund for carrying out the mortgage insurance obligations of sections 1715n(e), 1715x(a)(2), 1715z, 1715z-1, 1715z-2,¹ and 1715z-8 of this title, and the Secretary is hereby authorized to advance to the fund, at such times and in such amounts as he may determine to be necessary, a total sum of \$20,000,000 from the General Insurance Fund established pursuant to the provisions of section 1735c of this title. Such advance shall be repayable at such times and at such rates of interest as the Secretary deems appropriate. Premium charges, adjusted premium charges, inspection and other fees, service charges, and any other income received by the Secretary under sections 1715n(e), 1715x(a)(2), 1715z, 1715z-1, 1715z-2, and 1715z-8 of this title, together with all earnings on the assets of the fund, shall be credited to the fund. All payments made pursuant to claims of mortgagees with respect to mortgages insured under sections 1715x(a)(2), 1715z, 1715z-1, 1715z-2, and 1715z-8 of this title or pursuant to section 1715n(e) of this title, cash adjustments, the principal of and interest paid on debentures which are the obligation of the fund, expenses incurred in connection with or as a consequence of the acquisition and disposal of property acquired under such sections, and all administrative expenses in connection with the mortgage insurance operations under such sections shall be paid out of the fund. Moneys in the fund not needed for current operations of the fund shall be deposited with the Treasurer of the United States to the credit of the fund or invested in bonds or other obligations of, or in bonds or other obligations guaranteed by, the United States or any agency of the United States: *Provided*, That such moneys shall to the maximum extent feasible be invested in such bonds or other obligations the proceeds of which will be used to directly support the residential mortgage market. The Secretary, with the approval of the Secretary of the Treasury, may purchase in the open market debentures which are the obligation of the fund. Such purchases shall be made at a price which will provide an investment yield of not less than the yield obtained from other investments authorized by this section. Debentures so purchased shall be canceled and not reissued.

(c) Mortgage insurance for military impacted areas; criteria; obligation of Special Risk Insurance Fund; establishment of premiums and other charges

(1) Notwithstanding the provisions of this chapter or any other Act, and without regard to limitations upon eligibility contained in any section of this subchapter, the Secretary is authorized, upon application by the mortgagee, to insure under any section of this subchapter a mortgage executed in connection with the construction, repair, rehabilitation, or purchase of property located near any installation of the Armed Forces of the United States in federally impacted areas in which the conditions are such that one or more of the eligibility requirements applicable to the section under which insurance is sought could not be met, if (A) the Secretary finds that the benefits to be derived from such use outweigh the risk of probable cost to the Government, and (B) the Secretary of Defense certifies that there is no intention insofar as can reasonably be foreseen to curtail substantially the personnel assigned or to be assigned to such installation. The insurance of a mortgage pursuant to this subsection shall be the obligation of the Special Risk Insurance Fund.

(2) The Secretary is authorized (A) to establish such premiums and other charges as may be necessary to assure that the mortgage insurance program pursuant to this subsection is made available on a basis which, in the Secretary's judgment, is designed to be actuarially sound and likely to maintain the fiscal integrity of such program, and (B) to prescribe such terms and conditions

relating to insurance pursuant to this subsection as may be found by the Secretary to be necessary and appropriate, and which are to the maximum extent possible, consistent with provisions otherwise applicable to mortgage insurance and payment of insurance benefits.

(3) The Secretary shall undertake an annual assessment of the risks associated with each of the insurance programs comprising the Special Risk Insurance Fund, and shall present findings from such review to the Congress in the FHA Annual Management Report.

(June 27, 1934, ch. 847, title II, §238, as added Pub. L. 90–448, title I, §104(a), Aug. 1, 1968, 82 Stat. 486; amended Pub. L. 91–152, title IV, §415, Dec. 24, 1969, 83 Stat. 401; Pub. L. 91–351, title V, §503, July 24, 1970, 84 Stat. 461; Pub. L. 91–609, title I, §117(d), Dec. 31, 1970, 84 Stat. 1775; Pub. L. 93–383, title III, §318, Aug. 22, 1974, 88 Stat. 685; Pub. L. 95–128, title III, §309, Oct. 12, 1977, 91 Stat. 1135; Pub. L. 103–233, title I, §§103(g)(1), 105(a), Apr. 11, 1994, 108 Stat. 362, 363.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subsection (k) of section 1710 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 105–276, title VI, §601(c), Oct. 21, 1998, 112 Stat. 2673.

Section 1715z–2 of this title, referred to in subsecs. (a)(1) and (b), was repealed by Pub. L. 110–289, div. B, title I, §2120(a)(6), July 30, 2008, 122 Stat. 2835.

This chapter, referred to in subsec. (c)(1), was in the original "this Act", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–233, §105(a), struck out after fourth sentence "There is authorized to be appropriated such sums as may be needed from time to time to cover losses sustained by the fund in carrying out the mortgage insurance obligations of sections 1715n(e), 1715x(a)(2), 1715z, 1715z–1, 1715z–2, and 1715z–8 of this title."

Subsec. (c)(3). Pub. L. 103–233, §103(g)(1), added par. (3).

1977—Subsec. (c). Pub. L. 95–128 substituted provisions of pars. (1) and (2) respecting mortgage insurance for military impacted areas, criteria therefore, and establishment of premiums and other charges for prior subsec. (c), which had authorized use of the Special Risk Insurance Fund to carry out mortgage insurance obligations of sections 1709 and 1713 of this title to provide housing for military personnel, Federal civilian employees, and Federal contractor employees assigned to duty or employed at or in connection with any installation of the Armed Forces in federally impacted areas where in the judgment of the Secretary (1) the residual housing requirements for persons not associated with such installations were insufficient to sustain the housing market in the event of substantial curtailment of employment of personnel assigned to such installations, and (2) the benefits to be derived from such use outweighed the risk of possible cost to the Government.

1974—Subsec. (c). Pub. L. 93–383 added subsec. (c).

1970—Subsec. (a)(1). Pub. L. 91–351, §503(1), inserted references to section 1715z–8 of this title wherever appearing.

Subsec. (b). Pub. L. 91–609 provided for guarantee as to principal and interest by any agency of the United States and for investment of moneys in bonds or other obligations the proceeds of which will be used to directly support the residential mortgage market.

Pub. L. 91–351, §503(2), inserted references to section 1715z–8 of this title wherever appearing.

1969—Subsec. (b). Pub. L. 91–152 increased from \$5,000,000 to a total sum of \$20,000,000, at such times and in such amounts as he may determine to be necessary, the amount authorized to be advanced by the Secretary to the Fund.

¹ [*See References in Text note below.*](#)

§1715z–4. Modifications in terms of mortgages covering multifamily projects; requests for extensions to cure defaults or for modification of mortgage

terms; regulations

The Secretary shall not consent to any request for an extension of the time for curing a default under any mortgage covering multifamily housing, as defined in the regulations of the Secretary, or for a modification of the terms of such mortgage, except in conformity with regulations prescribed by the Secretary in accordance with the provisions of this section. Such regulations shall require, as a condition to the granting of any such request, that, during the period of such extension or modification, any part of the rents or other funds derived by the mortgagor from the property covered by the mortgage which is not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges under the mortgage, be held in trust by the mortgagor and distributed only with the consent of the Secretary; except that the Secretary may provide for the granting of consent to any request for an extension of the time for curing a default under any mortgage covering multifamily housing, or for a modification of the term of such mortgage, without regard to the foregoing requirement, in any case or class of cases in which an exemption from such requirement does not (as determined by the Secretary) jeopardize the interests of the United States.

(June 27, 1934, ch. 847, title II, §239, as added Pub. L. 90-448, title III, §302, Aug. 1, 1968, 82 Stat. 506; amended Pub. L. 100-242, title IV, §416(c), Feb. 5, 1988, 101 Stat. 1908.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100-242 struck out "insured" before "mortgages" in section catchline, and struck out subsec. (a) designation and subsec. (b) which related to violations and penalties imposed for violations of the provisions of former subsec. (a).

§1715z-4a. Double damages remedy for unauthorized use of multifamily housing project assets and income

(a) Action to recover assets or income

(1) The Secretary of Housing and Urban Development (referred to in this section as the "Secretary") may request the Attorney General to bring an action in a United States district court to recover any assets or income used by any person in violation of (A) a regulatory agreement that applies to a multifamily project, nursing home, intermediate care facility, board and care home, assisted living facility, or hospital whose mortgage is or, at the time of the violations, was insured or held by the Secretary under title II of the National Housing Act [12 U.S.C. 1707 et seq.]; (B) a regulatory agreement that applies to a multifamily project whose mortgage is or, at the time of the violations, was insured or held by the Secretary under section 1701q of this title (including property subject to section 1701q of this title as it existed before November 28, 1990); (C) a regulatory agreement or such other form of regulatory control as may be imposed by the Secretary that applies to mortgages insured or held or, at the time of the violations, was ¹insured or held by the Secretary under section 1715z-22 of this title, but not reinsured under section 1715z-22 of this title; or (D) any applicable regulation. For purposes of this section, a use of assets or income in violation of the regulatory agreement, or such other form of regulatory control as may be imposed by the Secretary, or any applicable regulation shall include any use for which the documentation in the books and accounts does not establish that the use was made for a reasonable operating expense or necessary repair of the property and has not been maintained in accordance with the requirements of the Secretary and in reasonable condition for proper audit.

(2) For purposes of a mortgage insured or held by the Secretary under title II of the National Housing Act [12 U.S.C. 1707 et seq.], under section 1701q of this title (including section 1701q of

this title as it existed before November 28, 1990) and under section 1715z-22 of this title, the term "any person" shall mean any person or entity that owns or operates a property, as identified in the regulatory agreement, including but not limited to—

- (A) any stockholder holding 25 percent or more interest of a corporation that owns that property;
- (B) any beneficial owner of the property under any business or trust;
- (C) any officer, director, or partner of an entity owning or controlling the property;
- (D) any nursing home lessee or operator;
- (E) any hospital lessee or operator;
- (F) any other person or entity that controls the property regardless of that person or entity's official relationship to the property; and
- (G) any heir, assignee, successor in interest, or agent of any person or entity described in the preceding subparagraphs.

(b) Initiation of proceedings and temporary relief

The Attorney General, upon request of the Secretary, shall have the exclusive authority to authorize the initiation of proceedings under this section. Pending final resolution of any action under this section, the court may grant appropriate temporary or preliminary relief, including restraining orders, injunctions, and acceptance of satisfactory performance bonds, to protect the interests of the Secretary and to prevent use of assets or income in violation of the regulatory agreement, or such other form of regulatory control as may be imposed by the Secretary, and any applicable regulation and to prevent loss of value of the realty and personalty involved.

(c) Amount recoverable

In any judgment favorable to the United States entered under this section, the Attorney General may recover double the value of the assets and income of the property that the court determines to have been used in violation of the regulatory agreement, or such other form of regulatory control as may be imposed by the Secretary, or any applicable regulation, plus all costs relating to the action, including but not limited to reasonable attorney and auditing fees. Notwithstanding any other provision of law, the Secretary may apply the recovery, or any portion of the recovery, to the property or to the applicable insurance fund under the National Housing Act [12 U.S.C. 1701 et seq.] or, in the case of any project for which the mortgage is held by the Secretary under section 1701q of this title (including property subject to section 1701q of this title as it existed before November 28, 1990), to the project or to the Department for use by the appropriate office within the Department for administrative costs related to enforcement of the requirements of the various programs administered by the Secretary, as appropriate.

(d) Time limitation

Notwithstanding any other statute of limitations, the Secretary may request the Attorney General to bring an action under this section at any time up to and including 6 years after the latest date that the Secretary discovers any use of a property's assets and income in violation of the regulatory agreement, or such other form of regulatory control as may be imposed by the Secretary, or any applicable regulation.

(e) Continued availability of other remedies

The remedy provided by this section is in addition to any other remedies available to the Secretary or the United States.

(Pub. L. 100-242, title IV, §421, Feb. 5, 1988, 101 Stat. 1913; Pub. L. 105-65, title V, §563, Oct. 27, 1997, 111 Stat. 1419; Pub. L. 108-447, div. I, title II, §220, Dec. 8, 2004, 118 Stat. 3319; Pub. L. 109-115, div. A, title III, §324, Nov. 30, 2005, 119 Stat. 2466.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Housing Act, referred to in subsecs. (a) and (c), is act June 27, 1934, ch. 847, 48 Stat. 1246,

which is classified principally to this chapter (§1701 et seq.). Title II of the National Housing Act is classified generally to this subchapter (§1707 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1987, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

2005—Subsec. (a)(1)(A). Pub. L. 109–115, §324(1), inserted "or, at the time of the violations, was" after "is".

Subsec. (a)(1)(C). Pub. L. 109–115, §324(2), inserted "or, at the time of the violations, was insured or held" after "held".

2004—Subsec. (a)(1). Pub. L. 108–447, §220(3), substituted "property" for "project" in second sentence.

Subsec. (a)(1)(A). Pub. L. 108–447, §220(1), inserted ", nursing home, intermediate care facility, board and care home, assisted living facility, or hospital" after "project".

Subsec. (a)(1)(B). Pub. L. 108–447, §220(2), inserted "or, at the time of the violations, was" after "whose mortgage is".

Subsec. (a)(2). Pub. L. 108–447, §220(4), substituted "that owns or operates a property, as identified in the regulatory agreement, including but not limited to—" and subpars. (A) to (G) for "which owns a project, as identified in the regulatory agreement, including but not limited to any stockholder holding 25 percent or more interest of a corporation that owns the project; any beneficial owner under any business or trust; any officer, director, or partner of an entity owning the project; and any heir, assignee, successor in interest, or agent of any owner."

Subsec. (c). Pub. L. 108–447, §220(5), substituted "property that the court determines" for "project that the court determines" and "property or to the applicable insurance fund" for "project or to the applicable insurance fund".

Subsec. (d). Pub. L. 108–447, §220(6), substituted "a property's" for "project".

1997—Subsec. (a)(1). Pub. L. 105–65, §563(1), substituted "(B) a regulatory agreement that applies to a multifamily project whose mortgage is insured or held by the Secretary under section 1701q of this title (including property subject to section 1701q of this title as it existed before November 28, 1990); (C) a regulatory agreement or such other form of regulatory control as may be imposed by the Secretary that applies to mortgages insured or held by the Secretary under section 542 of the Housing and Community Development Act of 1992, but not reinsured under section 542 of the Housing and Community Development Act of 1992; or (D)" for "or (B)" in first sentence and inserted ", or such other form of regulatory control as may be imposed by the Secretary," after "regulatory agreement" in second sentence.

Subsec. (a)(2). Pub. L. 105–65, §563(2), inserted "under section 1701q of this title (including section 1701q of this title as it existed before November 28, 1990) and under section 542 of the Housing and Community Development Act of 1992," after "title II of National Housing Act,".

Subsec. (b). Pub. L. 105–65, §563(3), inserted ", or such other form of regulatory control as may be imposed by the Secretary," after "regulatory agreement".

Subsec. (c). Pub. L. 105–65, §563(4), in first sentence, inserted ", or such other form of regulatory control as may be imposed by the Secretary," after "regulatory agreement" and inserted before period at end of second sentence "or, in the case of any project for which the mortgage is held by the Secretary under section 1701q of this title (including property subject to section 1701q of this title as it existed before November 28, 1990), to the project or to the Department for use by the appropriate office within the Department for administrative costs related to enforcement of the requirements of the various programs administered by the Secretary, as appropriate".

Subsec. (d). Pub. L. 105–65, §563(5), inserted ", or such other form of regulatory control as may be imposed by the Secretary," after "regulatory agreement".

¹ *So in original.*

§1715z–5. Purchase of fee simple title from lessors

(a) Authorization to insure loans for purpose of financing purchases

The Secretary is authorized, upon such terms and conditions as he may prescribe, to make commitments to insure and to insure loans made by financial institutions for the purpose of financing purchases by homeowners of the fee simple title to property on which their homes are located.

(b) Definitions

As used in this section—

(1) the term "financial institution" means a lender approved by the Secretary as eligible for insurance under section 1703 of this title or a mortgagee approved under section 1709(b)(1) of this title; and

(2) the term "homeowner" means a lessee under a long-term ground lease.

(c) Eligibility for insurance

To be eligible for insurance under this section, a loan shall—

(1) relate to property on which there is located a dwelling designed principally for a one-, two-, three-, or four-family residence;

(2) not exceed the cost of purchasing the fee simple title, or \$10,000 (\$30,000, if the property is located in Hawaii) per family unit, whichever is the lesser;

(3) be limited to an amount which when added to any outstanding indebtedness related to the property (as determined by the Secretary) creates a total outstanding indebtedness which does not exceed the applicable mortgage limit prescribed in section 1709(b) of this title;

(4) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee;

(5) have a maturity satisfactory to the Secretary, but not to exceed twenty years from the beginning of amortization of the loan; and

(6) comply with such other terms, conditions, and restrictions as the Secretary may prescribe.

(d) Applicability of other provisions of law

The provisions of paragraphs (3), (5), (6), (7), (8), and (10) of section 1715k(h) of this title shall be applicable to loans insured under this section and, as applied to loans insured under this section, references in those paragraphs to "home improvement loans" and "this subsection" shall be construed to refer to loans under this section.

(June 27, 1934, ch. 847, title II, §240, as added Pub. L. 90-448, title III, §304(a), Aug. 1, 1968, 82 Stat. 507; amended Pub. L. 95-557, title III, §314, Oct. 31, 1978, 92 Stat. 2099; Pub. L. 96-399, title III, §333(f), Oct. 8, 1980, 94 Stat. 1653; Pub. L. 98-181, title I [title IV, §404(b)(13)], Nov. 30, 1983, 97 Stat. 1210; Pub. L. 98-479, title II, §204(a)(10), Oct. 17, 1984, 98 Stat. 2232.)

EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-479 substituted "purchases" for "purchasers".

1983—Subsec. (c)(4). Pub. L. 98-181 substituted provision that the interest rate be such rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate not exceed such per centum per annum, not in excess of 6 per centum, on the amount of the principal obligation outstanding at any time, as the Secretary finds necessary to meet market conditions, and such other charges as approved by the Secretary.

1980—Subsec. (c)(5). Pub. L. 96-399 struck out "or three-quarters of the remaining economic life of the home, whichever is the lesser" after "loan".

1978—Subsec. (c)(2). Pub. L. 95-557 inserted "(\$30,000, if the property is located in Hawaii)" after "\$10,000".

§1715z-6. Supplemental loans for multifamily projects

(a) Authorization to insure; "supplemental loan" defined

With respect to a multifamily project, hospital, or group practice facility covered by a mortgage insured under any section or subchapter of this chapter or covered by a mortgage held by the Secretary, the Secretary is authorized, upon such terms and conditions as he may prescribe, to make

commitments to insure, and to insure, supplemental loans (including advances during construction or improvement) made by financial institutions approved by the Secretary. As used in this section, "supplemental loan" means a loan, advance of credit, or purchase of an obligation representing a loan or advance of credit made for the purpose of financing improvements or additions to such project, hospital, or facility: *Provided*, That a loan involving a nursing home, hospital, or a group practice facility may also be made for the purpose of financing equipment to be used in the operation of such nursing home, hospital, or facility.

(b) Eligibility for insurance

To be eligible for insurance under this section, a supplemental loan shall—

(1) be limited to 90 per centum of the amount which the Secretary estimates will be the value of such improvements, additions, and equipment, except that such amount when added to the outstanding balance of the mortgage covering the project or facility, shall not exceed the maximum mortgage amount insurable under the section or subchapter pursuant to which the mortgage covering such project or facility is insured or an amount acceptable to the Secretary;

(2) have a maturity satisfactory to the Secretary;

(3) bear interest at such rate as may be agreed upon by the borrower and the financial institution;

(4) be secured in such manner as the Secretary may require;

(5) be governed by the labor standards provisions of section 1715c of this title that are applicable to the section or subchapter pursuant to which the mortgage covering the project or facility is insured or pursuant to which the original mortgage covering the project or facility was insured; and

(6) contain such other terms, conditions, and restrictions as the Secretary may prescribe.

(c) Applicability of other provisions of law

The provisions of subsections (d), (e), (g), (h), (i), (j), (k), (l), and (n) of section 1713 of this title shall be applicable to loans insured under this section, except that (1) all references to the term "mortgage" shall be construed to refer to the term "loan" as used in this section, (2) loans involving projects covered by a mortgage insured under section 1715e of this title that is the obligation of the Cooperative Management Housing Insurance Fund shall be insured under and shall be the obligation of such fund, and (3) loans involving projects covered by a mortgage insured under section 1715z-1 of this title shall be insured under and shall be the obligation of the Special Risk Insurance Fund.

(d) Authorization to insure loans for improvements or additions; terms and conditions; limitation on amount

Notwithstanding the foregoing, the Secretary may insure a loan for improvements or additions to a multifamily housing project, or a group practice or medical practice facility or hospital or other health facility approved by the Secretary, which is not covered by a mortgage insured under this chapter, if he finds that such a loan would assist in preserving, expanding, or improving housing opportunities, or in providing protection against fire or other hazards. Such loans shall have a maturity satisfactory to the Secretary and shall meet such other conditions as the Secretary may prescribe. In no event shall such a loan be insured if it is for an amount in excess of the maximum amount which could be approved if the outstanding indebtedness, if any, covering the property were a mortgage insured under this chapter. At any sale under foreclosure of a mortgage on a project or facility which is not insured under this chapter but which is senior to a loan assigned to the Secretary pursuant to subsection (c), the Secretary is authorized to bid, in addition to amounts authorized under section 1713(k) of this title, any sum up to but not in excess of the total unpaid indebtedness secured by such senior mortgage, plus taxes, insurance, foreclosure costs, fees, and other expenses. In the event that, pursuant to subsection (c), the Secretary acquires title to, or is assigned, a loan covering a project or facility which is subject to a mortgage which is not insured under this chapter, the Secretary is authorized to make payments from the General Insurance Fund on the debt secured by such mortgage, and to take such other steps as the Secretary may deem appropriate to preserve or protect the Secretary's interest in the project or facility.

(e) Loan insurance for energy conserving improvements and solar energy systems

(1) Notwithstanding any other provision of this section, the Secretary may insure a loan for purchasing and installing energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 1703(a) of this title), for purchasing and installing a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title), and for purchasing or installing (or both) individual utility meters in a multifamily housing project if such meters are purchased or installed in connection with other energy conserving improvements or with a solar energy system or the project meets minimum standards of energy conservation established by the Secretary, without regard to whether the project is covered by a mortgage under this chapter.

(2) Notwithstanding the provisions of subsection (b), a loan insured under this subsection shall—

(A) not exceed an amount which the Secretary determines is necessary for the purchase and installation of individual utility meters plus an amount which the Secretary deems appropriate taking into account amounts which will be saved in operation costs over the period of repayment of the loan by reducing the energy requirements of the project as a result of the installation of energy conserving improvements or a solar energy system therein;

(B) be insured for 90 percent of any loss incurred by the person holding the note for the loan; except that, for cooperative multifamily projects receiving assistance under section 1715z-1 of this title or financed with a below market interest rate mortgage insured under section 1715l(d)(3) of this title, 100 percent of any such loss may be insured;

(C) bear an interest rate not to exceed an amount which the Secretary determines, after consulting with the Secretary of Energy, to be necessary to meet market demands;

(D) have a maturity satisfactory to the Secretary;

(E) be insured pursuant to a premium rate established on a sound actuarial basis to the extent practicable;

(F) be secured in such manner as the Secretary may require;

(G) be an acceptable risk in that energy conservation or solar energy benefits to be derived outweigh the risks of possible loss to the Federal Government; and

(H) contain such other terms, conditions, and restrictions as the Secretary may prescribe.

(3) The provisions of subsection (c) shall apply to loans insured under this subsection.

(4) The Secretary shall provide that any person obligated on the note for any loan insured under this section be regulated or restricted, until the termination of all obligations of the Secretary under the insurance, by the Secretary as to rents or sales, charges, capital structure, rate of return, and methods of operations of the multifamily project to such an extent and in such manner as to provide reasonable rentals to tenants and a reasonable return on the investment.

(f) Repealed. Pub. L. 104-204, title II, Sept. 26, 1996, 110 Stat. 2885

(g) Extension of rental assistance for term of loan

(1) When underwriting a rehabilitation loan under this section in connection with eligible multifamily housing, the Secretary may assume that any rental assistance provided for purposes of servicing the additional debt will be extended for the term of the rehabilitation loan. The Secretary shall exercise prudent underwriting practices in insuring rehabilitation loans under this section. For purposes of this subsection, the term "eligible multifamily housing" means any housing financed by a loan or mortgage that is—

(A) insured or held by the Secretary under section 1715l(d)(3) of this title and assisted under section 1701s of this title or section 1437f of title 42;

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

(C) insured, assisted or held by the Secretary under section 1715z-1 of this title.

(2) A mortgagee approved by the Secretary may not withhold consent to a rehabilitation loan insured in connection with eligible multifamily housing on which that mortgagee holds a mortgage.

(June 27, 1934, ch. 847, title II, §241, as added Pub. L. 90-448, title III, §307, Aug. 1, 1968, 82 Stat.

508; amended Pub. L. 91-609, title I, §111, Dec. 31, 1970, 84 Stat. 1772; Pub. L. 93-383, title III, §313, Aug. 22, 1974, 88 Stat. 684; Pub. L. 94-375, §5, Aug. 3, 1976, 90 Stat. 1070; Pub. L. 95-557, title III, §311(b), Oct. 31, 1978, 92 Stat. 2098; Pub. L. 95-619, title II, §247, Nov. 9, 1978, 92 Stat. 3234; Pub. L. 96-153, title III, §319, Dec. 21, 1979, 93 Stat. 1119; Pub. L. 96-399, title III, §314, Oct. 8, 1980, 94 Stat. 1645; Pub. L. 98-181, title I [title IV, §404(b)(14)], Nov. 30, 1983, 97 Stat. 1210; Pub. L. 98-479, title II, §204(a)(11), (12), Oct. 17, 1984, 98 Stat. 2232; Pub. L. 100-242, title II, §231, title IV, §429(c), Feb. 5, 1988, 101 Stat. 1884, 1918; Pub. L. 101-235, title II, §§203(c), (d), 204(b), Dec. 15, 1989, 103 Stat. 2038, 2039; Pub. L. 101-625, title VI, §602(a), Nov. 28, 1990, 104 Stat. 4275; Pub. L. 102-550, title III, §§316(a), (b), 317(c), Oct. 28, 1992, 106 Stat. 3771, 3772; Pub. L. 104-204, title II, Sept. 26, 1996, 110 Stat. 2885.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (d), and (e)(1), was in the original "this Act", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104-204 struck out subsec. (f), which related to insurance for second mortgage financing.

1992—Subsec. (f)(2)(B)(i). Pub. L. 102-550, §316(a)(1), inserted "the amount of rehabilitation costs required by the plan of action and related charges and" after "equal to".

Subsec. (f)(2)(B)(ii). Pub. L. 102-550, §317(c)(1), struck out "and" at end.

Subsec. (f)(3)(B). Pub. L. 102-550, §316(a)(2), inserted "and the amount of rehabilitation costs required by the plan of action and related charges and" after "1990".

Subsec. (f)(5)(A). Pub. L. 102-550, §316(a)(3)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: "have a maturity and provisions for amortization satisfactory to the Secretary, bear interest at such rate as may be agreed upon by the mortgagor and mortgagee, and be secured in such manner as the Secretary may require; and".

Subsec. (f)(5)(B), (C). Pub. L. 102-550, §316(a)(3), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(6). Pub. L. 102-550, §317(c)(2), which directed the substitution of "acquisition loan" for "acquisiton loan" in par. (7), was executed by making the substitution in par. (6) to reflect the probable intent of Congress and the intervening redesignation of par. (7) as (6) by Pub. L. 102-550, §316(a)(5). See below.

Pub. L. 102-550, §316(a)(4), (5), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: "The Secretary may provide for combination of loans insured under subsection (d) of this section with equity and acquisition loans insured under this subsection."

Subsec. (f)(7) to (9). Pub. L. 102-550, §316(a)(5), redesignated pars. (7) to (9) as (6) to (8), respectively.

Subsec. (f)(10). Pub. L. 102-550, §316(b), added par. (10).

1990—Subsec. (f). Pub. L. 101-625 amended subsec. (f) generally, substituting present provisions for provisions relating to insurance of "equity loans" under the Emergency Low Income Housing Preservation Act of 1987, providing for eligibility for such insurance, providing that a qualified nonprofit organization or limited equity tenant cooperative corporation may constitute an owner of housing for purposes of receiving an insured loan, providing for applicability of certain provisions of section 1713 of this title, and providing that an approved mortgagee may not withhold consent to an equity loan on property on which mortgagee holds a mortgage.

1989—Subsec. (f)(2). Pub. L. 101-235, §203(c)(1), inserted at end "When underwriting an equity loan under this subsection, the Secretary may assume that the rental assistance provided in accordance with an approved plan of action under section 225(b) of the Emergency Low Income Housing Preservation Act of 1987 will be extended for the full term of the contract entered into under section 225(c) of that Act. The Secretary may accelerate repayment of a loan under this section in the event rental assistance is not extended under section 225(c) of that Act or the Secretary is unable to develop a revised package of incentives to the owner comparable to those received under the original approved plan of action."

Subsec. (f)(3). Pub. L. 101-235, §203(c)(2), inserted "public entity," after "A".

Subsec. (f)(6). Pub. L. 101-235, §203(d), added par. (6).

Subsec. (g). Pub. L. 101-235, §204(b), added subsec. (g).

1988—Subsec. (b)(3). Pub. L. 100-242, §429(c), substituted "borrower and the financial institution" for "mortgagor and the mortgagee".

Subsec. (f). Pub. L. 100-242, §231, added subsec. (f).

1984—Subsec. (a). Pub. L. 98-479, §204(a)(11), substituted "to make" for "to made".

Subsec. (b)(1). Pub. L. 98-479, §204(a)(12), substituted "or facility" for "of facility" before "is insured".

1983—Subsec. (b)(3). Pub. L. 98-181 substituted provision that the interest rate be such a rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate, exclusive of premium charges for insurance and service charges, not exceed such per centum per annum, not in excess of 6 per centum, on the amount of the principal obligation outstanding at any time, as the Secretary finds necessary to meet market conditions.

1980—Subsec. (e)(1). Pub. L. 96-399 inserted provisions respecting requirements for purchase or installation in connection with other energy conserving improvements, etc.

1979—Subsec. (b)(2). Pub. L. 96-153 struck out "but not to exceed the remaining term of the mortgage" after "the Secretary".

1978—Subsec. (d). Pub. L. 95-557 inserted provision relating to the amounts the Secretary is authorized to bid at any sale under foreclosure of a mortgage on a project or facility which is not insured under this chapter but which is senior to a loan assigned to the Secretary pursuant to subsection (c), and such other steps the Secretary is authorized to take to preserve or protect his interest in the project or facility.

Subsec. (e). Pub. L. 95-619 added subsec. (e).

1976—Subsec. (a). Pub. L. 94-375 inserted ", hospital," after "multifamily project", "additions to such project", "involving a nursing home", and "of such nursing home".

1974—Subsec. (d). Pub. L. 93-383 added subsec. (d).

1970—Subsec. (a). Pub. L. 91-609, §111(1), (2), inserted in first sentence "or covered by a mortgage held by the Secretary" after "this chapter" and substituted in proviso "a nursing home or a group practice facility" for "a nursing home covered by a mortgage insured under section 1715w of this title or a loan involving a group practice facility covered by a mortgage insured under subchapter IX-B of this chapter", respectively.

Subsec. (b)(1). Pub. L. 91-609, §111(3), inserted "or an amount acceptable to the Secretary" before semicolon at end.

Subsec. (b)(5). Pub. L. 91-609, §111(4), inserted "or pursuant to which the original mortgage covering the project or facility was insured" before semicolon at end.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 231 of Pub. L. 100-242 applicable to any project that is eligible low income housing on or after Nov. 1, 1987, see section 235 of Pub. L. 100-242.

REGULATIONS

Pub. L. 102-550, title III, §316(c), Oct. 28, 1992, 106 Stat. 3771, directed Secretary, not later than the expiration of 45-day period beginning on Oct. 28, 1992, to issue regulations implementing subsec. (f)(1) of this section and provided that such regulations are not subject to requirements of 5 U.S.C. 553.

INSURANCE FOR SECOND MORTGAGE FINANCING NOT TO BE OFFERED AS INCENTIVE UNDER LIHPRHA AND ELIHPA

Insurance for second mortgage financing provided under former subsec. (f) of this section not to be offered as incentive under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4101 et seq.) and the Emergency Low Income Housing Preservation Act of 1987 (Pub. L. 100-242, title II, Feb. 5, 1988, 101 Stat. 1877, as amended), see title II in part of Pub. L. 104-204, set out as a Low-Income Housing Preservation note under section 4101 of this title.

DELEGATION OF PROCESSING OF MORTGAGE INSURANCE

Secretary of Housing and Urban Development to implement system of mortgage insurance for mortgages insured under this section that delegates processing functions to selected approved mortgagees, with Secretary to retain authority to approve rents, expenses, property appraisals, and mortgage amounts and to execute firm commitments, see section 328 of Pub. L. 101-625, set out as a note under section 1713 of this title.

§1715z-7. Mortgage insurance for hospitals

(a) Purpose

The purpose of this section is to assist the provision of urgently needed hospitals for the care and treatment of persons who are acutely ill or who otherwise require medical care and related services of the kind customarily furnished only (or most effectively) by hospitals. Such assistance shall be provided regardless of the amount of public financial or other support a hospital may receive, and the Secretary shall neither require additional security or collateral to guarantee such support, nor impose more stringent eligibility or other requirements on publicly owned or supported hospitals.

(b) Definitions

For the purposes of this section—

(1) the term "hospital" means a facility—

(A) which provides community service for inpatient medical care of the sick or injured (including obstetrical care);

(B) not more than 50 per centum of the total patient days of which during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis, unless the facility is a critical access hospital (as that term is defined in section 1861(mm)(1) of the Social Security Act (42 U.S.C. 1395x(mm)(1))); and

(C) which is a public facility, proprietary facility, or facility of a private nonprofit corporation or association, licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located); and

(2) the terms "mortgage" and "mortgagor" shall have the meanings respectfully set forth in section 1713(a) of this title.

(c) Authorization to insure; prohibition of premiums on guarantees of principal and interest under title VII of the Public Health Service Act

The Secretary is authorized to insure any mortgage (including advances on such mortgage during construction) in accordance with the provisions of this section upon such terms and conditions as he may prescribe and to make commitments for insurance of such mortgage prior to the date of its execution or disbursement thereon. No mortgage insurance premium shall be charged with respect to the amount of principal and interest guaranteed by the Department of Health and Human Services under title VII of the Public Health Service Act [42 U.S.C. 292 et seq.].

(d) Insurance of mortgages covering new or rehabilitated hospitals, including equipment; terms and conditions

In order to carry out the purpose of this section, the Secretary is authorized to insure any mortgage which covers a new or rehabilitated hospital, including equipment to be used in its operation, subject to the following conditions:

(1) The mortgage shall be executed by a mortgagor approved by the Secretary. The Secretary may in his discretion require any such mortgagor to be regulated or restricted as to charges and methods of financing, and, in addition thereto, if the mortgagor is a corporate entity, as to capital structure and rate of return. As an aid to the regulation or restriction of any mortgagor with respect to any of the foregoing matters, the Secretary may make such contracts with and acquire for not to exceed \$100 such stock or interest in such mortgagor as he may deem necessary. Any stock or interest so purchased shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

(2) The mortgage shall involve a principal obligation in the amount requested by the mortgagor if such amount does not exceed 90 percent of the estimated replacement cost of the property or project including—

(A) equipment to be used in the operation of the hospital, when the proposed improvements

are completed and the equipment is installed; and

(B) a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42) ¹ in cases where the Secretary determines that such measures are in addition to those required under the minimum property standards and will be cost-effective over the life of the measure.

(3) The mortgage shall—

(A) provide for complete amortization by periodic payments within such term as the Secretary shall prescribe; and

(B) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee.

(4)(A) The Secretary shall require satisfactory evidence that the hospital will be located in a State or political subdivision of a State with reasonable minimum standards of licensure and methods of operation for hospitals and satisfactory assurance that such standards will be applied and enforced with respect to the hospital.

(B) The Secretary shall establish the means for determining need and feasibility for the hospital, if the State does not have an official procedure for determining need for hospitals. If the State has an official procedure for determining need for hospitals, the Secretary shall require that such procedure be followed before the application for insurance is submitted, and the application shall document that need has also been established under that procedure.

(5) The Secretary shall not insure any mortgage or approve any modification of an existing mortgage insured pursuant to this section or section 1715n(f) of this title if such insurance or modification is to be made in connection with a guarantee, as authorized pursuant to section 1721 of this title, of a trust certificate or other security which is exempt from Federal taxation or which is to be used to collateralize obligations which are so exempt, except that the Secretary shall not refuse to insure such a mortgage or approve such a modification solely on the basis that such insurance or modification is to be made in connection with a guarantee, as authorized pursuant to section 1721 of this title, of a trust certificate or other security which is exempt from Federal taxation or which is to be used to collateralize obligations which are so exempt if—

(A) a written application for such insurance or modification submitted at the express direction of the hospital has been submitted to the appropriate office of the Department of Health and Human Services prior to March 29, 1979; or

(B) in the case of a nonprofit mortgagor which is seeking refinancing or modification of an existing mortgage insured pursuant to this section or section 1715n(f) of this title, the mortgagor (i) had engaged an investment banker for the purpose of obtaining such refinancing or modification, or had undertaken or arranged for the undertaking of a market or feasibility study with respect to the advisability of obtaining such refinancing or modification, and had made written notification of its interest in such refinancing or modification to the Department of Health and Human Services or the Department of Housing and Urban Development prior to June 7, 1979; and (ii) receives from the programs established under titles XVIII [42 U.S.C. 1395 et seq.] and XIX [42 U.S.C. 1396 et seq.] of the Social Security Act a percentage of its total revenue which is greater than 125 per centum of the national average for hospitals which derive revenue from such titles.

This paragraph shall not limit the authority of the Secretary to approve a mortgage increase on any mortgage eligible for insurance under this paragraph at any time prior to final endorsement of the loan for insurance; except that such mortgage increase may not be approved for the cost of constructing any improvements not included in the original plans and specifications approved by the Department of Health and Human Services unless approved by the Secretary of Housing and Urban Development and by the Secretary of Health and Human Services.

(6) To the extent that a private nonprofit or public facility mortgagor is required by the Secretary to provide cash equity in excess of the amount of the mortgage to complete the project,

the mortgagor shall be entitled, at the option of the mortgagee, to fund the excess with a letter of credit. In such event, mortgage proceeds may be advanced to the mortgagor prior to any demand being made on the letter of credit.

(e) Release of part of property or project from lien

The Secretary may consent to the release of a part or parts of the mortgaged property or project from the lien of any mortgage insured under this section upon such terms and conditions as he may prescribe.

(f) Encouragement of programs undertaking responsibility to provide comprehensive health care; immediate processing of applications for public hospitals

The activities and functions provided for in this section shall be carried out by the agencies involved so as to encourage programs that undertake responsibility to provide comprehensive health care, including outpatient and preventive care, as well as hospitalization, to a defined population, and, in the case of public hospitals, to encourage programs that are undertaken to provide essential health care services to all residents of a community regardless of ability to pay. The Secretary shall begin immediately to process applications of public facilities for mortgage insurance under this section in accordance with regulations, guidelines, and procedures applicable to facilities of private nonprofit corporations and associations.

(g) Insurance of mortgages providing permanent financing or refinancing of existing mortgage indebtedness; aggregate principal balance of mortgages

(1) Notwithstanding any of the other provisions of this subchapter, the Secretary may insure under this section a mortgage which provides permanent financing or refinancing of existing mortgage indebtedness in the case of a hospital whose permanent financing is presently lacking, if the construction of such hospital was completed between January 1, 1966, and August 1, 1968.

(2) The aggregate principal balance of all mortgages insured under paragraph (1) and outstanding at any one time shall not exceed \$20,000,000.

(h) Applicability of other laws

The provisions of subsections (d), (e), (g), (h), (i), (j), (k), (l), and (n) of section 1713 of this title shall apply to mortgages insured under this section and all references therein to section 1713 of this title shall be deemed to refer to this section.

(i) Termination of exemption for critical access hospitals

(1) In general

The exemption for critical access hospitals under subsection (b)(1)(B) shall have no effect after July 31, 2016.

(2) Report to Congress

Not later than 3 years after July 31, 2003, the Secretary shall submit a report to Congress detailing the effects of the exemption of critical access hospitals from the provisions of subsection (b)(1)(B) on—

- (A) the provision of mortgage insurance to hospitals under this section; and
- (B) the General Insurance Fund established under section 1735c of this title.

(June 27, 1934, ch. 847, title II, §242, as added Pub. L. 90–448, title XV, §1501, Aug. 1, 1968, 82 Stat. 599; amended Pub. L. 91–609, title I, §§109, 110(a), Dec. 31, 1970, 84 Stat. 1772; Pub. L. 93–383, title III, §304(i), Aug. 22, 1974, 88 Stat. 678; Pub. L. 95–128, title III, §308, Oct. 12, 1977, 91 Stat. 1135; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 96–153, title III, §315, Dec. 21, 1979, 93 Stat. 1117; Pub. L. 96–399, title III, §310(h), Oct. 8, 1980, 94 Stat. 1643; Pub. L. 97–35, title III, §339H, Aug. 13, 1981, 95 Stat. 418; Pub. L. 98–181, title I [title IV, §§404(b)(15), 436], Nov. 30, 1983, 97 Stat. 1210, 1222; Pub. L. 98–479, title II, §§201(a)(1), 204(a)(13), Oct. 17, 1984, 98 Stat. 2227, 2232; Pub. L. 100–242, title IV, §§411(a), 412(a)–(d), Feb.

5, 1988, 101 Stat. 1905, 1906; Pub. L. 108–91, §§2(a), 3(a), Oct. 3, 2003, 117 Stat. 1158; Pub. L. 109–240, §2, July 10, 2006, 120 Stat. 515; Pub. L. 113–76, div. L, title II, §233, Jan. 17, 2014, 128 Stat. 634.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (c), is act July 1, 1944, ch. 373, 58 Stat. 682. Title VII of the Act was added by act July 30, 1956, ch. 779, §2, 70 Stat. 717, and is classified generally to subchapter V (§292 et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

Section 8211 of title 42, referred to in subsec. (d)(2)(B), was omitted from the Code pursuant to section 8229 of Title 42, The Public Health and Welfare, which terminated authority under that section on June 30, 1989.

The Social Security Act, referred to in subsec. (d)(5)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2014—Subsec. (i)(1). Pub. L. 113–76 substituted "July 31, 2016" for "July 31, 2011".

2006—Subsec. (i)(1). Pub. L. 109–240 substituted "July 31, 2011" for "July 31, 2006".

2003—Subsec. (b)(1)(B). Pub. L. 108–91, §3(a)(1), inserted ", unless the facility is a critical access hospital (as that term is defined in section 1861(mm)(1) of the Social Security Act (42 U.S.C. 1395x(mm)(1)))" after "tuberculosis".

Subsec. (d)(4). Pub. L. 108–91, §2(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The Secretary shall not insure any mortgage under this section unless he has received, from the State agency designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act for the State in which is located the hospital covered by the mortgage, a certification that (A) there is a need for such hospital, and (B) there are in force in such State or the political subdivision of the State in which the proposed hospital would be located reasonable minimum standards of licensure and methods of operation for hospitals. No such mortgage shall be insured under this section unless the Secretary has received such assurance as he may deem satisfactory from the State agency that such standards will be applied and enforced with respect to any hospital located in the State for which mortgage insurance is provided under this section. If no such State agency exists, or if the State agency exists but is not empowered to provide a certification that there is a need for the hospital as set forth in clause (A) of the first sentence, the Secretary shall not insure any mortgage under this section unless (A) the State in which the hospital is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility that (i) is prepared in accordance with the principles established by the American Institute of Certified Public Accountants; (ii) assesses, on a marketwide basis, the impact of the proposed hospital on, and its relationship to, other health care facilities and services, the percentage of excess beds, demographic projections, alternative health care delivery systems, and the reimbursement structure of the hospital; (iii) is addressed to and is acceptable to the Secretary in form and substance; and (iv) in the event the State does not prepare the study, is prepared by a financial consultant selected by the State and approved by the Secretary; and (B) the State complies with the other provisions of this paragraph that would otherwise be required to be met by a State agency designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act. The proposed mortgagor may reimburse the State for the cost of the independent feasibility study required in the preceding sentence."

Subsec. (i). Pub. L. 108–91, §3(a)(2), added subsec. (i).

1988—Subsec. (a). Pub. L. 100–242, §412(a), inserted at end "Such assistance shall be provided regardless of the amount of public financial or other support a hospital may receive, and the Secretary shall neither require additional security or collateral to guarantee such support, nor impose more stringent eligibility or other requirements on publicly owned or supported hospitals."

Subsec. (d)(2). Pub. L. 100–242, §412(b), substituted "The mortgage shall involve a principal obligation in the amount requested by the mortgagor if such amount does not exceed 90 percent of the estimated

replacement cost of the property or project including" for "The mortgage shall involve a principal obligation in an amount not to exceed 90 per centum of the estimated replacement cost of the property or project including".

Subsec. (d)(4). Pub. L. 100-242, §411(a), inserted provisions at end relating to authority of Secretary to insure a mortgage under this section covering new or rehabilitated hospitals, including equipment, in cases where no State agency exists, or where such agency does exist but is not empowered to provide a certification for the need of such hospital as required under this section.

Subsec. (d)(6). Pub. L. 100-242, §412(c), added par. (6).

Subsec. (f). Pub. L. 100-242, §412(d), inserted at end "The Secretary shall begin immediately to process applications of public facilities for mortgage insurance under this section in accordance with regulations, guidelines, and procedures applicable to facilities of private nonprofit corporations and associations."

1984—Subsec. (c). Pub. L. 98-479, §201(a)(1), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (d)(3)(A). Pub. L. 98-479, §204(a)(13), substituted a semicolon for the comma at end.

1983—Subsec. (b)(1)(C). Pub. L. 98-181, §436(1), inserted "public facility," after "which is a".

Subsec. (d)(3)(B). Pub. L. 98-181, §404(b)(15), substituted provision that the interest rate be such a rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate, exclusive of premium charges for insurance and service charges, not exceed such per centum per annum, not in excess of 6 per centum, on the amount of the principal obligation outstanding at any time, as the Secretary finds necessary to meet the mortgage market.

Subsec. (f). Pub. L. 98-181, §436(2), inserted ", and in the case of public hospitals, to encourage programs that are undertaken to provide essential health care services to all residents of a community regardless of ability to pay" after "defined population".

1981—Subsec. (d)(5). Pub. L. 97-35 inserted provisions respecting limitation on authority of the Secretary to approve mortgage increases on eligible mortgages.

1980—Subsec. (d)(2). Pub. L. 96-399 revised existing provisions into introductory paragraph and subpar. (A) and added subpar. (B).

1979—Subsec. (d)(5). Pub. L. 96-153 added par. (5).

1977—Subsec. (c). Pub. L. 95-128, §308(b), prohibited charging any mortgage insurance premium with respect to the amount of principal and interest guaranteed by the Department of Health, Education, and Welfare under title VII of the Public Health Service Act.

Subsec. (d)(4). Pub. L. 95-128, §308(a), inserted reference to section 1521.

1974—Subsec. (d)(2). Pub. L. 93-383 struck out "not to exceed \$50,000,000, and" after "an amount".

1970—Subsec. (b)(1)(C). Pub. L. 91-609, §110(a), substituted as definition of "hospital" a facility "which is a proprietary facility, or facility of a private nonprofit corporation or association, licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located)" for "prior definition as a facility which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual".

Subsec. (d)(2). Pub. L. 91-609, §109, increased limitation on amount of mortgage from \$25,000,000 to \$50,000,000.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"Department of Health and Human Services" substituted for "Department of Health, Education, and Welfare" in subsec. (d)(5)(A), (B) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-91, §2(b), Oct. 3, 2003, 117 Stat. 1158, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect and apply as of the date of the enactment of this Act [Oct. 3, 2003].

"(2) EFFECT OF REGULATORY AUTHORITY.—Any authority of the Secretary of Housing and Urban Development to issue regulations to carry out the amendment made by subsection (a) may not be construed to affect the effectiveness or applicability of such amendment under paragraph (1) of this subsection."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of this title.

REGULATIONS

Pub. L. 100-242, title IV, §411(b), Feb. 5, 1988, 101 Stat. 1905, directed Secretary of Housing and Urban Development to issue regulations to carry out amendment of this section by not later than expiration of 90-day period following Feb. 5, 1988.

Secretary of Housing and Urban Development directed to issue regulations implementing amendments to this section by section 436 of Pub. L. 98-181, not later than Oct. 31, 1984, see section 104(f) of Pub. L. 98-479, set out as a note under section 1715b of this title.

¹ [*See References in Text note below.*](#)

§1715z-8. Mortgage assistance payments for middle-income families

(a) Determination by Secretary of necessity; interest subsidy payments; effective date

Whenever he determines such action to be necessary in furtherance of the purposes set forth in section 501 of the Emergency Home Finance Act of 1970, the Secretary is authorized to make, and to contract to make, periodic assistance payments on behalf of families of middle income. The assistance shall be accomplished through interest subsidy payments to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation (hereinafter referred to as "the investor") with respect to mortgages meeting the special requirements specified in this section and made after July 24, 1970.

(b) Qualifications of mortgagor for assistance payments

To qualify for assistance payments a middle-income family shall be a mortgagor under a mortgage which is (1) insured under subsection (j) of this section, (2) guaranteed under chapter 37 of title 38, or (3) a conventional mortgage meeting the requirements of subsection (j)(3) of this section. In addition to the foregoing requirement, the Secretary may require that the mortgagor have an income, at the time of acquisition of the property, of not more than the median income for the area in which the property is located, as determined by the Secretary, with appropriate adjustments for smaller and larger families.

(c) Termination of interest subsidy payments

The interest subsidy payments authorized by this section shall cease when (1) the mortgagor no longer occupies the property which secures the mortgage, (2) the mortgages are no longer held by the investor, or (3) the rate of interest paid by the mortgagor reaches the rate of interest specified on the mortgage.

(d) Monthly mortgage payments as determining eligibility for interest subsidy payments; mortgage assistance payments for middle-income cooperative members; interest subsidy payments; applicability of provisions to cooperative mortgagors

(1) Interest subsidy payments shall be on mortgages on which the mortgagor makes monthly payments towards principal and interest equal to an amount which would be required if the mortgage bore an effective interest rate of 7 per centum per annum including any discounts or charges in the nature of points or otherwise (but not including premiums, if any, for mortgage insurance) or such higher rate (not to exceed the rate specified in the mortgage), which the mortgagor could pay by applying at least 20 per centum of his income towards homeownership expenses. As used in this subsection, the term "monthly homeownership expense" includes the monthly payment for principal, interest, mortgage insurance premium, insurance, and taxes due under the mortgage.

(2) In addition to the mortgages eligible for assistance under paragraph (1) of this subsection, the Secretary is authorized to make periodic assistance payments on behalf of cooperative members of middle income. Such assistance payments shall be accomplished through interest subsidy payments to the investor with respect to mortgages insured (subsequent to July 24, 1970) under section 1715e

of this title which are executed by cooperatives, the membership in which is limited to middle-income families. For purposes of this paragraph—

(A) the term "mortgagor", when used in subsection (b) in the case of a mortgage covering a cooperative housing project, means a member of the cooperative;

(B) the term "acquisition of the property", when used in subsection (b), means the family's application for a dwelling unit; and

(C) in the case of a cooperative mortgagor, subsection (c) shall not apply and the interest subsidy payments shall cease when the mortgage is no longer held by the investor or the cooperative fails to limit membership to families whose incomes at the time of their application for a dwelling unit meets such requirements as are laid down by the Secretary pursuant to subsection (b).

(e) Amount of interest subsidy payments

The interest subsidy payments shall be in an amount equal to the difference, as determined by the Secretary, between the total amount of interest per calendar quarter received by the investor on mortgages assisted under this section and purchased by it and the total amount of interest which the investor would have received if the yield on such mortgages was equal to the sum of (1) the average costs (expressed as an annual percentage rate) to it of all borrowed funds outstanding in the immediately preceding calendar quarter, and (2) such per centum per annum as will provide for administrative and other expenses of the investor and a reasonable economic return, as determined by the Secretary to be necessary and appropriate taking into account the purpose of this section to provide additional mortgage credit at reasonable rates of interest to middle-income families.

(f) Adoption of procedures for recertifications of mortgagor's income

Procedures shall be adopted by the Secretary for recertifications of the mortgagor's income at intervals of two years (or at shorter intervals where the Secretary deems it desirable) for the purpose of adjusting the amount of the mortgagor's payments pursuant to subsection (d).

(g) Regulations to assure that sales price or other consideration paid is not increased above appraised value

The Secretary shall prescribe such regulations as he deems necessary to assure that the sales price of, or other consideration paid in connection with, the purchase by a homeowner of the property with respect to which assistance payments are to be made is not increased above the appraised value on which the maximum mortgage which the Secretary will insure is computed.

(h) Authorization of appropriations; aggregate amount of assistance payment contracts; termination date

(1) There are authorized to be appropriated such sums as may be necessary to enable the Secretary to make interest subsidy payments under contracts entered into under this section. The aggregate amount of contracts to make such payments shall not exceed amounts approved in appropriation Acts, and payments pursuant to such contracts shall not exceed \$105,000,000 during the first year of such contracts prior to July 1, 1971, which amount shall be increased by an additional \$105,000,000 during the first year of an additional number of such contracts on July 1 of each of the years 1971 and 1972.

(2) No interest subsidy payments under this section shall be made after June 30, 1973, except pursuant to contracts entered into on or before such date.

(i) Determination of family income; exclusion of income of minors

In determining the income of any family for the purposes of this section, income from all sources of each member of the family in the household shall be included, except that the Secretary shall exclude income earned by any minor person.

(j) Insurance of mortgages executed by mortgagors meeting eligibility requirements for assistance payments; issuance of commitment; eligibility requirements for insurance

(1) The Secretary is authorized, upon application by the mortgagee, to insure a mortgage executed by a mortgagor who meets the eligibility requirements for assistance payments prescribed by the

Secretary under subsection (b). Commitments for the insurance of such mortgages may be issued by the Secretary prior to the date of their execution or disbursement thereon, upon such terms and conditions as the Secretary may prescribe.

(2) To be eligible for insurance under this subsection, a mortgage shall meet the requirements of section 1715l(d)(2) or 1715y(c) of this title, except as such requirements are modified by this subsection: *Provided, however,* That in the discretion of the Secretary 25 per centum of the authority conferred by this section and subject to all the terms thereof may be used for mortgages on existing housing.

(3) A mortgage to be insured under this section shall—

(i) involve a single-family dwelling which has been approved by the Secretary prior to the beginning of construction, or a one-family unit in a condominium project (together with an undivided interest in the common areas and facilities serving the project) which is released from a multifamily project, the construction of which has been completed within two years prior to the filing of the application for assistance payments with respect to such family unit and the unit shall have had no previous occupant other than the mortgagor;

(ii) involve a single-family dwelling whose appraised value, as determined by the Secretary, is not in excess of \$20,000 (which amount may be increased by not more than 50 per centum in any geographical area where the Secretary authorizes an increase on the basis of a finding that the cost level so requires); and

(iii) be executed by a mortgagor who shall have paid in cash or its equivalent on account of the property (A) 3 per centum of the first \$15,000 of the appraised value of the property, (B) 10 per centum of such value in excess of \$15,000 but not in excess of \$25,000, and (C) 20 per centum of such value in excess of \$25,000.

(June 27, 1934, ch. 847, title II, §243, as added Pub. L. 91–351, title V, §502, July 24, 1970, 84 Stat. 458; amended Pub. L. 98–479, title II, §204(a)(14), (15), Oct. 17, 1984, 98 Stat. 2232.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 501 of the Emergency Home Finance Act of 1970, referred to in subsec. (a), is section 501 of Pub. L. 91–351, which is set out as a note below.

AMENDMENTS

1984—Subsec. (d)(2). Pub. L. 98–479, §204(a)(14), redesignated subpars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively.

Subsec. (j)(3)(ii). Pub. L. 98–479, §204(a)(15), substituted "; and" for period at end.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Pub. L. 91–351, title V, §501, July 24, 1970, 84 Stat. 458, provided that: "The Congress finds that—

"(1) periodic episodes of monetary stringency and high interest rates make it extremely difficult for families of middle income to obtain mortgage credit at rates which they can afford to pay;

"(2) periods of monetary stringency and high interest rates are directly related to the Government's monetary and fiscal policies;

"(3) a disproportionate share of the burden of sustaining these anti-inflationary policies of the Government falls on families of middle income who are buyers or prospective buyers of homes; and

"(4) the Government has a responsibility to lessen the disproportionate burden which such families bear as a result of such policies.

It is the purpose of this title [enacting this section, and amending sections 1715z–3 and 1719 of this title] to provide, during periods of high mortgage interest rates, a source of mortgage credit for such families which is within their financial means."

§1715z–9. Co-insurance of eligible mortgage, advance, or loan

(a) Authority of Secretary; request of mortgagee; premium charges; provisions of contract of co-insurance; non-applicability of state insurance laws

In addition to providing insurance as otherwise authorized under this chapter, and notwithstanding any other provision of this chapter inconsistent with this section, the Secretary, upon request of any mortgagee and for such mortgage insurance premium as he may prescribe (which premium, or other charges to be paid by the mortgagor, shall not exceed the premium, or other charges, that would otherwise be applicable), may insure and make a commitment to insure under any provision of this subchapter any mortgage, advance, or loan otherwise eligible under such provision, pursuant to a co-insurance contract providing that the mortgagee will—

(1) assume a percentage of any loss on the insured mortgage, advance, or loan in direct proportion to the amount of the co-insurance, which co-insurance shall not be less than 10 per centum, subject to any reasonable limit or limits on the liability of the mortgagee that may be specified in the event of unusual or catastrophic losses that may be incurred by any one mortgagee; and

(2) carry out (under a delegation or otherwise and with or without compensation but subject to audit, exception, or review requirements) such credit approval, appraisal, inspection, commitment, property disposition, or other functions as the Secretary, pursuant to regulations, shall approve as consistent with the purposes of this chapter.

Any contract of co-insurance under this section shall contain such provisions relating to the sharing of premiums on a sound actuarial basis, establishment of mortgage reserves, manner of calculating insurance benefits, conditions with respect to foreclosure, handling and disposition of property prior to claim or settlement, rights of assignees (which may elect not to be subject to the loss sharing provisions), and other similar matters as the Secretary may prescribe pursuant to regulations. A mortgagee which enters into a contract of co-insurance under this section shall not by reason of such contract, or its adherence to such contract or applicable regulations of the Secretary, including provisions relating to the retention of risks in the event of sale or assignment of a mortgage, be made subject to any State law regulating the business of insurance.

(b) Inspection of construction of dwellings or projects as prerequisite; minimum standards or criteria applicable

No insurance shall be granted pursuant to this section with respect to dwellings or projects approved for insurance prior to the beginning of construction unless the inspection of such construction is conducted in accordance with at least the minimum standards and criteria used with respect to dwellings or projects approved for mortgage insurance pursuant to other provisions of this subchapter.

(c) Repealed. Pub. L. 100–242, title IV, §414(a), Feb. 5, 1988, 101 Stat. 1907

(d) Repealed. Pub. L. 100–242, title IV, §401(a)(3), Feb. 5, 1988, 101 Stat. 1898

(e) Availability unaffected insurance otherwise authorized; criteria for exercise of authority by Secretary

The Secretary shall not withdraw, deny, or delay insurance otherwise authorized under any other provision of this chapter by reason of the availability of insurance pursuant to this section. The Secretary shall exercise his authority under this section only to the extent that he finds that the continued exercise of such authority will not adversely affect the flow of mortgage credit to older and declining neighborhoods and to the purchasers of older and lower cost housing.

(f) Multifamily housing project; contract provisions; aggregate principal amount of all mortgages insured; loans on defaulted mortgages; insurance for state assisted projects and projects under construction; definitions; amount of reserves

(1) Where the mortgage covers a multifamily housing project, the co-insurance contract may provide that the mortgagee assume (i) the full amount of any loss on the insured mortgage up to an

amount equal to a fixed percentage of the outstanding principal balance of the mortgage at the time of claim for insurance benefits, or (ii) the full amount of any losses on insured mortgages in a portfolio of mortgages approved by the Secretary up to an amount equal to a fixed percentage of the outstanding principal balance of all mortgages in such portfolio at the time of claim for insurance benefits on a mortgage in the portfolio, plus a share of any loss in excess of the amount under clause (i) or (ii), whichever is applicable.

(2) The Secretary may make loans, from the applicable insurance fund, to public housing agencies in connection with mortgages which have been insured pursuant to this subsection and which are in default.

(3) The Secretary may insure and make a commitment to insure in connection with a co-insurance contract pursuant to this subsection (A) a mortgage on a project assisted under the second proviso in the first sentence of section 1715z-1(b) of this title, and (B) a mortgage or advance on a mortgage made to a public housing agency on a project under construction which is not approved for insurance prior to construction.

(4) As used in this subsection, the term "public housing agency" has the meaning given such term in section 1437a(b)(6) of title 42.

(5) Notwithstanding any other provision of this chapter, the Secretary may include in the determination of replacement cost of a project to be covered by a mortgage made to a public housing agency and insured pursuant to this subsection, such reserves and development costs, not to exceed 5 per centum of the amount otherwise allowable, as may be established or authorized by the public housing agency consistent with such agency's procedures and underwriting standards.

(g) Redesignated (f)

(h) Acceptable co-insurance provisions for rental rehabilitation; termination date

Notwithstanding any other provision of this section, in the case of a mortgage insured under section 1715n(f) of this title secured by property which is to be rehabilitated or developed under section 1437o¹ of title 42, such co-insurance may include provisions that—

(1) insurance benefits shall equal the sum of (A) 90 per centum of the mortgage on the date of institution of foreclosure proceedings (or on the date of acquisition of the property otherwise after default), and (B) 90 per centum of interest arrears on the date benefits are paid;

(2) the mortgagee shall remit to the Secretary, for credit to the General Insurance Fund, 90 per centum of any proceeds of the property, including sale proceeds, net of the mortgagee's actual and reasonable costs related to the property and the enforcement of security;

(3) payment of such benefits shall be made in cash unless the mortgagee submits a written request for debenture payment; and

(4) the underwriter of co-insurance may reinsure 10 per centum of the mortgage amount with a private mortgage insurance company or with a State mortgage insurance agency.

(i)² Authority of mortgagee to assign its interest in any note or mortgage subject to a contract of co-insurance; terms and conditions respecting retention of co-insurance risk of such note or mortgage

Any mortgagee which enters into a contract of co-insurance under this section shall have the authority to assign its interest in any note or mortgage subject to a contract of co-insurance to a warehouse bank or other financial institution which provides interim funding for a loan co-insured under this section, and to retain the co-insurance risk of such note or mortgage, upon such terms and conditions as the Secretary shall prescribe.

(i)² Annual review of, and assessment of compliance with, requirements; report; adjustment of requirements

The Secretary shall, by January 15 and July 15 of each year (1) review the adequacy of capital and other requirements for mortgagees under this section, (2) assess the compliance by mortgagees with such requirements, and (3) make such adjustment to such requirements as the Secretary, after providing opportunity for hearing, determines to be appropriate to improve the long-term financial

soundness of the Federal Housing Administration funds. Such requirements shall include the minimum capital or net worth of mortgagees; the ratio that mortgagees shall maintain between the mortgagee's capital and the volume of mortgages co-insured by such mortgagee; and such other requirements as the Secretary determines to be appropriate to ensure the long-term financial soundness of the Federal Housing Administration funds. The Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report on the review and assessment under the previous sentence, and an explanation of the Secretary's reasons for making any adjustment in requirements authorized under this section.

(June 27, 1934, ch. 847, title II, §244, as added Pub. L. 93-383, title III, §307, Aug. 22, 1974, 88 Stat. 679; amended Pub. L. 94-375, §6, Aug. 3, 1976, 90 Stat. 1070; Pub. L. 95-60, §1(d), June 30, 1977, 91 Stat. 257; Pub. L. 95-80, §1(d), July 31, 1977, 91 Stat. 339; Pub. L. 95-128, title III, §301(f), Oct. 12, 1977, 91 Stat. 1131; Pub. L. 95-406, §1(f), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95-557, title III, §301(f), Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96-71, §1(f), Sept. 28, 1979, 93 Stat. 501; Pub. L. 96-105, §1(f), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96-153, title III, §301(f), Dec. 21, 1979, 93 Stat. 1111; Pub. L. 96-372, §1(f), Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96-399, title III, §301(f), Oct. 8, 1980, 94 Stat. 1638; Pub. L. 96-470, title I, §107(a), Oct. 19, 1980, 94 Stat. 2238; Pub. L. 97-35, title III, §331(f), Aug. 13, 1981, 95 Stat. 413; Pub. L. 97-289, §1(f), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 98-35, §1(f), May 26, 1983, 97 Stat. 197; Pub. L. 98-109, §1(f), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98-181, title I [title III, §303(a), title IV, §§401(e), 434], Nov. 30, 1983, 97 Stat. 1206, 1207, 1222; Pub. L. 98-479, title I, §104(a)(5), Oct. 17, 1984, 98 Stat. 2225; Pub. L. 99-120, §1(e), Oct. 8, 1985, 99 Stat. 502; Pub. L. 99-156, §1(e), Nov. 15, 1985, 99 Stat. 815; Pub. L. 99-219, §1(e), Dec. 26, 1985, 99 Stat. 1730; Pub. L. 99-267, §1(e), Mar. 27, 1986, 100 Stat. 73; Pub. L. 99-272, title III, §3007(e), Apr. 7, 1986, 100 Stat. 105; Pub. L. 99-289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99-345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99-430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100-122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100-154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100-170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100-179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100-200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100-242, title IV, §§401(a)(3), 414, 429(g), Feb. 5, 1988, 101 Stat. 1898, 1907, 1919; Pub. L. 101-235, title I, §139(a), Dec. 15, 1989, 103 Stat. 2029.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (e), and (f)(5), was in the original "this Act", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

Section 1437o of title 42, referred to in subsec. (h), was repealed by Pub. L. 101-625, title II, §289(b), Nov. 28, 1990, 104 Stat. 4128.

AMENDMENTS

1989—Subsec. (i). Pub. L. 101-235 added subsec. (i) relating to annual review of, and assessment of compliance with, requirements.

1988—Subsec. (c). Pub. L. 100-242, §414(a), struck out subsec. (c) which read as follows: "No insurance shall be granted pursuant to this section unless the Secretary has, after due consultation with the mortgage lending industry, determined that the demonstration program of co-insurance authorized by this section will not disrupt the mortgage market or reduce the availability of mortgage credit to borrowers who depend upon mortgage insurance provided under this chapter."

Subsec. (d). Pub. L. 100-242, §401(a)(3), struck out subsec. (d) which read as follows: "No mortgage, advance, or loan shall be insured pursuant to this section after March 15, 1988, except pursuant to a commitment to insure made before that date."

Subsec. (f). Pub. L. 100-242, §429(g)(1), which directed that subsec. (g) be amended by striking out par. (2) which read: "The second sentence of subsection (d) of this section shall not apply to mortgages made to public housing agencies, but for purposes of such second sentence such mortgages shall not be counted in the aggregate principal amount of all mortgages insured under this subchapter.", and by redesignating former pars.

(3) to (6) as (2) to (5), was executed to subsec. (f) to reflect the probable intent of Congress, because of the prior redesignation of subsec. (g) as (f) by Pub. L. 96-470, §107(a).

Subsec. (h). Pub. L. 100-242, §§414(b)(1), 429(g)(2), made identical amendments, substituting "co-insurance" for "coinsurance" in introductory provision and par. (4).

Pub. L. 100-242, §401(a)(3), struck out at end "No commitment for insurance pursuant to this subsection may be issued after March 15, 1988."

Subsec. (i). Pub. L. 100-242, §414(b)(2), added subsec. (i).

1987—Subsecs. (d), (h). Pub. L. 100-200 substituted "March 15, 1988" for "December 16, 1987".

Pub. L. 100-179 substituted "December 16, 1987" for "December 2, 1987".

Pub. L. 100-170 substituted "December 2, 1987" for "November 15, 1987".

Pub. L. 100-154 substituted "November 15, 1987" for "October 31, 1987".

Pub. L. 100-122 substituted "October 31, 1987" for "September 30, 1987".

1986—Subsecs. (d), (h). Pub. L. 99-430 substituted "September 30, 1987" for "September 30, 1986".

Pub. L. 99-345 substituted "September 30, 1986" for "June 6, 1986".

Pub. L. 99-289 substituted "June 6, 1986" for "April 30, 1986".

Pub. L. 99-272 made amendment identical to Pub. L. 99-219. See 1985 Amendment note below.

Pub. L. 99-267 substituted "April 30, 1986" for "March 17, 1986".

1985—Subsec. (d). Pub. L. 99-219, §1(e)(1), substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156, §1(e)(1), substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120, §1(e)(1), substituted "November 14, 1985" for "September 30, 1985".

Subsec. (h). Pub. L. 99-219, §1(e)(2), substituted "after March 17, 1986" for "on or after December 16, 1985".

Pub. L. 99-156, §1(e)(2), substituted "December 16, 1985" for "November 15, 1985".

Pub. L. 99-120, §1(e)(2), substituted "November 15, 1985" for "October 1, 1985".

1984—Subsec. (d). Pub. L. 98-479 amended subsec. (d) generally, thereby striking out last sentence which provided: "The aggregate principal amount of mortgages and loans insured pursuant to this section in any fiscal year beginning on or after July 1, 1974, and ending prior to October 1, 1985, shall not exceed 20 per centum of the aggregate principal amount of all mortgages and loans insured under this subchapter during such fiscal year."

1983—Subsec. (d). Pub. L. 98-181, §401(e)(3), which directed that last two sentences of subsec. (d) be struck out was executed by striking out last sentence which provided that the overall percentage limitation specified in the preceding sentence also apply separately within each of the categories of mortgages and loans covering one- to four-family dwellings and mortgages and loans covering projects with five or more dwelling units, as the probable intent of Congress, in view of the amendment to the next to last sentence by section 401(e)(2) of Pub. L. 98-181.

Pub. L. 98-181, §401(e)(1), (2), substituted "September 30, 1985" for "November 30, 1983" and "October 1, 1985" for "December 1, 1983".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983" and "December 1, 1983" for "October 1, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983" and "October 1, 1983" for "May 21, 1983".

Subsec. (f)(1). Pub. L. 98-181, §434(1), struck out "the mortgagee is a public housing agency or an insured depository institution and" after "Where". Notwithstanding the directory language that amendment be made to subsec. (g)(1), the amendment was executed to subsec. (f)(1) to reflect the probable intent of Congress and the intervening redesignation of subsec. (g) as (f) by Pub. L. 96-470.

Subsec. (f)(5). Pub. L. 98-181, §434(2), substituted reference to section 1437a(b)(6) of title 42 for reference to section 1437a(6) of title 42 and struck out provision which defined the term "insured depository institution" as any savings bank, savings and loan association, commercial bank or other such depository institution whose deposits are insured by the Federal Deposit Insurance Corporation, by the Federal Savings and Loan Insurance Corporation, or by an agency or instrumentality of a State. Notwithstanding the directory language that amendment be made to subsec. (g)(5), the amendment was executed to subsec. (f)(5) to reflect the probable intent of Congress and the intervening redesignation of subsec. (g) as (f) by Pub. L. 96-470.

Subsec. (h). Pub. L. 98-181, §303(a), added subsec. (h).

1982—Subsec. (d). Pub. L. 97-289 substituted "May 20, 1983" and "May 21, 1983" for "September 30, 1982" and "October 1, 1982", respectively.

1981—Subsec. (d). Pub. L. 97-35 substituted "1982" for "1981" in two places.

1980—Subsec. (d). Pub. L. 96-399 substituted "September 30, 1981" and "October 1, 1981" for "October 15, 1980" and "October 16, 1980", respectively.

Pub. L. 96-372 substituted "October 15, 1980" and "October 16, 1980" for "September 30, 1980" and "October 1, 1980", respectively.

Subsecs. (f), (g). Pub. L. 96-470 struck out subsec. (f) and redesignated subsec. (g) as (f).

1979—Subsec. (d). Pub. L. 96-153 substituted "September 30, 1980" for "November 30, 1979" and "October 1, 1980" for "December 1, 1979".

Pub. L. 96-105 substituted "November 30, 1979" and "December 1, 1979" for "October 31, 1979" and "November 1, 1979", respectively.

Pub. L. 96-71 substituted "October 31, 1979" and "November 1, 1979" for "September 30, 1979" and "October 1, 1979", respectively.

1978—Subsec. (d). Pub. L. 95-557 substituted "September 30, 1979" for "October 31, 1978" and "October 1, 1979" for "November 1, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978" and "November 1, 1978" for "October 1, 1978".

1977—Subsec. (d). Pub. L. 95-128 substituted "September 30, 1978" for "September 30, 1977" and "October 1, 1978" for "October 1, 1977".

Pub. L. 95-80 substituted "September 30, 1977" for "July 31, 1977".

Pub. L. 95-60 substituted "July 31, 1977" for "June 30, 1977".

1976—Subsec. (a). Pub. L. 94-375, §6(b), inserted, in text following par. (2), a provision excluding a mortgagee which enters into a contract under this section from regulation by state insurance laws.

Subsec. (g). Pub. L. 94-375, §6(a), added subsec. (g).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of this title.

¹ [*See References in Text note below.*](#)

² [*So in original. Two subsecs. \(i\) have been enacted.*](#)

§1715z-10. Repealed. Pub. L. 110-289, div. B, title I, §2120(a)(7), July 30, 2008, 122 Stat. 2835

Section, act June 27, 1934, ch. 847, title II, §245, as added Pub. L. 93-383, title III, §308, Aug. 22, 1974, 88 Stat. 680; amended Pub. L. 94-375, §7, Aug. 3, 1976, 90 Stat. 1071; Pub. L. 95-128, title III, §§301(g), 310, Oct. 12, 1977, 91 Stat. 1131, 1136; Pub. L. 95-406, §1(g), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95-557, title III, §301(g), Oct. 31, 1978, 92 Stat. 2096; Pub. L. 95-630, title XV, §1503, Nov. 10, 1978, 92 Stat. 3713; Pub. L. 96-71, §1(g), Sept. 28, 1979, 93 Stat. 501; Pub. L. 96-105, §1(g), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96-153, title III, §§301(g), 311(b), Dec. 21, 1979, 93 Stat. 1112, 1115; Pub. L. 96-372, §1(g), Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96-399, title III, §301(g), Oct. 8, 1980, 94 Stat. 1638; Pub. L. 97-35, title III, §331(g) Aug. 13, 1981, 95 Stat. 413; Pub. L. 97-289, §1(g), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 98-35, §1(g), May 26, 1983, 97 Stat. 197; Pub. L. 98-109, §1(g), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98-181, title I [title IV, §401(f), 441, 442], Nov. 30, 1983, 97 Stat. 1208, 1223, 1224; Pub. L. 99-120, §1(f), Oct. 8, 1985, 99 Stat. 502; Pub. L. 99-156, §1(f), Nov. 15, 1985, 99 Stat. 815; Pub. L. 99-219, §1(f), Dec. 26, 1985, 99 Stat. 1730; Pub. L. 99-267, §1(f), Mar. 27, 1986, 100 Stat. 73; Pub. L. 99-272, title III, §3007(f), Apr. 7, 1986, 100 Stat. 105; Pub. L. 99-289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99-345, §1, June 24, 1986, 100 Stat. 673;

Pub. L. 99-430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100-122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100-154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100-170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100-179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100-200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100-242, title IV, §§401(a)(4), 408(b), 415(b)(1), Feb. 5, 1988, 101 Stat. 1898, 1903, 1907; Pub. L. 107-326, §3, Dec. 4, 2002, 116 Stat. 2793, related to graduated payment and indexed mortgages.

§1715z-11. Sale to cooperatives of multifamily housing projects acquired by Secretary; acceptance of purchase money mortgage for sale or insurance of mortgage; principal amount of mortgage; expenditures for repairs, etc., prior to sale

In any case which the Secretary sells a multifamily housing project acquired as the result of a default on a mortgage which was insured under this chapter to a cooperative which will operate it on a nonprofit basis and restrict permanent occupancy of its dwellings to members, or to a nonprofit corporation which operates as a consumer cooperative as defined by the Secretary, the Secretary may accept a purchase money mortgage, or upon application of the mortgagee, insure a mortgage under this section upon such terms and conditions as the Secretary determines are reasonable and appropriate, in a principal amount equal to the value of the property at the time of purchase, which value shall be based upon a mortgage amount on which the debt service can be met from the income of property when operated on a nonprofit basis after payment of all operating expenses, taxes, and required reserves; except that the Secretary may add to the mortgage amount an amount not greater than the amount of prepaid expenses and costs involved in achieving cooperative ownership, or make such other provisions for payment of such expenses and costs as the Secretary deems reasonable and appropriate. Prior to such disposition of a project, funds may be expended by the Secretary for necessary repairs and improvements.

(June 27, 1934, ch. 847, title II, §246, as added Pub. L. 93-383, title III, §315, Aug. 22, 1974, 88 Stat. 684; amended Pub. L. 95-557, title III, §322, Oct. 31, 1978, 92 Stat. 2102.)

EDITORIAL NOTES

AMENDMENTS

1978—Pub. L. 95-557 inserted "or to a nonprofit corporation which operates as a consumer cooperative as defined by the Secretary" after "dwellings to members" and "or upon application of the mortgagee, insure a mortgage under this section upon such terms and conditions as the Secretary determines are reasonable and appropriate" after "purchase money mortgage" and substituted "the value of the property at the time of purchase, which value shall be based upon a mortgage amount on which the debt service can be met from the income of property when operated on a nonprofit basis after payment of all operating expenses, taxes, and required reserves; except that the Secretary may add to the mortgage amount an amount not greater than the amount of prepaid expenses and costs involved in achieving cooperative ownership, or make such other provision for payment of such expenses and costs as the Secretary deems reasonable and appropriate" for "the sum of (1) the appraised value of the property at the time of purchase, which value shall be based upon a mortgage amount on which the debt service can be met from the income of the property when operated on a nonprofit basis and after payment of all operating expenses, taxes and required reserves, and (2) the amount of prepaid expenses and costs involved in achieving cooperative ownership".

§1715z-11a. Disposition of HUD-owned properties

(a) Flexible authority for multifamily projects

During fiscal year 1997 and fiscal years thereafter, the Secretary may manage and dispose of multifamily properties owned by the Secretary, including, for fiscal years 1997, 1998, 1999, 2000, and thereafter, the provision of grants and loans from the General Insurance Fund (12 U.S.C. 1735c) for the necessary costs of rehabilitation, demolition, or construction on the properties (which shall be

eligible whether vacant or occupied), and multifamily mortgages held by the Secretary on such terms and conditions as the Secretary may determine, notwithstanding any other provision of law. A grant provided under this subsection during fiscal years 2006 through 2010 shall be available only to the extent that appropriations are made in advance for such purposes and shall not be derived from the General Insurance Fund.

(b) Transfer of unoccupied and substandard housing to local governments and community development corporations

(1) Transfer authority

Notwithstanding the authority under subsection (a) and the last sentence of section 1710(g) of this title, the Secretary of Housing and Urban Development shall transfer ownership of any qualified HUD property, subject to the requirements of this section, to a unit of general local government having jurisdiction for the area in which the property is located or to a community development corporation which operates within such a unit of general local government in accordance with this subsection, but only to the extent that units of general local government and community development corporations consent to transfer and the Secretary determines that such transfer is practicable.

(2) Qualified HUD properties

For purposes of this subsection, the term "qualified HUD property" means any property for which, as of the date that notification of the property is first made under paragraph (3)(B), not less than 6 months have elapsed since the later of the date that the property was acquired by the Secretary or the date that the property was determined to be unoccupied or substandard, that is owned by the Secretary and is—

- (A) an unoccupied multifamily housing project;
- (B) a substandard multifamily housing project; or
- (C) an unoccupied single family property that—
 - (i) has been determined by the Secretary not to be an eligible asset under section 1710(h) of this title; or
 - (ii) is an eligible asset under such section 1710(h) of this title, but—
 - (I) is not subject to a specific sale agreement under such section; and
 - (II) has been determined by the Secretary to be inappropriate for continued inclusion in the program under such section 1710(h) of this title pursuant to paragraph (10) of such section.

(3) Timing

The Secretary shall establish procedures that provide for—

- (A) time deadlines for transfers under this subsection;
- (B) notification to units of general local government and community development corporations of qualified HUD properties in their jurisdictions;
- (C) such units and corporations to express interest in the transfer under this subsection of such properties;
- (D) a right of first refusal for transfer of qualified HUD properties to units of general local government and community development corporations, under which—
 - (i) the Secretary shall establish a period during which the Secretary may not transfer such properties except to such units and corporations;
 - (ii) the Secretary shall offer qualified HUD properties that are single family properties for purchase by units of general local government at a cost of \$1 for each property, but only to the extent that the costs to the Federal Government of disposal at such price do not exceed the costs to the Federal Government of disposing of property subject to the procedures for single family property established by the Secretary pursuant to the authority under the last sentence of section 1710(g) of this title;
 - (iii) the Secretary may accept an offer to purchase a property made by a community development corporation only if the offer provides for purchase on a cost recovery basis; and

(iv) the Secretary shall accept an offer to purchase such a property that is made during such period by such a unit or corporation and that complies with the requirements of this paragraph; and

(E) a written explanation, to any unit of general local government or community development corporation making an offer to purchase a qualified HUD property under this subsection that is not accepted, of the reason that such offer was not acceptable.

(4) Other disposition

With respect to any qualified HUD property, if the Secretary does not receive an acceptable offer to purchase the property pursuant to the procedure established under paragraph (3), the Secretary shall dispose of the property to the unit of general local government in which property is located or to community development corporations located in such unit of general local government on a negotiated, competitive bid, or other basis, on such terms as the Secretary deems appropriate.

(5) Satisfaction of indebtedness

Before transferring ownership of any qualified HUD property pursuant to this subsection, the Secretary shall satisfy any indebtedness incurred in connection with the property to be transferred, by canceling the indebtedness.

(6) Determination of status of properties

To ensure compliance with the requirements of this subsection, the Secretary shall take the following actions:

(A) Upon enactment

Upon the enactment of this subsection [December 21, 2000], the Secretary shall promptly assess each residential property owned by the Secretary to determine whether such property is a qualified HUD property.

(B) Upon acquisition

Upon acquiring any residential property, the Secretary shall promptly determine whether the property is a qualified HUD property.

(C) Updates

The Secretary shall periodically reassess the residential properties owned by the Secretary to determine whether any such properties have become qualified HUD properties.

(7) Tenant leases

This subsection shall not affect the terms or the enforceability of any contract or lease entered into with respect to any residential property before the date that such property becomes a qualified HUD property.

(8) Use of property

Property transferred under this subsection shall be used only for appropriate neighborhood revitalization efforts, including homeownership, rental units, commercial space, and parks, consistent with local zoning regulations, local building codes, and subdivision regulations and restrictions of record.

(9) Inapplicability to properties made available for homeless

Notwithstanding any other provision of this subsection, this subsection shall not apply to any properties that the Secretary determines are to be made available for use by the homeless pursuant to subpart E of part 291 of title 24, Code of Federal Regulations, during the period that the properties are so available.

(10) Protection of existing contracts

This subsection may not be construed to alter, affect, or annul any legally binding obligations

entered into with respect to a qualified HUD property before the property becomes a qualified HUD property.

(11) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Community development corporation

The term "community development corporation" means a nonprofit organization whose primary purpose is to promote community development by providing housing opportunities for low-income families.

(B) Cost recovery basis

The term "cost recovery basis" means, with respect to any sale of a residential property by the Secretary, that the purchase price paid by the purchaser is equal to or greater than the sum of: (i) the appraised value of the property, as determined in accordance with such requirements as the Secretary shall establish; and (ii) the costs incurred by the Secretary in connection with such property during the period beginning on the date on which the Secretary acquires title to the property and ending on the date on which the sale is consummated.

(C) Multifamily housing project

The term "multifamily housing project" has the meaning given the term in section 1701z-11 of this title.

(D) Residential property

The term "residential property" means a property that is a multifamily housing project or a single family property.

(E) Secretary

The term "Secretary" means the Secretary of Housing and Urban Development.

(F) Severe physical problems

The term "severe physical problems" means, with respect to a dwelling unit, that the unit—

- (i) lacks hot or cold piped water, a flush toilet, or both a bathtub and a shower in the unit, for the exclusive use of that unit;

- (ii) on not less than three separate occasions during the preceding winter months, was uncomfortably cold for a period of more than 6 consecutive hours due to a malfunction of the heating system for the unit;

- (iii) has no functioning electrical service, exposed wiring, any room in which there is not a functioning electrical outlet, or has experienced three or more blown fuses or tripped circuit breakers during the preceding 90-day period;

- (iv) is accessible through a public hallway in which there are no working light fixtures, loose or missing steps or railings, and no elevator; or

- (v) has severe maintenance problems, including water leaks involving the roof, windows, doors, basement, or pipes or plumbing fixtures, holes or open cracks in walls or ceilings, severe paint peeling or broken plaster, and signs of rodent infestation.

(G) Single family property

The term "single family property" means a 1- to 4-family residence.

(H) Substandard

The term "substandard" means, with respect to a multifamily housing project, that 25 percent or more of the dwelling units in the project have severe physical problems.

(I) Unit of general local government

The term "unit of general local government" has the meaning given such term in section 5302(a) of title 42.

(J) Unoccupied

The term "unoccupied" means, with respect to a residential property, that the unit of general local government having jurisdiction over the area in which the project is located has certified in writing that the property is not inhabited.

(12) Regulations

(A) Interim

Not later than 30 days after December 21, 2000, the Secretary shall issue such interim regulations as are necessary to carry out this subsection.

(B) Final

Not later than 60 days after December 21, 2000, the Secretary shall issue such final regulations as are necessary to carry out this subsection.

(Pub. L. 104–204, title II, §204, Sept. 26, 1996, 110 Stat. 2894; Pub. L. 105–65, title II, §213, Oct. 27, 1997, 111 Stat. 1366; Pub. L. 105–276, title II, §206, Oct. 21, 1998, 112 Stat. 2484; Pub. L. 106–74, title V, §537, Oct. 20, 1999, 113 Stat. 1122; Pub. L. 106–377, §1(a)(1) [title II, §204], Oct. 27, 2000, 114 Stat. 1441, 1441A–24; Pub. L. 106–554, §1(a)(7) [title I, §141], Dec. 21, 2000, 114 Stat. 2763, 2763A–614; Pub. L. 109–171, title II, §2003(a), Feb. 8, 2006, 120 Stat. 9.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–171 inserted at end "A grant provided under this subsection during fiscal years 2006 through 2010 shall be available only to the extent that appropriations are made in advance for such purposes and shall not be derived from the General Insurance Fund."

2000—Pub. L. 106–554 substituted "Disposition of HUD-owned properties" for "Flexible authority" in section catchline, designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Pub. L. 106–377 substituted "2000, and thereafter" for "and 2000".

1999—Pub. L. 106–74 substituted "1999, and 2000" for "and 1999" and ", demolition, or construction on the properties (which shall be eligible whether vacant or occupied)" for "or demolition".

1998—Pub. L. 105–276 substituted "fiscal years 1997, 1998, and 1999" for "fiscal years 1997 and 1998".

1997—Pub. L. 105–65 inserted ", including, for fiscal years 1997 and 1998, the provision of grants and loans from the General Insurance Fund (12 U.S.C. 1735c) for the necessary costs of rehabilitation or demolition," after "owned by the Secretary".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 not applicable to any transaction that formally commences within one year prior to Feb. 8, 2006, see section 2003(c) of Pub. L. 109–171, set out as a note under section 1701z–11 of this title.

§1715z–12. Single-family mortgage insurance on Hawaiian home lands

(a) One- to four-family residence; eligibility

The Secretary, subject to such conditions as the Secretary may prescribe, may insure under any provision of this subchapter that authorizes such insurance, a mortgage covering a property upon which there is located a one- to four-family residence, without regard to any limitation in this chapter relating to marketability of title or any other limitation in this chapter that the Secretary determines is contrary to promoting the availability of such insurance on Hawaiian home lands, if—

(1) the mortgage is executed by a native Hawaiian on property located within Hawaiian home lands covered under a homestead lease issued under section 207(a) of the Hawaiian Homes Commission Act, 1920, or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 5);

(2) the property will be used as the principal residence of the mortgagor; and

(3) the Department of Hawaiian Home Lands of the State of Hawaii (A) is a comortgagor; (B) guarantees to reimburse the Secretary for any mortgage insurance claim paid in connection with a property on Hawaiian home lands; or (C) offers other security acceptable to the Secretary.

(b) Construction advances

Notwithstanding any other provision of this chapter, the Secretary may, with respect to mortgages eligible for insurance under subsection (a), insure and make commitments to insure advances made during construction if the Secretary determines that the proposed construction is otherwise acceptable and that no feasible financing alternative is available.

(c) Insurance of mortgage as obligation of General Insurance Fund

Notwithstanding any other provision of this chapter, the insurance of a mortgage using the authority contained in this section shall be the obligation of the Mutual Mortgage Insurance Fund. The mortgagee shall be eligible to receive the benefits of insurance as provided in section 1710 of this title with respect to mortgages insured pursuant to this section, except that all references in section 1710 of this title to section 1709 of this title shall be construed to refer to the section under which the mortgage is insured.

(d) "Native Hawaiian" and "Hawaiian home lands" defined

For purposes of this section:

(1) Native Hawaiian

The term "native Hawaiian" means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands before January 1, 1778, or, in the case of an individual who is awarded an interest in a lease of Hawaiian home lands through transfer or succession, such lower percentage as may be established for such transfer or succession under section 208 or 209 of the Hawaiian Homes Commission Act of 1920 (42 Stat. 111), or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 5).

(2) Hawaiian home lands

The term "Hawaiian home lands" means all lands given the status of Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act of 1920 (42 Stat. 110), or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 5).

(e) Certification of eligibility for existing lessees

Possession of a lease of Hawaiian home lands issued under section 207(a) of the Hawaiian Homes Commission Act of 1920 (42 Stat. 110), shall be sufficient to certify eligibility to receive a mortgage under this section.

(June 27, 1934, ch. 847, title II, §247, as added Pub. L. 98–181, title I [title IV, §421], Nov. 30, 1983, 97 Stat. 1213; amended Pub. L. 100–202, §101(f) [title I, §101], Dec. 22, 1987, 101 Stat. 1329–187, 1329–191; Pub. L. 100–242, title IV, §§413(a), (b), 429(h), Feb. 5, 1988, 101 Stat. 1906, 1919; Pub. L. 100–628, title X, §1065, Nov. 7, 1988, 102 Stat. 3275; Pub. L. 107–73, title II, §215, Nov. 26, 2001, 115 Stat. 677; Pub. L. 110–289, div. B, title I, §2119(a), July 30, 2008, 122 Stat. 2835.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Hawaiian Homes Commission Act, 1920, referred to in subsec. (a)(1), is act July 9, 1921, ch. 42, 42 Stat. 108. The Hawaiian Homes Commission Act of 1920, referred to in subsecs. (d) and (e), probably means the Hawaiian Homes Commission Act, 1920. Sections 204, 207, 208, and 209 of that Act were classified to sections 698, 701, 702, and 703 of Title 48, Territories and Insular Possessions, and were omitted from the Code.

Section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved Mar. 18, 1959 (73 Stat. 5), referred to in subsecs. (a)(1) and (d), is section 4 of Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 5, which is set out as a note preceding section 491 of Title 48.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-289 substituted "Mutual Mortgage Insurance Fund" for "General Insurance Fund established in section 1735c of this title" and struck out "(1) all references in section 1710 of this title to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund; and (2)" after "except that".

2001—Subsec. (d)(1), (2). Pub. L. 107-73, §215(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

"(1) The term 'native Hawaiian' means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands before January 1, 1778 (or, in the case of an individual who succeeds a spouse or parent in an interest in a lease of Hawaiian home lands, such lower percentage as may be established for such succession under section 209 of the Hawaiian Homes Commission Act, 1920, or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled 'An Act to provide for the admission of the State of Hawaii into the Union', approved March 18, 1959 (73 Stat. 5)).

"(2) The term 'Hawaiian home lands' means all lands given the status of Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act, 1920, or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled 'An Act to provide for the admission of the State of Hawaii into the Union', approved March 18, 1959 (73 Stat. 5)."

Subsec. (e). Pub. L. 107-73, §215(2), added subsec. (e).

1988—Subsec. (a)(2). Pub. L. 100-242, §429(h), substituted "mortgagor" for "Mortgagor".

Subsecs. (c), (d). Pub. L. 100-628 clarified amendment by Pub. L. 100-242, §413(a), (b).

Pub. L. 100-242, §413(a), (b), made amendment identical to Pub. L. 100-202. See 1987 Amendment note below.

1987—Subsec. (c). Pub. L. 100-202 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100-202 extended subsec. (c)(1) term "native Hawaiian" to include in the case of succession in an interest in a lease of Hawaiian homelands any descendant of a percentage less than one-half of the blood of the races inhabiting the Hawaiian Islands before Jan. 1, 1778, as may be established under statute or constitution for succession; and redesignated subsec. (c), including such par. (1), as subsec. (d).

§1715z-13. Single family mortgage insurance on Indian reservations

(a) One- to four-family residence; eligibility

The Secretary, subject to such special conditions as the Secretary may prescribe, may insure under any provision of this subchapter that authorizes such insurance, a mortgage covering a property upon which there is located a one- to four-family residence, without regard to any limitation in this chapter relating to marketability of title or any other limitation in this chapter that the Secretary determines is contrary to promoting the availability of such insurance on Indian reservations if the mortgage (1) is executed by an Indian tribe and the property is located on trust or otherwise restricted land; or (2) is executed by a member of an Indian tribe who will use the property as a principal residence and the property is on trust or otherwise restricted land.

(b) Construction advances; percentage limitation on amount of principal obligation; pledge of income from tribal resources or assets

Notwithstanding any other provision of this chapter, with respect to mortgages covering a property

upon which there is located a one- to four-family residence—

(1) the Secretary may insure and make commitments to insure under this subchapter pursuant to this section advances made during construction where the Secretary determines that the proposed construction is otherwise acceptable and meets an applicable tribal or national model building code, and that no feasible financing alternative is available;

(2) the applicable percentage limitation on the amount of the principal obligation of a mortgage based on the appraised value or replacement cost, as appropriate, of a one- to four-family owner-occupied residence contained in this subchapter shall apply in the case of all mortgages insured pursuant to this section without regard to whether the residences are owner-occupied where the residences are owned by the tribe; and

(3)(A) the Secretary may require an Indian tribe, only as a condition of insurance made under this subchapter pursuant to this section, to pledge income from tribal resources or income from tribal assets not subject to a restriction by the Secretary of the Interior or pledge grants under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] or any other Federal grant program administered by the Secretary of Housing and Urban Development to be used to reimburse the Secretary for any mortgage insurance claims paid in connection with residences insured pursuant to this section; or

(B) in the case of an individual Indian mortgagor, the Secretary may require a pledge of his or her share of distributed income from tribal resources or income from tribal assets, excluding any Federal grants received by the tribe.

(c) Lack of tribal or trust fund income

The Secretary may not refuse to insure a mortgage under this section to an individual home purchaser because there is no distributed tribal or trust fund income attributable to that purchaser.

(d) Availability of tribal eviction procedures

Before making any commitment to insure a mortgage under this section with respect to property located on trust or otherwise restricted land, the Secretary shall require a showing by the tribe that it has adopted eviction procedures to be used in the event of a default.

(e) Assumption of mortgage

A mortgage insured under this section may be assumed, subject to credit approval by the lender and the consent of the tribe to an assumption of the existing lease or the grant of a new lease, without an adjustment of the interest rate. Any other sale of a property subject to a mortgage insured under this section may be made only if a new lease is granted, except that a sale following a foreclosure may be accompanied by an assumption of the lease with the consent of the tribe.

(f) Insurance of mortgage as obligation of General Insurance Fund

Notwithstanding any other provision of this chapter, the insurance of a mortgage using the authority contained in this section shall be the obligation of the Mutual Mortgage Insurance Fund. The mortgagee shall be eligible to receive the benefits of insurance as provided in section 1710 of this title with respect to mortgages insured pursuant to this section, except that all references in section 1710 of this title to section 1709 of this title shall be construed to refer to the section under which the mortgage is insured.

(g) Availability of status and payment history of loans; entitlement to benefit of insurance; reinstatement of loan upon cure of default; garnishment proceedings; foreclosure proceedings

(1) The Secretary shall make information regarding the status and payment history of loans insured under this section available to local credit bureaus and prospective creditors. Prior to accepting assignment of a mortgage, the Secretary shall require mortgagees to submit documentation that mortgagors have been counseled in a face-to-face interview, informed of the provisions of this subsection or other available assistance, and provided with the names and addresses of officials of the Department of Housing and Urban Development to whom further communications shall be addressed.

(2) Notwithstanding the requirement for conveyance of title under section 1710 of this title, a mortgagee under this section shall be entitled to receive the benefit of insurance under this section in the case of a mortgage which is more than 90 days in default upon conveyance of the lease agreement and the mortgage documents.

(3) In the event that any default is cured, the Secretary shall seek to reinstate the loan with the mortgagee or another mortgagee. For purposes of this paragraph, the Secretary may provide appropriate financial incentives to reinstate the loan commensurate with sound management of the General Insurance Fund.

(4) If the Secretary determines that a mortgagor is not making a good-faith effort to cure a default, and that trust fund or tribal income is available under subsection (b)(3)(B), the Secretary shall commence proceedings for the garnishment of the mortgagor's distributed share of tribal or trust fund income in order to collect loan payments that are past due. Proceedings under this paragraph may be instituted in a tribal court, court of competent jurisdiction designated by the tribe, or Federal district court.

(5) If the Secretary determines such action is necessary to protect the General Insurance Fund from undue loss, the Secretary may initiate foreclosure proceedings with respect to any mortgage acquired under this subsection. Such proceeding may take place in a tribal court, a court of competent jurisdiction, or Federal district court. Any such court shall have jurisdiction to convey to the Secretary the remaining life of a lease on the real property and to order eviction of the delinquent mortgagor.

(h) Premium charge for insurance; report to Congress

In the administration of this section, the Secretary shall establish a premium charge for insurance that will be sufficient to cover the full costs of the mortgage insurance program under this section, except that such charge may not exceed 3 percent per annum of the principal amount of the mortgage outstanding at any time. Not later than September 30, 1984, the Secretary shall determine and report to the Congress on the feasibility of eliminating any excess amount of the premium under this section over the premium under section 1709 of this title. In the event such premiums are not sufficient to cover the full costs of the mortgage insurance program under this section, the Secretary shall make recommendations to the Congress about changes to the program.

(i) "Indian tribe" and "trust or otherwise restricted land" defined

For purposes of this section:

(1) The term "Indian tribe" means any Indian or Alaska native tribe, band, nation, or other organized group or community of Indians or Alaska natives recognized as eligible for the services provided to Indians or Alaska natives by the Secretary of the Interior because of its status as such an entity, or that was an eligible recipient under chapter 67 of title 31, prior to the repeal of such chapter.

(2) The term "trust or otherwise restricted land" means (A) that area of land, as defined by the Secretary of the Interior, over which an Indian tribe is recognized by the United States as having governmental jurisdiction; (B) land held in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation; or (C) land acquired by Alaska natives under the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] or any other land acquired by Alaska natives pursuant to statute by virtue of their unique status as Alaska natives.

(June 27, 1934, ch. 847, title II, §248, as added Pub. L. 98–181, title I [title IV, §422], Nov. 30, 1983, 97 Stat. 1214; amended Pub. L. 99–272, title XIV, §14001(b)(7), Apr. 7, 1986, 100 Stat. 329; Pub. L. 100–242, title IV, §§413(c), 429(i), Feb. 5, 1988, 101 Stat. 1906, 1919; Pub. L. 110–289, div. B, title I, §2119(b), July 30, 2008, 122 Stat. 2835.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsec. (b)(3)(A), is Pub. L. 93–383,

Aug. 22, 1974, 88 Stat. 633. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§5301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42 and Tables.

Chapter 67 of title 31, referred to in subsec. (i)(1), was repealed by Pub. L. 99-272, title XIV, §14001(a)(1), Apr. 7, 1986, 100 Stat. 327. A new chapter 67 of Title 31, Money and Finance, was added by Pub. L. 103-322, title III, §31001(a), Sept. 13, 1994, 108 Stat. 1859.

The Alaska Native Claims Settlement Act, referred to in subsec. (i)(2), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

2008—Subsec. (f). Pub. L. 110-289 substituted "Mutual Mortgage Insurance Fund" for "General Insurance Fund established in section 1735c of this title" and struck out "(1) all references in section 1710 of this title to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund; and (2)" after "except that".

1988—Subsec. (a)(1). Pub. L. 100-242, §429(i)(1), substituted "land" for "lands".

Subsec. (a)(2). Pub. L. 100-242, §429(i)(2), substituted "on trust or otherwise restricted land" for "on trust lands or otherwise restricted land".

Subsec. (d). Pub. L. 100-242, §429(i)(3), substituted "trust or otherwise restricted land" for "tribal or trust land".

Subsec. (f). Pub. L. 100-242, §413(c)(3), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 100-242, §413(c)(1), (2), redesignated former subsec. (f) as (g) and substituted "General Insurance Fund" for "insurance fund" in pars. (3) and (5). Former subsec. (g) redesignated (h).

Subsecs. (h), (i). Pub. L. 100-242, §413(c)(2), redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

1986—Subsec. (h)(1). Pub. L. 99-272 substituted "was an eligible recipient under chapter 67 of title 31, prior to the repeal of such chapter" for "is an eligible recipient under chapter 67 of title 31".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99-272.

§1715z-13a. Loan guarantees for Indian housing

(a) Authority

To provide access to sources of private financing to Indian families, Indian housing authorities, and Indian tribes, who otherwise could not acquire housing financing because of the unique legal status of Indian lands, the Secretary may guarantee not to exceed 100 percent of the unpaid principal and interest due on any loan eligible under subsection (b) made to an Indian family, Indian housing authority, or Indian tribe.

(b) Eligible loans

Loans guaranteed pursuant to this section shall meet the following requirements:

(1) Eligible borrowers

The loans shall be made only to borrowers who are Indian families, Indian housing authorities, or Indian tribes.

(2) Eligible housing

The loan shall be used to construct, acquire, refinance, or rehabilitate 1- to 4-family dwellings that are standard housing and are located on trust land or land located in an Indian or Alaska Native area.

(3) Security

The loan may be secured by any collateral authorized under existing Federal law or applicable

State or tribal law.

(4) Lenders

The loan shall be made only by a lender approved by and meeting qualifications established by the Secretary, except that loans otherwise insured or guaranteed by an agency of the Federal Government or made by an organization of Indians from amounts borrowed from the United States shall not be eligible for guarantee under this section. The following lenders are deemed to be approved under this paragraph:

(A) Any mortgagee approved by the Secretary of Housing and Urban Development for participation in the single family mortgage insurance program under title II of the National Housing Act [12 U.S.C. 1707 et seq.].

(B) Any lender whose housing loans under chapter 37 of title 38 are automatically guaranteed pursuant to section 1802(d) ¹ of such title.

(C) Any lender approved by the Secretary of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949 [42 U.S.C. 1441 et seq.].

(D) Any other lender that is supervised, approved, regulated, or insured by any agency of the Federal Government.

(5) Terms

The loan shall—

(A) be made for a term not exceeding 30 years;

(B) bear interest (exclusive of the guarantee fee under section 404 ² and service charges, if any) at a rate agreed upon by the borrower and the lender and determined by the Secretary to be reasonable, which may not exceed the rate generally charged in the area (as determined by the Secretary) for home mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal Government;

(C) involve a principal obligation not exceeding—

(i) 97.75 percent of the appraised value of the property as of the date the loan is accepted for guarantee (or 98.75 percent if the value of the property is \$50,000 or less); and

(ii) the amount approved by the Secretary under this section; and

(D) involve a payment on account of the property (i) in cash or its equivalent, or (ii) through the value of any improvements to the property made through the skilled or unskilled labor of the borrower, as the Secretary shall provide.

(c) Certificate of guarantee

(1) Approval process

Before the Secretary approves any loan for guarantee under this section, the lender shall submit the application for the loan to the Secretary for examination. If the Secretary approves the loan for guarantee, the Secretary shall issue a certificate under this paragraph as evidence of the guarantee.

(2) Standard for approval

The Secretary may approve a loan for guarantee under this section and issue a certificate under this paragraph only if the Secretary determines there is a reasonable prospect of repayment of the loan.

(3) Effect

A certificate of guarantee issued under this paragraph by the Secretary shall be conclusive evidence of the eligibility of the loan for guarantee under the provisions of this section and the amount of such guarantee. Such evidence shall be incontestable in the hands of the bearer and the full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Secretary as security for such obligations.

(4) Fraud and misrepresentation

This subsection may not be construed to preclude the Secretary from establishing defenses

against the original lender based on fraud or material misrepresentation or to bar the Secretary from establishing by regulations in effect on the date of issuance or disbursement, whichever is earlier, partial defenses to the amount payable on the guarantee.

(5) Trailing documents

(A) In general

The Secretary may issue a certificate of guarantee under this subsection for a loan involving a security interest in Indian trust land before the Secretary receives the trailing documents required by the Secretary from the Bureau of Indian Affairs, including the final certified title status report showing the recordation by the Bureau of Indian Affairs of the mortgage relating to the loan, if the originating lender agrees to indemnify the Secretary for any losses that may result when—

- (i) a claim payment is presented to the Secretary due to the default of the borrower on the loan; and
- (ii) the required trailing documents are outstanding.

(B) Termination of indemnification agreement

An indemnification agreement between an originating lender and the Secretary described in subparagraph (A) shall only terminate upon receipt by the Secretary of the trailing documents described in that subparagraph in a form and manner that is acceptable to the Secretary.

(C) Rule of construction

Nothing in this paragraph shall be construed as authorizing the Bureau of Indian Affairs to delay the issuance of a final certified title status report and recorded mortgage relating to a loan closed on Indian trust land.

(d) Guarantee fee

The Secretary shall establish and collect, at the time of issuance of the guarantee, a fee for the guarantee of loans under this section, in an amount not exceeding 3 percent of the principal obligation of the loan. The Secretary may also establish and collect annual premium payments in an amount not exceeding 1 percent of the remaining guaranteed balance (excluding the portion of the remaining balance attributable to the fee collected at the time of issuance of the guarantee). The Secretary shall establish the amount of the fees and premiums by publishing a notice in the Federal Register. The Secretary shall deposit any fees and premiums collected under this subsection in the Indian Housing Loan Guarantee Fund established under subsection (i).

(e) Liability under guarantee

The liability under a guarantee provided under this section shall decrease or increase on a pro rata basis according to any decrease or increase in the amount of the unpaid obligation under the provisions of the loan agreement.

(f) Transfer and assumption

Notwithstanding any other provision of law, any loan guaranteed under this section, including the security given for the loan, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the Federal Government or of any State or the District of Columbia.

(g) Disqualification of lenders and civil money penalties

(1) In general

If the Secretary determines that any lender or holder of a guarantee certificate under subsection (c) has failed to maintain adequate accounting records, to adequately service loans guaranteed under this section, to exercise proper credit or underwriting judgment, or has engaged in practices otherwise detrimental to the interest of a borrower or the United States, the Secretary may—

- (A) refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder;

(B) bar such lender or holder from acquiring additional loans guaranteed under this section; and

(C) require that such lender or holder assume not less than 10 percent of any loss on further loans made or held by the lender or holder that are guaranteed under this section.

(2) Civil money penalties for intentional violations

If the Secretary determines that any lender or holder of a guarantee certificate under subsection (c) has intentionally failed to maintain adequate accounting records, to adequately service loans guaranteed under this section, or to exercise proper credit or underwriting judgment, the Secretary may impose a civil money penalty on such lender or holder in the manner and amount provided under section 536 of the National Housing Act [12 U.S.C. 1735f-14] with respect to mortgagees and lenders under such Act.

(3) Payment on loans made in good faith

Notwithstanding paragraphs (1) and (2), the Secretary may not refuse to pay pursuant to a valid guarantee on loans of a lender or holder barred under this subsection if the loans were previously made in good faith.

(h) Payment under guarantee

(1) Lender options

(A) In general

In the event of default by the borrower on a loan guaranteed under this section, the holder of the guarantee certificate shall provide written notice of the default to the Secretary. Upon providing such notice, the holder of the guarantee certificate shall be entitled to payment under the guarantee (subject to the provisions of this section) and may proceed to obtain payment in one of the following manners:

(i) Foreclosure

The holder of the certificate may initiate foreclosure proceedings (after providing written notice of such action to the Secretary) and upon a final order by the court authorizing foreclosure and submission to the Secretary of a claim for payment under the guarantee, the Secretary shall pay to the holder of the certificate the pro rata portion of the amount guaranteed (as determined pursuant to subsection (e)) plus reasonable fees and expenses as approved by the Secretary. The Secretary shall be subrogated to the rights of the holder of the guarantee and the lender holder shall assign the obligation and security to the Secretary.

(ii) No foreclosure

Without seeking foreclosure (or in any case in which a foreclosure proceeding initiated under clause (i) continues for a period in excess of 1 year), the holder of the guarantee may submit to the Secretary a request to assign the obligation and security interest to the Secretary in return for payment of the claim under the guarantee. The Secretary may accept assignment of the loan if the Secretary determines that the assignment is in the best interests of the United States. Upon assignment, the Secretary shall pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined under subsection (e)). The Secretary shall be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Secretary.

(B) Requirements

Before any payment under a guarantee is made under subparagraph (A), the holder of the guarantee shall exhaust all reasonable possibilities of collection. Exhausting all reasonable possibilities of collection by the holder of the guarantee shall include a good faith consideration of loan modification as well as meeting standards for servicing loans in default, as determined by the Secretary. Upon payment, in whole or in part, to the holder, the note or judgment

evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States. The Secretary shall then take such action to collect as the Secretary determines appropriate.

(2) Limitations on liquidation

In the event of a default by the borrower on a loan guaranteed under this section involving a security interest in restricted Indian land, the mortgagee or the Secretary shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe or tribes. If the mortgagee or the Secretary subsequently proceeds to liquidate the account, the mortgagee or the Secretary shall not sell, transfer, or otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

(i) Indian Housing Loan Guarantee Fund

(1) Establishment

There is established in the Treasury of the United States the Indian Housing Loan Guarantee Fund for the purpose of providing loan guarantees under this section.

(2) Credits

The Guarantee Fund shall be credited with—

- (A) any amounts, claims, notes, mortgages, contracts, and property acquired by the Secretary under this section, and any collections and proceeds therefrom;
- (B) any amounts appropriated under paragraph (7);
- (C) any guarantee fees collected under subsection (d); and
- (D) any interest or earnings on amounts invested under paragraph (4).

(3) Use

Amounts in the Guarantee Fund shall be available, to the extent provided in appropriation Acts, for—

- (A) fulfilling any obligations of the Secretary with respect to loans guaranteed under this section, including the costs (as such term is defined in section 661a of title 2) of such loans;
- (B) paying taxes, insurance, prior liens, expenses necessary to make fiscal adjustment in connection with the application and transmittal of collections, and other expenses and advances to protect the Secretary for loans which are guaranteed under this section or held by the Secretary;
- (C) acquiring such security property at foreclosure sales or otherwise;
- (D) paying administrative expenses in connection with this section; and
- (E) reasonable and necessary costs of rehabilitation and repair to properties that the Secretary holds or owns pursuant to this section.

(4) Investment

Any amounts in the Guarantee Fund determined by the Secretary to be in excess of amounts currently required to carry out this section may be invested in obligations of the United States.

(5) Limitation on commitments to guarantee loans and mortgages

(A) Requirement of appropriations

The authority of the Secretary to enter into commitments to guarantee loans under this section shall be effective for any fiscal year to the extent or in such amounts as are or have been provided in appropriations Acts, without regard to the fiscal year for which such amounts were appropriated.

(B) Limitations on costs of guarantees

The authority of the Secretary to enter into commitments to guarantee loans under this section shall be effective for any fiscal year only to the extent that amounts in the Guarantee Fund are or have been made available in appropriation Acts to cover the costs (as such term is defined in

section 661a of title 2) of such loan guarantees for such fiscal year. Any amounts appropriated pursuant to this subparagraph shall remain available until expended.

(C) Limitation on outstanding aggregate principal amount

Subject to the limitations in subparagraphs (A) and (B), the Secretary may enter into commitments to guarantee loans under this section in each of fiscal years 2008 through 2012 with an aggregate outstanding principal amount not exceeding such amount as may be provided in appropriation Acts for such fiscal year.

(6) Liabilities

All liabilities and obligations of the assets credited to the Guarantee Fund under paragraph (2)(A) shall be liabilities and obligations of the Guarantee Fund.

(7) Authorization of appropriations

There are authorized to be appropriated to the Guarantee Fund to carry out this section such sums as may be necessary for each of fiscal years 2008 through 2012.

(j) Requirements for standard housing

The Secretary shall, by regulation, establish housing safety and quality standards for use under this section. Such standards shall provide sufficient flexibility to permit the use of various designs and materials in housing acquired with loans guaranteed under this section. The standards shall require each dwelling unit in any housing so acquired to—

- (1) be decent, safe, sanitary, and modest in size and design;
- (2) conform with applicable general construction standards for the region;
- (3) contain a heating system that—
 - (A) has the capacity to maintain a minimum temperature in the dwelling of 65 degrees Fahrenheit during the coldest weather in the area;
 - (B) is safe to operate and maintain;
 - (C) delivers a uniform distribution of heat; and
 - (D) conforms to any applicable tribal heating code or, if there is no applicable tribal code, an appropriate county, State, or National code;
- (4) contain a plumbing system that—
 - (A) uses a properly installed system of piping;
 - (B) includes a kitchen sink and a partitioned bathroom with lavatory, toilet, and bath or shower; and
 - (C) uses water supply, plumbing, and sewage disposal systems that conform to any applicable tribal code or, if there is no applicable tribal code, the minimum standards established by the applicable county or State;
- (5) contain an electrical system using wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any applicable tribal code or, if there is no applicable tribal code, an appropriate county, State, or National code;
- (6) be not less than—
 - (A)(i) 570 square feet in size, if designed for a family of not more than 4 persons;
 - (ii) 850 square feet in size, if designed for a family of not less than 5 and not more than 7 persons; and
 - (iii) 1020 square feet in size, if designed for a family of not less than 8 persons, or
 - (B) the size provided under the applicable locally adopted standards for size of dwelling units;

except that the Secretary, upon the request of a tribe or Indian housing authority, may waive the size requirements under this paragraph; and

- (7) conform with the energy performance requirements for new construction established by the

Secretary under section 526(a) of the National Housing Act [12 U.S.C. 1735f-4(a)].

(k) Environmental review

For purposes of environmental,³ review, decisionmaking, and action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any other law that furthers the purposes of that Act, a loan guarantee under this section shall—

(1) be treated as a grant under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.); and

(2) be subject to the regulations promulgated by the Secretary to carry out section 105 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4115).

(l) Definitions

For purposes of this section:

(1) The term "family" means 1 or more persons maintaining a household, as the Secretary shall by regulation provide.

(2) The term "Guarantee Fund" means the Indian Housing Loan Guarantee Fund established under subsection (i).

(3) The term "Indian" means person recognized as being Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

(4) The term "Indian area" means the area within which an Indian housing authority or Indian tribe is authorized to provide housing.

(5) The term "Indian housing authority" means any entity that—

(A) is authorized to engage in or assist in the development or operation of—

(i) low-income housing for Indians; or

(ii) housing subject to the provisions of this section; and

(B) is established—

(i) by exercise of the power of self-government of an Indian tribe independent of State law; or

(ii) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

The term includes tribally designated housing entities under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.].

(6) The term "Secretary" means the Secretary of Housing and Urban Development.

(7) The term "standard housing" means a dwelling unit or housing that complies with the requirements established under subsection (j).

(8) **TRIBE; INDIAN TRIBE.**—The term "tribe" or "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975 [25 U.S.C. 5301 et seq.].

(9) The term "trust land" means land title to which is held by the United States for the benefit of an Indian or Indian tribe or title to which is held by an Indian tribe subject to a restriction against alienation imposed by the United States.

(Pub. L. 102-550, title I, §184, Oct. 28, 1992, 106 Stat. 3739; Pub. L. 104-330, title VII, §701(a)-(j), Oct. 26, 1996, 110 Stat. 4048-4050; Pub. L. 105-276, title V, §595(e)(11)-(13), Oct. 21, 1998, 112 Stat. 2658; Pub. L. 106-377, §1(a)(1) [title II, §227], Oct. 27, 2000, 114 Stat. 1441, 1441A-30; Pub. L. 106-568, title X, §1002, Dec. 27, 2000, 114 Stat. 2925; Pub. L. 106-569, title V, §502, Dec. 27, 2000, 114 Stat. 2961; Pub. L. 107-292, §2(d), Nov. 13, 2002, 116 Stat. 2053; Pub. L. 110-37, §2, June 18, 2007, 121 Stat. 229; Pub. L. 113-6, div. F, title VIII, §1806, Mar. 26, 2013, 127 Stat. 433; Pub. L. 113-235, div. K, title II, §241, Dec. 16, 2014, 128 Stat. 2759; Pub. L. 116-260, div. Q, title I, §105(b), Dec. 27, 2020, 134 Stat. 2171.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b)(4)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246. Title II of the Act is classified generally to subchapter II (§1707 et seq.) of this chapter. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing Act of 1949, referred to in subsec. (b)(4)(C), is act July 15, 1949, ch. 338, 63 Stat. 413, which is classified principally to chapter 8A (§1441 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (k), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsecs. (k)(1) and (l)(5), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, which is classified principally to chapter 43 (§4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (l)(8), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (l)(8), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to chapter 46 (§5301 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 25 and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1992, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

2020—Subsec. (c)(5). Pub. L. 116–260 added par. (5).

2014—Subsec. (h)(1)(B). Pub. L. 113–235 inserted after first sentence "Exhausting all reasonable possibilities of collection by the holder of the guarantee shall include a good faith consideration of loan modification as well as meeting standards for servicing loans in default, as determined by the Secretary."

2013—Subsec. (d). Pub. L. 113–6 amended subsec. (d) generally. Prior to amendment, text read as follows: "The Secretary shall fix and collect a guarantee fee for the guarantee of loans under this section, which may not exceed the amount equal to 1 percent of the principal obligation of the loan. The fee shall be paid by the lender at time of issuance of the guarantee and shall be adequate, in the determination of the Secretary, to cover expenses and probable losses. The Secretary shall deposit any fees collected under this subsection in the Indian Housing Loan Guarantee Fund established under subsection (i) of this section."

2007—Subsec. (i)(5)(C), (7). Pub. L. 110–37 substituted "fiscal years 2008 through 2012" for "fiscal years 1997 through 2007".

2002—Subsec. (i)(5)(C), (7). Pub. L. 107–292 substituted "each of fiscal years 1997 through 2007" for "each fiscal year".

2000—Subsec. (a). Pub. L. 106–377, §1(a)(1) [title II, §227(1)], struck out "or as a result of a lack of access to private financial markets" after "legal status of Indian lands".

Subsec. (b)(2). Pub. L. 106–377, §1(a)(1) [title II, §227(2)], inserted "refinance," after "acquire,".

Subsec. (i)(5)(C). Pub. L. 106–568, §1002(1), and Pub. L. 106–569, §502(1), amended par. (5) identically, adding subpar. (C) and striking out heading and text of former subpar. (C). Text read as follows: "Subject to the limitations in subparagraphs (A) and (B), the Secretary may enter into commitments to guarantee loans under this section in each of fiscal years 1997, 1998, 1999, 2000, and 2001 with an aggregate outstanding principal amount not exceeding \$400,000,000 for each such fiscal year."

Subsec. (i)(7). Pub. L. 106–568, §1002(2), and Pub. L. 106–569, §502(2), amended par. (7) identically, substituting "each fiscal year" for "each of fiscal years 1997, 1998, 1999, 2000, and 2001".

1998—Subsec. (b)(2). Pub. L. 105–276, §595(e)(11), struck out before period at end "that is under the jurisdiction of an Indian tribe for which an Indian housing plan has been submitted and approved pursuant to

sections 102 and 103 of the Native American Housing Assistance and Self-Determination Act of 1996 that provides for the use of loan guarantees under this section to provide affordable homeownership housing in such areas."

Subsec. (i)(5)(C). Pub. L. 105-276, §595(e)(12), substituted "not" for "note".

Subsecs. (k), (l). Pub. L. 105-276, §595(e)(13), added subsec. (k) and redesignated former subsec. (k) as (l).

1996—Subsec. (a). Pub. L. 104-330, §701(a)(1), (b), substituted ", Indian housing authorities, and Indian tribes," for "and Indian housing authorities", "lands or as a result of a lack of access to private financial markets" for "trust land", and ", Indian housing authority, or Indian tribe" for "or Indian housing authority".

Subsec. (b)(1). Pub. L. 104-330, §701(a)(2), substituted ", Indian housing authorities, or Indian tribes" for "or Indian housing authorities".

Subsec. (b)(2). Pub. L. 104-330, §701(c), inserted before period at end "that is under the jurisdiction of an Indian tribe for which an Indian housing plan has been submitted and approved pursuant to sections 102 and 103 of the Native American Housing Assistance and Self-Determination Act of 1996 that provides for the use of loan guarantees under this section to provide affordable homeownership housing in such areas".

Subsec. (b)(5)(C)(i). Pub. L. 104-330, §701(i), added cl. (i) and struck out former cl. (i) which read as follows: "an amount equal to the sum of (I) 97 percent of \$25,000 of the appraised value of the property, as of the date the loan is accepted for guarantee, and (II) 95 percent of such value in excess of \$25,000; and".

Subsec. (h)(1)(A)(i). Pub. L. 104-330, §701(d)(1)(A), struck out "in a court of competent jurisdiction" after "foreclosure proceedings" in first sentence.

Subsec. (h)(1)(A)(ii). Pub. L. 104-330, §701(d)(1)(B), added cl. (ii) and struck out heading and text of former cl. (ii). Text read as follows: "Without seeking a judicial foreclosure (or in any case in which a foreclosure proceeding initiated under clause (i) continues for a period in excess of 1 year), the holder of the guarantee may submit to the Secretary a claim for payment under the guarantee and the Secretary shall only pay to such holder for a loss on any single loan an amount equal to 90 percent of the pro rata portion of the amount guaranteed (as determined under subsection (e) of this section). The Secretary shall be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Secretary."

Subsec. (h)(2), (3). Pub. L. 104-330, §701(d)(2), (3), (e), redesignated par. (3) as (2), in first sentence substituted "restricted Indian land, the mortgagee or" for "tribal allotted or trust land," in second sentence substituted "mortgagee or the Secretary" for "Secretary" in two places, and struck out heading and text of former par. (2). Text read as follows: "Notwithstanding paragraph (1), upon receiving notice of default on a loan guaranteed under this section from the holder of the guarantee, the Secretary may accept assignment of the loan if the Secretary determines that the assignment is in the best interests of the United States. Upon assignment the Secretary shall pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined under subsection (e) of this section). The Secretary shall be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Secretary."

Subsec. (i)(5)(A). Pub. L. 104-330, §701(j)(1), added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: "The authority of the Secretary to enter into commitments to guarantee loans under this section shall be effective for any fiscal year only to the extent or in such amounts as are or have been provided in appropriations Acts for such fiscal year."

Subsec. (i)(5)(B). Pub. L. 104-330, §701(j)(2), inserted at end "Any amounts appropriated pursuant to this subparagraph shall remain available until expended."

Subsec. (i)(5)(C). Pub. L. 104-330, §701(f), substituted "1997, 1998, 1999, 2000, and 2001 with an aggregate outstanding principal amount not exceeding \$400,000,000 for each such fiscal year" for "1993 and 1994 with an aggregate outstanding principal amount not exceeding such amount as may be provided in appropriation Acts for each such year".

Subsec. (i)(7). Pub. L. 104-330, §701(g), substituted "such sums as may be necessary for each of fiscal years 1997, 1998, 1999, 2000, and 2001" for "such sums as may be necessary for fiscal year 1993 and \$50,000,000 for fiscal year 1994".

Subsec. (k)(4). Pub. L. 104-330, §701(h)(1), inserted "or Indian tribe" after "authority".

Subsec. (k)(5). Pub. L. 104-330, §701(h)(2), inserted concluding provisions, added subpar. (A), and struck out former subpar. (A) which read as follows: "is authorized to engage in or assist in the development or operation of low-income housing for Indians; and".

Subsec. (k)(8). Pub. L. 104-330, §701(h)(3), added par. (8) and struck out former par. (8) which read as follows: "The term 'tribe' means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, §595(f), Oct. 21, 1998, 112 Stat. 2659, provided that: "The amendments made by this section [enacting section 4168 of Title 25, Indians, amending this section, sections 4103, 4111 to 4113, 4131, 4135 to 4139 of Title 25, and sections 1437e and 12899h–1 of Title 42, The Public Health and Welfare, and repealing provisions set out as a note under section 1437 of Title 42] are made and shall apply beginning upon the date of the enactment of this Act [Oct. 21, 1998]."

FINDINGS RELATED TO IMPROVEMENTS TO LOAN GUARANTEES FOR INDIAN HOUSING

Pub. L. 116–260, div. Q, title I, §105(a), Dec. 27, 2020, 134 Stat. 2170, provided that: "Congress finds that—

"(1) the extended timelines for approving lenders' applications to participate in the program established under section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a) are unacceptably long;

"(2) those extended timelines inhibit the ability of lenders to provide needed mortgage loans on Native American reservations; and

"(3) it can take a significant amount of time for certain Bureau of Indian Affairs Land Title and Records Offices to issue final certified title status reports for mortgages issued on Indian trust land under section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a), which delays the guarantee of the loan by the Department of Housing and Urban Development."

REPORTS ON ACCELERATION OF PROCESSING

Pub. L. 116–260, div. Q, title I, §105(c), Dec. 27, 2020, 134 Stat. 2171, provided that: "The Secretary of Housing and Urban Development shall—

"(1) report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Indian Affairs of the Senate and the Committee on Financial Services and the Committee on Natural Resources of the House of Representatives on a semi-annual basis on the progress that the Secretary is making to accelerate the processing of loan applications on fee simple and Indian trust land under section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a); and

"(2) if there is no improvement in accelerating those processing timelines, submit to the committees described in paragraph (1) a report explaining the lack of improvement."

¹ *So in original. Probably should be section "3702(d)".*

² *So in original. Probably should be "subsection (d)".*

³ *So in original. The comma probably should not appear.*

§1715z–13b. Loan guarantees for Native Hawaiian housing

(a) Definitions

In this section:

(1) Department of Hawaiian Home Lands

The term "Department of Hawaiian Home Lands" means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.).

(2) Eligible entity

The term "eligible entity" means a Native Hawaiian family, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and private nonprofit or private for-profit organizations experienced in the planning and development of affordable housing for Native Hawaiians.

(3) Family

The term "family" means one or more persons maintaining a household, as the Secretary shall

by regulation provide.

(4) Guarantee Fund

The term "Guarantee Fund" means the Native Hawaiian Housing Loan Guarantee Fund established under subsection (j).

(5) Hawaiian Home Lands

The term "Hawaiian Home Lands" means lands that—

- (A) have the status of Hawaiian Home Lands under section 204 of the Hawaiian Homes Commission Act (42 Stat. 110); or
- (B) are acquired pursuant to that Act.

(6) Native Hawaiian

The term "Native Hawaiian" means any individual who is—

- (A) a citizen of the United States; and
- (B) a descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by—
 - (i) genealogical records;
 - (ii) verification by kupuna (elders) or kama'aina (long-term community residents); or
 - (iii) birth records of the State of Hawaii.

(7) Office of Hawaiian Affairs

The term "Office of Hawaiian Affairs" means the entity of that name established under the constitution of the State of Hawaii.

(b) Authority

To provide access to sources of private financing to Native Hawaiian families who otherwise could not acquire housing financing because of the unique legal status of the Hawaiian Home Lands or as a result of a lack of access to private financial markets, the Secretary may guarantee an amount not to exceed 100 percent of the unpaid principal and interest that is due on an eligible loan under subsection (c).

(c) Eligible loans

Under this section, a loan is an eligible loan if that loan meets the following requirements:

(1) Eligible borrowers

The loan is made only to a borrower who is—

- (A) a Native Hawaiian family;
- (B) the Department of Hawaiian Home Lands;
- (C) the Office of Hawaiian Affairs; or
- (D) a private nonprofit organization experienced in the planning and development of affordable housing for Native Hawaiians.

(2) Eligible housing

(A) In general

The loan will be used to construct, acquire, or rehabilitate not more than 4-family dwellings that are standard housing and are located on Hawaiian Home Lands for which a housing plan described in subparagraph (B) applies.

(B) Housing plan

A housing plan described in this subparagraph is a housing plan that—

- (i) has been submitted and approved by the Secretary under section 4223 of title 25; and
- (ii) provides for the use of loan guarantees under this section to provide affordable homeownership housing on Hawaiian Home Lands.

(3) Security

The loan may be secured by any collateral authorized under applicable Federal or State law.

(4) Lenders

(A) In general

The loan shall be made only by a lender approved by, and meeting qualifications established by, the Secretary, including any lender described in subparagraph (B), except that a loan otherwise insured or guaranteed by an agency of the Federal Government or made by the Department of Hawaiian Home Lands from amounts borrowed from the United States shall not be eligible for a guarantee under this section.

(B) Approval

The following lenders shall be considered to be lenders that have been approved by the Secretary:

- (i) Any mortgagee approved by the Secretary for participation in the single family mortgage insurance program under title II of the National Housing Act [12 U.S.C. 1707 et seq.].
- (ii) Any lender that makes housing loans under chapter 37 of title 38 that are automatically guaranteed under section 3702(d) of title 38.
- (iii) Any lender approved by the Secretary of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949 [42 U.S.C. 1441 et seq.].
- (iv) Any other lender that is supervised, approved, regulated, or insured by any agency of the Federal Government.

(5) Terms

The loan shall—

- (A) be made for a term not exceeding 30 years;
- (B) bear interest (exclusive of the guarantee fee under subsection (e) and service charges, if any) at a rate agreed upon by the borrower and the lender and determined by the Secretary to be reasonable, but not to exceed the rate generally charged in the area (as determined by the Secretary) for home mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal Government;
- (C) involve a principal obligation not exceeding—
 - (i) 97.75 percent of the appraised value of the property as of the date the loan is accepted for guarantee (or 98.75 percent if the value of the property is \$50,000 or less); or
 - (ii) the amount approved by the Secretary under this section; and
- (D) involve a payment on account of the property—
 - (i) in cash or its equivalent; or
 - (ii) through the value of any improvements to the property made through the skilled or unskilled labor of the borrower, as the Secretary shall provide.

(d) Certificate of guarantee

(1) Approval process

(A) In general

Before the Secretary approves any loan for guarantee under this section, the lender shall submit the application for the loan to the Secretary for examination.

(B) Approval

If the Secretary approves the application submitted under subparagraph (A), the Secretary shall issue a certificate under this subsection as evidence of the loan guarantee approved.

(2) Standard for approval

The Secretary may approve a loan for guarantee under this section and issue a certificate under this subsection only if the Secretary determines that there is a reasonable prospect of repayment of the loan.

(3) Effect

(A) In general

A certificate of guarantee issued under this subsection by the Secretary shall be conclusive evidence of the eligibility of the loan for guarantee under this section and the amount of that guarantee.

(B) Evidence

The evidence referred to in subparagraph (A) shall be incontestable in the hands of the bearer.

(C) Full faith and credit

The full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Secretary as security for the obligations made by the Secretary under this section.

(4) Fraud and misrepresentation

This subsection may not be construed—

(A) to preclude the Secretary from establishing defenses against the original lender based on fraud or material misrepresentation; or

(B) to bar the Secretary from establishing by regulations that are on the date of issuance or disbursement, whichever is earlier, partial defenses to the amount payable on the guarantee.

(e) Guarantee fee

(1) In general

The Secretary shall fix and collect a guarantee fee for the guarantee of a loan under this section, which may not exceed the amount equal to 1 percent of the principal obligation of the loan.

(2) Payment

The fee under this subsection shall—

(A) be paid by the lender at time of issuance of the guarantee; and

(B) be adequate, in the determination of the Secretary, to cover expenses and probable losses.

(3) Deposit

The Secretary shall deposit any fees collected under this subsection in the Native Hawaiian Housing Loan Guarantee Fund established under subsection (j).

(f) Liability under guarantee

The liability under a guarantee provided under this section shall decrease or increase on a pro rata basis according to any decrease or increase in the amount of the unpaid obligation under the provisions of the loan agreement involved.

(g) Transfer and assumption

Notwithstanding any other provision of law, any loan guaranteed under this section, including the security given for the loan, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the Federal Government or of any State or the District of Columbia.

(h) Disqualification of lenders and civil money penalties

(1) In general

(A) Grounds for action

The Secretary may take action under subparagraph (B) if the Secretary determines that any lender or holder of a guarantee certificate under subsection (d)—

(i) has failed—

(I) to maintain adequate accounting records;

(II) to service adequately loans guaranteed under this section; or

(III) to exercise proper credit or underwriting judgment; or

(ii) has engaged in practices otherwise detrimental to the interest of a borrower or the United States.

(B) Actions

Upon a determination by the Secretary that a holder of a guarantee certificate under subsection (d) has failed to carry out an activity described in subparagraph (A)(i) or has engaged in practices described in subparagraph (A)(ii), the Secretary may—

(i) refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder;

(ii) bar such lender or holder from acquiring additional loans guaranteed under this section; and

(iii) require that such lender or holder assume not less than 10 percent of any loss on further loans made or held by the lender or holder that are guaranteed under this section.

(2) Civil money penalties for intentional violations

(A) In general

The Secretary may impose a civil monetary penalty on a lender or holder of a guarantee certificate under subsection (d) if the Secretary determines that the holder or lender has intentionally failed—

(i) to maintain adequate accounting records;

(ii) to adequately service loans guaranteed under this section; or

(iii) to exercise proper credit or underwriting judgment.

(B) Penalties

A civil monetary penalty imposed under this paragraph shall be imposed in the manner and be in an amount provided under section 536 of the National Housing Act [12 U.S.C. 1735f–14] with respect to mortgagees and lenders under that Act.

(3) Payment on loans made in good faith

Notwithstanding paragraphs (1) and (2), if a loan was made in good faith, the Secretary may not refuse to pay a lender or holder of a valid guarantee on that loan, without regard to whether the lender or holder is barred under this subsection.

(i) Payment under guarantee

(1) Lender options

(A) In general

(i) Notification

If a borrower on a loan guaranteed under this section defaults on the loan, the holder of the guarantee certificate shall provide written notice of the default to the Secretary.

(ii) Payment

Upon providing the notice required under clause (i), the holder of the guarantee certificate shall be entitled to payment under the guarantee (subject to the provisions of this section) and may proceed to obtain payment in one of the following manners:

(I) Foreclosure

(aa) In general

The holder of the certificate may initiate foreclosure proceedings (after providing written notice of that action to the Secretary).

(bb) Payment

Upon a final order by the court authorizing foreclosure and submission to the Secretary of a claim for payment under the guarantee, the Secretary shall pay to the

holder of the certificate the pro rata portion of the amount guaranteed (as determined pursuant to subsection (f)) plus reasonable fees and expenses as approved by the Secretary.

(cc) Subrogation

The rights of the Secretary shall be subrogated to the rights of the holder of the guarantee. The holder shall assign the obligation and security to the Secretary.

(II) No foreclosure

(aa) In general

Without seeking foreclosure (or in any case in which a foreclosure proceeding initiated under clause (i) continues for a period in excess of 1 year), the holder of the guarantee may submit to the Secretary a request to assign the obligation and security interest to the Secretary in return for payment of the claim under the guarantee. The Secretary may accept assignment of the loan if the Secretary determines that the assignment is in the best interest of the United States.

(bb) Payment

Upon assignment, the Secretary shall pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined under subsection (f)).

(cc) Subrogation

The rights of the Secretary shall be subrogated to the rights of the holder of the guarantee. The holder shall assign the obligation and security to the Secretary.

(B) Requirements

Before any payment under a guarantee is made under subparagraph (A), the holder of the guarantee shall exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note or judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States. The Secretary shall then take such action to collect as the Secretary determines to be appropriate.

(2) Limitations on liquidation

(A) In general

If a borrower defaults on a loan guaranteed under this section that involves a security interest in restricted Hawaiian Home Land property, the mortgagee or the Secretary shall only pursue liquidation after offering to transfer the account to another eligible Hawaiian family or the Department of Hawaiian Home Lands.

(B) Limitation

If, after action is taken under subparagraph (A), the mortgagee or the Secretary subsequently proceeds to liquidate the account, the mortgagee or the Secretary shall not sell, transfer, or otherwise dispose of or alienate the property described in subparagraph (A) except to another eligible Hawaiian family or to the Department of Hawaiian Home Lands.

(j) Hawaiian Housing Loan Guarantee Fund

(1) Establishment

There is established in the Treasury of the United States the Hawaiian Housing Loan Guarantee Fund for the purpose of providing loan guarantees under this section.

(2) Credits

The Guarantee Fund shall be credited with—

(A) any amount, claims, notes, mortgages, contracts, and property acquired by the Secretary under this section, and any collections and proceeds therefrom;

(B) any amounts appropriated pursuant to paragraph (7);

(C) any guarantee fees collected under subsection (e); and

(D) any interest or earnings on amounts invested under paragraph (4).

(3) Use

Amounts in the Guarantee Fund shall be available, to the extent provided in appropriations Acts, for—

(A) fulfilling any obligations of the Secretary with respect to loans guaranteed under this section, including the costs (as that term is defined in section 661a of title 2) of such loans;

(B) paying taxes, insurance, prior liens, expenses necessary to make fiscal adjustment in connection with the application and transmittal of collections, and other expenses and advances to protect the Secretary for loans which are guaranteed under this section or held by the Secretary;

(C) acquiring such security property at foreclosure sales or otherwise;

(D) paying administrative expenses in connection with this section; and

(E) reasonable and necessary costs of rehabilitation and repair to properties that the Secretary holds or owns pursuant to this section.

(4) Investment

Any amounts in the Guarantee Fund determined by the Secretary to be in excess of amounts currently required at the time of the determination to carry out this section may be invested in obligations of the United States.

(5) Limitation on commitments to guarantee loans and mortgages

(A) Requirement of appropriations

The authority of the Secretary to enter into commitments to guarantee loans under this section shall be effective for any fiscal year to the extent, or in such amounts as are, or have been, provided in appropriations Acts, without regard to the fiscal year for which such amounts were appropriated.

(B) Limitations on costs of guarantees

The authority of the Secretary to enter into commitments to guarantee loans under this section shall be effective for any fiscal year only to the extent that amounts in the Guarantee Fund are or have been made available in appropriations Acts to cover the costs (as that term is defined in section 661a of title 2) of such loan guarantees for such fiscal year. Any amounts appropriated pursuant to this subparagraph shall remain available until expended.

(C) Limitation on outstanding aggregate principal amount

Subject to the limitations in subparagraphs (A) and (B), the Secretary may enter into commitments to guarantee loans under this section for each of fiscal years 2001, 2002, 2003, 2004, and 2005 with an aggregate outstanding principal amount not exceeding \$100,000,000 for each such fiscal year.

(6) Liabilities

All liabilities and obligations of the assets credited to the Guarantee Fund under paragraph (2)(A) shall be liabilities and obligations of the Guarantee Fund.

(7) Authorization of appropriations

There are authorized to be appropriated to the Guarantee Fund to carry out this section such sums as may be necessary for each of fiscal years 2001, 2002, 2003, 2004, and 2005.

(k) Requirements for standard housing

(1) In general

The Secretary shall, by regulation, establish housing safety and quality standards to be applied for use under this section.

(2) Standards

The standards referred to in paragraph (1) shall—

(A) provide sufficient flexibility to permit the use of various designs and materials in housing acquired with loans guaranteed under this section; and

(B) require each dwelling unit in any housing acquired in the manner described in subparagraph (A) to—

- (i) be decent, safe, sanitary, and modest in size and design;
- (ii) conform with applicable general construction standards for the region in which the housing is located;
- (iii) contain a plumbing system that—
 - (I) uses a properly installed system of piping;
 - (II) includes a kitchen sink and a partitioned bathroom with lavatory, toilet, and bath or shower; and
 - (III) uses water supply, plumbing, and sewage disposal systems that conform to any minimum standards established by the applicable county or State;
- (iv) contain an electrical system using wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any appropriate county, State, or national code;
- (v) be not less than the size provided under the applicable locally adopted standards for size of dwelling units, except that the Secretary, upon request of the Department of Hawaiian Home Lands may waive the size requirements under this paragraph; and
- (vi) conform with the energy performance requirements for new construction established by the Secretary under section 526(a) of the National Housing Act [12 U.S.C. 1735f-4(a)], unless the Secretary determines that the requirements are not applicable.

(I) Applicability of civil rights statutes

To the extent that the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) or of the Fair Housing Act [42 U.S.C. 3601 et seq.] apply to a guarantee provided under this subsection, nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of the guarantee to an eligible entity on the basis that the entity serves Native Hawaiian families or is a Native Hawaiian family.

(Pub. L. 102-550, title I, §184A, as added Pub. L. 106-568, title II, §204, Dec. 27, 2000, 114 Stat. 2895, and Pub. L. 106-569, title V, §514, Dec. 27, 2000, 114 Stat. 2989.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Hawaiian Homes Commission Act, 1920, referred to in subsec. (a)(1), (5), is act July 9, 1921, ch. 42, 42 Stat. 108, which was classified generally to sections 691 to 718 of Title 48, Territories and Insular Possessions, and was omitted from the Code. Section 204 of the Act was classified to section 698 of Title 48.

The National Housing Act, referred to in subsecs. (c)(4)(B)(i) and (h)(2)(B), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). Title II of the Act is classified generally to this subchapter (§1707 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing Act of 1949, referred to in subsec. (c)(4)(B)(iii), is act July 15, 1949, ch. 338, 63 Stat. 413, which is classified principally to chapter 8A (§1441 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Civil Rights Act of 1964, referred to in subsec. (I), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

The Fair Housing Act, referred to in subsec. (I), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1992, and not as part of the National Housing Act which comprises this chapter.

Pub. L. 106–568, §204, and Pub. L. 106–569, §514, enacted substantially identical sections 184A to Pub. L. 102–550. This section is based on the text of section 184A of Pub. L. 102–550, as added by Pub. L. 106–569.

§1715z–14. Risk-sharing demonstration

(a) Demonstration mortgage risk-sharing program; areas; number of mortgages

The purpose of this section is to authorize a demonstration mortgage risk-sharing program designed to test the feasibility of entering into risk-sharing contracts with private mortgage insurers and with insured community development financial institutions in order to reduce Government risk and administrative costs, and to speed mortgage processing. The Secretary shall limit the demonstration under this section to not more than four administrative regions of the Department of Housing and Urban Development, and shall assure that the program is in the financial interest of the Government and will not result in loss of employment by any employees of the Department of Housing and Urban Development before the expiration of the 5-year period beginning on December 21, 2000. The aggregate number of mortgages for which risk of nonpayment is shared under this section in any administrative region of the Department of Housing and Urban Development in any fiscal year may not exceed 20 percent of the aggregate number of mortgages and loans insured by the Secretary under this subchapter in such region during the preceding fiscal year.

(b) One- to four-family dwellings; requirements for private mortgage insurance companies

Notwithstanding any other provision of this chapter inconsistent with this section, the Secretary is authorized, in providing mortgage insurance with respect to one- to four-family dwellings under sections 1709(b), 1715y, and 1715z–10 ¹ of this title, to enter into risk-sharing contracts with private mortgage insurance companies which have been determined to be qualified insurers under section 1717(b)(2)(C) of this title and with insured community development financial institutions. Such contracts shall require private mortgage insurance companies and insured community development financial institutions to—

(1) assume a secondary percentage of loss on any mortgage insured pursuant to section 1709(b), 1715y, or 1715z–10 of this title covering a one- to four-family dwelling, which percentage of loss shall be set forth in the risk-sharing contract, with the first percentage of loss to be borne by the Secretary; ²

(2) perform or delegate underwriting, credit approval, appraisal, inspection, commitment, claims processing, property disposition, or other functions as the Secretary shall approve as consistent with the purposes of this section and shall set forth in the risk-sharing contract.

(c) Required contract provisions

Any contract for risk-sharing under this section shall contain such provisions relating to the sharing of premiums received by the Secretary with a private mortgage insurer or insured community development financial institution on a sound actuarial basis, establishment of loss reserves, manner of calculating claims on such risk-sharing contract, conditions with respect to foreclosure, handling and disposition of property prior to claim or settlement, rights of assignees, and other similar matters as the Secretary may prescribe pursuant to regulations. Pursuant to a contract under this section, a private mortgage insurance company or insured community development financial institution shall endorse loans for risk-sharing and take such other actions on behalf of the Secretary and in the Secretary's name as the Secretary may authorize.

(d) Mortgages offered for inclusion by Secretary

The Secretary shall require any private mortgage insurance company or insured community development financial institution participating in the program under this section to provide risk-sharing for those mortgages offered by the Secretary for inclusion in the program.

(e) Insured community development financial institution

For purposes of this section, the term "insured community development financial institution" means a community development financial institution, as such term is defined in section 4702 of this title that is an insured depository institution (as such term is defined in section 1813 of this title) or an insured credit union (as such term is defined in section 1752 of this title).

(June 27, 1934, ch. 847, title II, §249, as added Pub. L. 98–181, title I [title IV, §428(a)], Nov. 30, 1983, 97 Stat. 1219; amended Pub. L. 99–120, §1(g), Oct. 8, 1985, 99 Stat. 502; Pub. L. 99–156, §1(g), Nov. 15, 1985, 99 Stat. 815; Pub. L. 99–219, §1(g), Dec. 26, 1985, 99 Stat. 1730; Pub. L. 99–267, §1(g), Mar. 27, 1986, 100 Stat. 73; Pub. L. 99–272, title III, §3007(g), Apr. 7, 1986, 100 Stat. 105; Pub. L. 99–289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 106–554, §1(a)(7) [title I, §143], Dec. 21, 2000, 114 Stat. 2763, 2763A–618.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1715z–10 of this title, referred to in subsec. (b), was repealed by Pub. L. 110–289, div. B, title I, §2120(a)(7), July 30, 2008, 122 Stat. 2835.

AMENDMENTS

2000—Pub. L. 106–554, §1(a)(7) [title I, §143(1)], substituted "Risk-sharing demonstration" for "Reinsurance contracts" in section catchline.

Subsec. (a). Pub. L. 106–554, §1(a)(7) [title I, §143(2), (3)], in heading and first sentence substituted "risk-sharing" for "reinsurance" wherever appearing, in first sentence inserted "and with insured community development financial institutions" after "private mortgage insurers", in second sentence substituted "four administrative regions" for "two administrative regions" and "the expiration of the 5-year period beginning on December 21, 2000" for "March 15, 1988", and in last sentence substituted "mortgages for which risk of nonpayment is shared" for "mortgages insured" and "20 percent" for "10 percent".

Subsec. (b). Pub. L. 106–554, §1(a)(7) [title I, §143(2), (4)(A), (B)], in first sentence of introductory provisions, substituted ", in providing" for "to provide", ", to enter into" for "through" and "risk-sharing" for "reinsurance" and inserted "and with insured community development financial institutions" before period at end and, in second sentence of introductory provisions, inserted "and insured community development financial institutions" after "private mortgage insurance companies".

Subsec. (b)(1). Pub. L. 106–554, §1(a)(7) [title I, §143(4)(C)], added par. (1) and struck out former par. (1) which read as follows: "assume a percentage of loss on any mortgage insured pursuant to section 1709(b), 1715y, or 1715z–10 of this title covering a one- to four-family dwelling, which percentage of loss shall be set forth in the risk-sharing contract; and".

Pub. L. 106–554, §1(a)(7) [title I, §143(2)], substituted "risk-sharing" for "reinsurance".

Subsec. (b)(2). Pub. L. 106–554, §1(a)(7) [title I, §143(4)(D)], substituted "perform or delegate underwriting," for "carry out (under appropriate delegation) such" and "functions as the Secretary" for "function as the Secretary pursuant to regulations," and inserted before period at end "and shall set forth in the risk-sharing contract".

Subsec. (c). Pub. L. 106–554, §1(a)(7) [title I, §143(2), (5)], in first sentence, substituted "contract for" for "contract of" and "risk-sharing" for "reinsurance", inserted "received by the Secretary with a private mortgage insurer or insured community development financial institution" after "sharing of premiums", substituted "loss reserves" for "insurance reserves", "such risk-sharing contract" for "such insurance", and "rights of assignees" for "right of assignees" and, in second sentence, inserted "or insured community development financial institution" after "private mortgage insurance company" and substituted "loans for risk-sharing" for "loans for insurance".

Subsec. (d). Pub. L. 106–554, §1(a)(7) [title I, §143(2), (6)], inserted "or insured community development financial institution" after "private mortgage insurance company" and substituted "risk-sharing" for "reinsurance".

Subsec. (e). Pub. L. 106–554, §1(a)(7) [title I, §143(7)], added subsec. (e).

1987—Subsec. (a). Pub. L. 100–200 substituted "March 15, 1988" for "December 16, 1987".

Pub. L. 100–179 substituted "December 16, 1987" for "December 2, 1987".

Pub. L. 100–170 substituted "December 2, 1987" for "November 15, 1987".

Pub. L. 100–154 substituted "November 15, 1987" for "October 31, 1987".

Pub. L. 100–122 substituted "October 31, 1987" for "September 30, 1987".

1986—Subsec. (a). Pub. L. 99–430 substituted "September 30, 1987" for "September 30, 1986".

Pub. L. 99–345 substituted "September 30, 1986" for "June 6, 1986".

Pub. L. 99–289 substituted "June 6, 1986" for "April 30, 1986".

Pub. L. 99–272 made amendment identical to Pub. L. 99–219. See 1985 Amendment note below.

Pub. L. 99–267 substituted "April 30, 1986" for "March 17, 1986".

1985—Subsec. (a). Pub. L. 99–219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99–156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99–120 substituted "November 14, 1985" for "September 30, 1985".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EVALUATION OF REINSURANCE PROGRAM; REPORT TO CONGRESS

Pub. L. 98–181, title I [title IV, §428(b)], Nov. 30, 1983, 97 Stat. 1219, provided that: "The Secretary of Housing and Urban Development shall evaluate the reinsurance program under section 249 of the National Housing Act [this section] and, not later than March 1, 1985, submit to the Congress a report setting forth the results of such evaluation. Such report shall include an evaluation of the possible effect of a reinsurance program on the characteristics of the pool of mortgages remaining wholly under the applicable insurance funds and the actuarial soundness of such funds under such conditions."

¹ [See References in Text note below.](#)

² [So in original. Probably should be followed by "and".](#)

§1715z–15. Limitation on prepayment of mortgages on multifamily rental housing

(a) Acceptance of offer to prepay; qualifications

During any period in which an owner of a multifamily rental housing project is required to obtain the approval of the Secretary for prepayment of the mortgage, the Secretary shall not accept an offer to prepay the mortgage on such project or permit a termination of an insurance contract pursuant to section 1715t of this title unless—

(1) the Secretary has determined that such project is no longer meeting a need for rental housing for lower income families in the area;

(2) the Secretary (A) has determined that the tenants have been notified of the owner's request for approval of a prepayment; (B) has provided the tenants with an opportunity to comment on the owner's request; and (C) has taken such comments into consideration; and

(3) the Secretary has ensured that there is a plan for providing relocation assistance for adequate, comparable housing for any lower income tenant who will be displaced as a result of the prepayment and withdrawal of the project from the program.

(b) Approval prior to foreclosure

A mortgagee may foreclose the mortgage on, or acquire by deed in lieu of foreclosure, any eligible low-income housing project (as such term is defined in section 4119 of this title) only if the mortgagee also conveys title to the project to the Secretary in connection with a claim for insurance benefits.

(c) "Lower income families" defined

For purposes of this section, the term "lower income families" has the meaning given such term in section 1437a(b)(2) of title 42.

(June 27, 1934, ch. 847, title II, §250, as added Pub. L. 98–181, title I [title IV, §433], Nov. 30, 1983, 97 Stat. 1221; amended Pub. L. 100–242, title II, §261, Feb. 5, 1988, 101 Stat. 1890; Pub. L. 101–235, title II, §202(d)(1), Dec. 15, 1989, 103 Stat. 2037; Pub. L. 101–625, title VI, §602(b), (c), Nov. 28, 1990, 104 Stat. 4277.)

EDITORIAL NOTES

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–625, §602(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "In the case of a project assisted under section 1715z–1 of this title or the proviso to section 1715l(d)(5) of this title, section 101 of the Housing and Urban Development Act of 1965, or section 1701q of this title where the owner has the right to prepay the mortgage covering the assisted project without the Secretary's approval, the Secretary shall give a priority for additional assistance under section 1437f of title 42 and section 201 of the Housing and Community Development Amendments of 1978 to tenants and applicants to become tenants of the project, if—

"(1) funds to provide such additional assistance are available; and

"(2) the Secretary determines that making such additional assistance available to the project is necessary to prevent the owner from prepaying the mortgage."

Subsecs. (c), (d). Pub. L. 101–625, §602(c), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: "Any owner of a multifamily rental housing project referred to in subsection (b) of this section who receives additional assistance under section 1437f of title 42 under the priority established in subsection (b) of this section shall—

"(1) fully utilize the assistance which is available;

"(2) grant a priority to applicants to become tenants who have the lowest incomes; and

"(3) maintain the low-income character of the project for a period at least equal to the remaining term of the project mortgage to the extent that assistance is provided."

1989—Subsec. (a). Pub. L. 101–235 inserted "or permit a termination of an insurance contract pursuant to section 1715t of this title" after second reference to "project".

1988—Subsec. (a)(1). Pub. L. 100–242 struck out "or that the needs of lower income families in such project can more efficiently and effectively be met through other Federal housing assistance taking into account the remaining time the project could meet such needs" after "families in the area".

§1715z–16. Adjustable rate single family mortgages

(a) One- to four-family dwellings; maximum term of mortgage; adjustments in effective rate of interest

The Secretary may insure under any provision of this subchapter a mortgage involving property upon which there is located a dwelling designed principally for occupancy by one to four families, where the mortgage provides for periodic adjustments by the mortgagee in the effective rate of interest charged. Such interest rate adjustments may be accomplished through adjustments in the monthly payment amount, the outstanding principal balance, or the mortgage term, or a combination of these factors, except that in no case may any extension of a mortgage term result in a total term in excess of 40 years. Adjustments in the effective rate of interest shall correspond to a specified national interest rate index approved in regulations by the Secretary, information on which is readily accessible to mortgagors from generally available published sources. Adjustments in the effective rate of interest shall (1) be made on an annual basis; (2) be limited, with respect to any single interest rate increase, to no more than 1 percent on the outstanding loan balance; and (3) be limited to a maximum increase of 5 percentage points above the initial contract interest rate over the term of the mortgage.

(b) Written explanation of mortgage features

The Secretary shall require that the mortgagee make available to the mortgagor, at the time of loan application, a written explanation of the features of an adjustable rate mortgage consistent with the disclosure requirements applicable to variable rate mortgages secured by a principal dwelling under

the Truth in Lending Act [15 U.S.C. 1601 et seq.].

(c) Number of mortgages and loans

The aggregate number of mortgages and loans insured under this section in any fiscal year may not exceed 30 percent of the aggregate number of mortgages and loans insured by the Secretary under this subchapter during the preceding fiscal year.

(d) Adjustable rate mortgage with initial fixed rate of interest

(1) The Secretary may insure under this subsection a mortgage that meets the requirements of subsection (a), except that the effective rate of interest—

(A) shall be fixed for a period of not less than the first 3 years of the mortgage term;

(B) shall be adjusted by the mortgagee initially upon the expiration of such period and annually thereafter; and

(C) in the case of the initial interest rate adjustment, is subject to the 1 percent limitation only if the interest rate remained fixed for 3 or fewer years.

(2) The disclosure required under subsection (b) shall be required for a mortgage insured under this subsection.

(June 27, 1934, ch. 847, title II, §251, as added Pub. L. 98–181, title I [title IV, §443], Nov. 30, 1983, 97 Stat. 1225; amended Pub. L. 100–242, title IV, §415(a), Feb. 5, 1988, 101 Stat. 1907; Pub. L. 107–73, title II, §206, Nov. 26, 2001, 115 Stat. 674; Pub. L. 108–186, title III, §301(a), Dec. 16, 2003, 117 Stat. 2692.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (b), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

AMENDMENTS

2003—Subsec. (d)(1)(C). Pub. L. 108–186 substituted "3" for "five"

2001—Subsec. (b). Pub. L. 107–73, §206(1), substituted "require that the mortgagee make available to the mortgagor, at the time of loan application, a written explanation of the features of an adjustable rate mortgage consistent with the disclosure requirements applicable to variable rate mortgages secured by a principal dwelling under the Truth in Lending Act" for "issue regulations requiring that the mortgagee make available to the mortgagor, at the time of loan application, a written explanation of the features of the adjustable rate mortgage, including a hypothetical payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first 5 years of the mortgage term".

Subsec. (d). Pub. L. 107–73, §206(2), added subsec. (d).

1988—Subsec. (c). Pub. L. 100–242 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The aggregate number of mortgages and loans insured under this section, section 1715z–10(c) of this title, and section 1715z–17 of this title in any fiscal year may not exceed 10 percent of the aggregate number of mortgages and loans insured by the Secretary under this subchapter during the preceding fiscal year."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–186, title III, §301(b), Dec. 16, 2003, 117 Stat. 2692, provided that: "The amendment made by subsection (a) [amending this section] shall apply to mortgages executed on or after the date of the enactment of this title [Dec. 16, 2003]."

§1715z–17. Shared appreciation mortgages for single family housing

(a) One- to four-family dwellings; requirements

Notwithstanding any provision of this subchapter that is inconsistent with this section, the Secretary may insure, under any provision of this subchapter providing for insurance of mortgages on properties upon which there is located a dwelling designed principally for occupancy by one to four families, a mortgage secured by a first lien on such a property or on the stock allocated to a dwelling unit in a residential cooperative housing corporation, which—

- (1) provides for the mortgagee to share in a predetermined percentage of the property's or stock's net appreciated value;
- (2) bears interest at a rate which meets criteria prescribed by the Secretary;
- (3) provides for amortization over a period of not to exceed 30 years, but the actual term of the mortgage (excluding any refinancing) may be not less than 10 nor more than 30 years, and contains such provisions relating to refinancing of the principal balance of the mortgage and any contingent deferred interest as the Secretary may provide; and
- (4) meets such other conditions as the Secretary may require by regulation.

(b) Payment of mortgagee's share of net appreciated value; "net appreciated value" defined

The mortgagee's share of a property's or stock's net appreciated value shall be payable upon sale or transfer (as defined by the Secretary) of the property or stock or payment in full of the mortgage, whichever occurs first. For purposes of this section, the term "net appreciated value" means the amount by which the sales price of the property or stock (less the mortgagor's selling costs) exceeds the value of the property or stock at the time the commitment to insure is issued (with adjustments for capital improvements stipulated in the loan contract). If there has been no sale or transfer at the time the mortgagee's share of net appreciated value becomes payable, the sales price for purposes of this section shall be determined by means of an appraisal conducted in accordance with procedures approved by the Secretary and provided for in the mortgage.

(c) Entitlement of mortgagee upon default

In the event of a default, the mortgagee shall be entitled to receive the benefits of insurance in accordance with section 1710(a) of this title, but such insurance benefits shall not include the mortgagee's share of net appreciated value. The term "original principal obligation of the mortgage" as used in section 1710 of this title shall not include the mortgagee's share of net appreciated value.

(d) Inapplicability of State constitution, statute, etc., limiting or prohibiting increases in outstanding loan balance

Mortgages insured pursuant to this section which contain provisions for sharing appreciation or which otherwise require or permit increases in the outstanding loan balance which are authorized under this section or under applicable regulations shall not be subject to any State constitution, statute, court decree, common law, rule, or public policy limiting or prohibiting increases in the outstanding loan balance after execution of the mortgage.

(e) Encouraged use of insurance by low and moderate income families

In carrying out the provisions of this section, the Secretary shall encourage the use of insurance under this section by low and moderate income tenants who would otherwise be displaced by the conversion of their rental housing to condominium or cooperative ownership.

(f) Consumer protections and disclosure requirements

The Secretary shall prescribe adequate consumer protections and disclosure requirements with respect to mortgages insured under this section, and may prescribe such other terms and conditions as may be appropriate to carry out the provisions of this section.

(g) Number of mortgages and loans

The aggregate number of mortgages and loans insured under this section and section 1715z–10(c) ¹ of this title in any fiscal year may not exceed 10 percent of the aggregate number of mortgages and

loans insured by the Secretary under this subchapter during the preceding fiscal year.

(June 27, 1934, ch. 847, title II, §252, as added Pub. L. 98–181, title I [title IV, §444], Nov. 30, 1983, 97 Stat. 1225; amended Pub. L. 100–242, title IV, §415(b)(2), Feb. 5, 1988, 101 Stat. 1907.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1715z–10(c) of this title, referred to in subsec. (g), was repealed by Pub. L. 110–289, div. B, title I, §2120(a)(7), July 30, 2008, 122 Stat. 2835.

AMENDMENTS

1988—Subsec. (g). Pub. L. 100–242 struck out reference to section 1715z–16 of this title.

¹ [*See References in Text note below.*](#)

§1715z–18. Shared appreciation mortgages for multifamily housing

(a) Five or more family units; requirements

Notwithstanding any provision of this subchapter that is inconsistent with this section, the Secretary may insure, under any provision of this subchapter providing for insurance of mortgages on properties including 5 or more family units, a mortgage secured by a first lien on the property that (1) provides for the mortgagee to share in a predetermined percentage of the property's net appreciated value; and (2) meets such other conditions, including limitations on the rate of interest which may be charged, as the Secretary may require by regulation.

(b) Payment of mortgagee's share of net appreciated value; term of mortgage; repayment; "net appreciated value" defined

The mortgagee's share of a property's net appreciated value shall be payable upon maturity or upon payment in full of the loan or sale or transfer (as defined by the Secretary) of the property, whichever occurs first. The term of the mortgage shall not be less than 15 years, and shall be repayable in equal monthly installments of principal and fixed interest during the mortgage term in an amount which would be sufficient to retire a debt with the same principal and fixed interest rate over a period not exceeding 30 years. In the case of a mortgage which will not be completely amortized during the mortgage term, the principal obligation of the mortgage may not exceed 85 percent of the estimated value of the property or project. For purposes of this section, the term "net appreciated value" means the amount by which the sales price of the property (less the mortgagor's selling costs) exceeds the actual project cost after completion, as approved by the Secretary. If there has been no sale or transfer at the time the mortgagee's share of net appreciated value becomes payable, the sales price for purposes of this section shall be determined by means of an appraisal conducted in accordance with procedures approved by the Secretary and provided for in the mortgage.

(c) Entitlement of mortgagee upon default

In the event of a default, the mortgagee shall be entitled to receive the benefits of insurance in accordance with section 1713 of this title, but such insurance benefits shall not include the mortgagee's share of net appreciated value. The term "original principal face amount of the mortgage" as used in section 1713 of this title shall not include the mortgagee's share of net appreciated value.

(d) Maximum percentage of net appreciated value; disclosure requirements

The Secretary shall establish by regulation the maximum percentage of net appreciated value which may be payable to a mortgagee as the mortgagee's share. The Secretary shall also establish disclosure requirements applicable to mortgagees making mortgage loans pursuant to this section, to

assure that mortgagors are informed of the characteristics of such mortgages.

(e) Inapplicability of State constitution, statute, etc., limiting or prohibiting increases in outstanding loan balance

Mortgages insured pursuant to this section which contain provisions for sharing appreciation or which otherwise require or permit increases in the outstanding loan balance which are authorized under this section or under applicable regulations shall not be subject to any State constitution, statute, court decree, common law, rule, or public policy limiting or prohibiting increases in the outstanding loan balance after execution of the mortgage.

(f) Number of dwelling units

The number of dwelling units included in properties covered by mortgages insured pursuant to this section in any fiscal year may not exceed 5,000.

(June 27, 1934, ch. 847, title II, §253, as added Pub. L. 98–181, title I [title IV, §445], Nov. 30, 1983, 97 Stat. 1226; amended Pub. L. 100–242, title IV, §429(j), Feb. 5, 1988, 101 Stat. 1919.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–242, §429(j)(1), substituted "For purposes of this section, the term 'net appreciated value' means the amount by which the sales price of the property (less the mortgagor's selling costs) exceeds the actual project cost after completion, as approved by the Secretary" for "For purposes of this section, the term 'net appreciated value' means the amount by which the sales price of the property (less the mortgagor's selling costs) exceeds the value (or replacement cost, as appropriate) of the property at the time the commitment to insure is issued (with adjustments for capital improvements stipulated in the loan contract)".

Subsec. (c). Pub. L. 100–242, §429(j)(2), (3), substituted "in accordance with section 1713 of this title" for "in accordance with section 1710 of this title" and "The term 'original principal face amount of the mortgage' as used in section 1713 of this title shall not include the mortgagee's share of net appreciated value" for "The term 'original principal obligation of the mortgage' as used in section 1710(a) of this title shall not include the mortgagee's share of net appreciated value".

§1715z–19. Equity skimming penalty

(a) In general

Whoever, as an owner, agent, or manager, or who is otherwise in custody, control, or possession of a multifamily project or a 1- to 4-family residence that is security for a mortgage note that is described in subsection (b), willfully uses or authorizes the use of any part of the rents, assets, proceeds, income, or other funds derived from property covered by that mortgage note for any purpose other than to meet reasonable and necessary expenses that include expenses approved by the Secretary if such approval is required, in a period during which the mortgage note is in default or the project is in a nonsurplus cash position, as defined by the regulatory agreement covering the property, or the mortgagor has failed to comply with the provisions of such other form of regulatory control imposed by the Secretary, shall be fined not more than \$500,000, imprisoned not more than 5 years, or both.

(b) Mortgage notes described

For purposes of subsection (a), a mortgage note is described in this subsection if it—

- (1) is insured, acquired, or held by the Secretary pursuant to this chapter;
- (2) is made pursuant to section 1701q of this title (including property still subject to section 1701q program requirements that existed before November 28, 1990); or
- (3) is insured or held pursuant to section 1715z–22 of this title, but is not reinsured under section 1715z–22 of this title.

(June 27, 1934, ch. 847, title II, §254, as added Pub. L. 100–242, title IV, §416(b), Feb. 5, 1988, 101

Stat. 1908; amended Pub. L. 105–65, title V, §552, Oct. 27, 1997, 111 Stat. 1412.)

EDITORIAL NOTES

AMENDMENTS

1997—Pub. L. 105–65 amended section generally. Prior to amendment, section read as follows: "Whoever, as an owner, agent, or manager, or who is otherwise in custody, control, or possession of property that is security for a mortgage note that is insured, acquired, or held by the Secretary pursuant to section 1709, 1713, 1715e, 1715k, 1715l(d)(3), 1715l(d)(4), 1715n(f), 1715v, 1715w, 1715y, 1715z–1, 1715z–3(c), 1715z–6, 1715z–7, 1715z–9, 1743, or 1748h–2 of this title, or subchapter IX–B of this chapter, or is made pursuant to section 1701q of this title, willfully uses or authorizes the use of any part of the rents, assets, proceeds, income or other funds derived from property covered by such mortgage note during a period when the mortgage note is in default or the project is in a nonsurplus cash position as defined by the regulatory agreement covering such property, for any purpose other than to meet actual or necessary expenses that include expenses approved by the Secretary if such approval is required under the terms of the regulatory agreement, shall be fined not more than \$250,000 or imprisoned not more than 5 years, or both."

§1715z–20. Insurance of home equity conversion mortgages for elderly homeowners

(a) Purpose

The purpose of this section is to authorize the Secretary to carry out a program of mortgage insurance designed—

(1) to meet the special needs of elderly homeowners by reducing the effect of the economic hardship caused by the increasing costs of meeting health, housing, and subsistence needs at a time of reduced income, through the insurance of home equity conversion mortgages to permit the conversion of a portion of accumulated home equity into liquid assets; and

(2) to encourage and increase the involvement of mortgagees and participants in the mortgage markets in the making and servicing of home equity conversion mortgages for elderly homeowners.

(b) Definitions

For purposes of this section:

(1) The terms "elderly homeowner" and "homeowner" mean any homeowner who is, or whose spouse is, at least 62 years of age or such higher age as the Secretary may prescribe.

(2) The terms "mortgagee", "mortgagor", "real estate," ¹ and "State" have the meanings given such terms in section 1707 of this title.

(3) The term "home equity conversion mortgage" means a first mortgage which provides for future payments to the homeowner based on accumulated equity and which a housing creditor (as defined in section 3802(2) of this title) is authorized to make (A) under any law of the United States (other than section 3803 of this title) or applicable agency regulations thereunder; (B) in accordance with section 3803 of this title, notwithstanding any State constitution, law, or regulation; or (C) under any State constitution, law, or regulation.

(4) **MORTGAGE.**—The term "mortgage" means a first mortgage or first lien on real estate, in fee simple, a first or subordinate mortgage or lien on all stock allocated to a dwelling unit in a residential cooperative housing corporation, or a first mortgage or first lien on a leasehold—

(A) under a lease for not less than 99 years that is renewable; or

(B) under a lease that has a term that ends no earlier than the minimum number of years, as specified by the Secretary, beyond the actuarial life expectancy of the mortgagor or comortgagor, whichever is the later date.

(5) **FIRST MORTGAGE.**—The term "first mortgage" means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate or a first or

subordinate lien on all stock allocated to a dwelling unit in a residential cooperative housing corporation, under the laws of the State in which the real estate or dwelling unit is located, together with the credit instruments, if any, secured thereby.

(c) Insurance authority

The Secretary may, upon application by a mortgagee, insure any home equity conversion mortgage eligible for insurance under this section and, upon such terms and conditions as the Secretary may prescribe, make commitments for the insurance of such mortgages prior to the date of their execution or disbursement to the extent that the Secretary determines such mortgages—

- (1) have promise for improving the financial situation or otherwise meeting the special needs of elderly homeowners;
- (2) will include appropriate safeguards for mortgagors to offset the special risks of such mortgages; and
- (3) have a potential for acceptance in the mortgage market.

(d) Eligibility requirements

To be eligible for insurance under this section, a mortgage shall—

- (1) have been originated by a mortgagee approved by the Secretary;
- (2) have been executed by a mortgagor who—
 - (A) qualifies as an elderly homeowner;
 - (B) has received adequate counseling, as provided in subsection (f), by an independent third party that is not, either directly or indirectly, associated with or compensated by a party involved in—
 - (i) originating or servicing the mortgage;
 - (ii) funding the loan underlying the mortgage; or
 - (iii) the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product;
 - (C) has received full disclosure, as prescribed by the Secretary, of all costs charged to the mortgagor, including costs of estate planning, financial advice, and other services that are related to the mortgage but are not required to obtain the mortgage, which disclosure shall clearly state which charges are required to obtain the mortgage and which are not required to obtain the mortgage; and
 - (D) meets any additional requirements prescribed by the Secretary;
- (3) be secured by a dwelling that is designed principally for a 1- to 4-family residence in which the mortgagor occupies 1 of the units;
- (4) provide that prepayment, in whole or in part, may be made without penalty at any time during the period of the mortgage;
- (5) provide for a fixed or variable interest rate or future sharing between the mortgagor and the mortgagee of the appreciation in the value of the property, as agreed upon by the mortgagor and the mortgagee;
- (6) contain provisions for satisfaction of the obligation satisfactory to the Secretary;
- (7) provide that the homeowner shall not be liable for any difference between the net amount of the remaining indebtedness of the homeowner under the mortgage and the amount recovered by the mortgagee from—
 - (A) the net sales proceeds from the dwelling that are subject to the mortgage (based upon the amount of the accumulated equity selected by the mortgagor to be subject to the mortgage, as agreed upon by the mortgagor and mortgagee); or
 - (B) the insurance benefits paid pursuant to subsection (i)(1)(C);
- (8) contain such terms and provisions with respect to insurance, repairs, alterations, payment of taxes, default reserve, delinquency charges, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters as the Secretary may prescribe;

(9) provide for future payments to the mortgagor based on accumulated equity (minus any applicable fees and charges), according to the method that the mortgagor shall select from among the methods under this paragraph, by payment of the amount—

- (A) based upon a line of credit;
- (B) on a monthly basis over a term specified by the mortgagor;
- (C) on a monthly basis over a term specified by the mortgagor and based upon a line of credit;
- (D) on a monthly basis over the tenure of the mortgagor;
- (E) on a monthly basis over the tenure of the mortgagor and based upon a line of credit; or
- (F) on any other basis that the Secretary considers appropriate;

(10) provide that the mortgagor may convert the method of payment under paragraph (9) to any other method during the term of the mortgage, except that in the case of a fixed rate mortgage, the Secretary may, by regulation, limit such convertibility; and

(11) have been made with such restrictions as the Secretary determines to be appropriate to ensure that the mortgagor does not fund any unnecessary or excessive costs for obtaining the mortgage, including any costs of estate planning, financial advice, or other related services.

(e) Disclosures by mortgagee

The Secretary shall require each mortgagee of a mortgage insured under this section to make available to the homeowner—

(1) at the time of the loan application, a written list of the names and addresses of third-party information sources who are approved by the Secretary as responsible and able to provide the information required by subsection (f);

(2) at least 10 days prior to loan closing, a statement informing the homeowner that the liability of the homeowner under the mortgage is limited and explaining the homeowner's rights, obligations, and remedies with respect to temporary absences from the home, late payments, and payment default by the lender, all conditions requiring satisfaction of the loan obligation, and any other information that the Secretary may require;

(3) on an annual basis (but not later than January 31 of each year), a statement summarizing the total principal amount paid to the homeowner under the loan secured by the mortgage, the total amount of deferred interest added to the principal, and the outstanding loan balance at the end of the preceding year; and

(4) prior to loan closing, a statement of the projected total cost of the mortgage to the homeowner based on the projected total future loan balance (such cost expressed as a single average annual interest rate for at least 2 different appreciation rates for the term of the mortgage) for not less than 2 projected loan terms, as the Secretary shall determine, which shall include—

- (A) the cost for a short-term mortgage; and
- (B) the cost for a loan term equaling the actuarial life expectancy of the mortgagor.

(f) Counseling services and information for mortgagors

The Secretary shall provide or cause to be provided adequate counseling for the mortgagor, as described in subsection (d)(2)(B). Such counseling shall be provided by counselors that meet qualification standards and follow uniform counseling protocols. The qualification standards and counseling protocols shall be established by the Secretary within 12 months of July 30, 2008. The protocols shall require a qualified counselor to discuss with each mortgagor information which shall include—

(1) options other than a home equity conversion mortgage that are available to the homeowner, including other housing, social service, health, and financial options;

(2) other home equity conversion options that are or may become available to the homeowner, such as sale-leaseback financing, deferred payment loans, and property tax deferral;

(3) the financial implications of entering into a home equity conversion mortgage;

(4) a disclosure that a home equity conversion mortgage may have tax consequences, affect eligibility for assistance under Federal and State programs, and have an impact on the estate and

heirs of the homeowner; and

(5) any other information that the Secretary may require.

The Secretary shall consult with consumer groups, industry representatives, representatives of counseling organizations, and other interested parties to identify alternative approaches to providing consumer information required by this subsection that may be feasible and desirable for home equity conversion mortgages insured under this section and other types of reverse mortgages. The Secretary may, in lieu of providing the consumer education required by this subsection, adopt alternative approaches to consumer education that may be developed as a result of such consultations, but only if the alternative approaches provide all of the information specified in this subsection.

(g) Limitation on insurance authority

The aggregate number of mortgages insured under this section may not exceed 275,000. In no case may the benefits of insurance under this section exceed the maximum dollar amount limitation established under section 1454(a)(2) of this title for a 1-family residence.

(h) Administrative authority

The Secretary may—

(1) enter into such contracts and agreements with Federal, State, and local agencies, public and private entities, and such other persons as the Secretary determines to be necessary or desirable to carry out the purposes of this section;

(2) make such investigations and studies of data, and publish and distribute such reports, as the Secretary determines to be appropriate; and

(3) establish, by notice or mortgagee letter, any additional or alternative requirements that the Secretary, in the Secretary's discretion, determines are necessary to improve the fiscal safety and soundness of the program authorized by this section, which requirements shall take effect upon issuance.

(i) Protection of homeowner and lender

(1) Notwithstanding any other provision of law, and in order to further the purposes of the program authorized in this section, the Secretary shall take any action necessary—

(A) to provide any mortgagor under this section with funds to which the mortgagor is entitled under the insured mortgage or ancillary contracts but that the mortgagor has not received because of the default of the party responsible for payment;

(B) to obtain repayment of disbursements provided under subparagraph (A) from any source; and

(C) to provide any mortgagee under this section with funds not to exceed the limitations in subsection (g) to which the mortgagee is entitled under the terms of the insured mortgage or ancillary contracts authorized in this section.

(2) Actions under paragraph (1) may include—

(A) disbursing funds to the mortgagor or mortgagee from the Mutual Mortgage Insurance Fund;

(B) accepting an assignment of the insured mortgage notwithstanding that the mortgagor is not in default under its terms, and calculating the amount and making the payment of the insurance claim on such assigned mortgage;

(C) requiring a subordinate mortgage from the mortgagor at any time in order to secure repayments of any funds advanced or to be advanced to the mortgagor;

(D) requiring a subrogation to the Secretary of the rights of any parties to the transaction against any defaulting parties; and

(E) imposing premium charges.

(j) Safeguard to prevent displacement of homeowner

The Secretary may not insure a home equity conversion mortgage under this section unless such mortgage provides that the homeowner's obligation to satisfy the loan obligation is deferred until the homeowner's death, the sale of the home, or the occurrence of other events specified in regulations of

the Secretary. For purposes of this subsection, the term "homeowner" includes the spouse of a homeowner. Section 1647(b) of title 15 and any implementing regulations issued by the Board of Governors of the Federal Reserve System shall not apply to a mortgage insured under this section.

(k) Insurance authority for refinancings

(1) In general

The Secretary may, upon application by a mortgagee, insure under this subsection any mortgage given to refinance an existing home equity conversion mortgage insured under this section.

(2) Anti-churning disclosure

The Secretary shall, by regulation, require that the mortgagee of a mortgage insured under this subsection, provide to the mortgagor, within an appropriate time period and in a manner established in such regulations, a good faith estimate of: (A) the total cost of the refinancing; and (B) the increase in the mortgagor's principal limit as measured by the estimated initial principal limit on the mortgage to be insured under this subsection less the current principal limit on the home equity conversion mortgage that is being refinanced and insured under this subsection.

(3) Waiver of counseling requirement

The mortgagor under a mortgage insured under this subsection may waive the applicability, with respect to such mortgage, of the requirements under subsection (d)(2)(B) (relating to third party counseling), but only if—

(A) the mortgagor has received the disclosure required under paragraph (2);

(B) the increase in the principal limit described in paragraph (2) exceeds the amount of the total cost of refinancing (as described in such paragraph) by an amount to be determined by the Secretary; and

(C) the time between the closing of the original home equity conversion mortgage that is refinanced through the mortgage insured under this subsection and the application for a refinancing mortgage insured under this subsection does not exceed 5 years.

(4) Credit for premiums paid

Notwithstanding section 1709(c)(2)(A) of this title, the Secretary may reduce the amount of the single premium payment otherwise collected under such section at the time of the insurance of a mortgage refinanced and insured under this subsection. The amount of the single premium for mortgages refinanced under this subsection shall be determined by the Secretary based on the actuarial study required under paragraph (5).

(5) Actuarial study

Not later than 180 days after December 27, 2000, the Secretary shall conduct an actuarial analysis to determine the adequacy of the insurance premiums collected under the program under this subsection with respect to—

(A) a reduction in the single premium payment collected at the time of the insurance of a mortgage refinanced and insured under this subsection;

(B) the establishment of a single national limit on the benefits of insurance under subsection (g) (relating to limitation on insurance authority); and

(C) the combined effect of reduced insurance premiums and a single national limitation on insurance authority.

(6) Fees

The Secretary may establish a limit on the origination fee that may be charged to a mortgagor under a mortgage insured under this subsection, except that such limitation shall provide that the origination fee may be fully financed with the mortgage and shall include any fees paid to correspondent mortgagees approved by the Secretary.

(l) Funding for counseling

The Secretary may use a portion of the mortgage insurance premiums collected under the program under this section to adequately fund the counseling and disclosure activities required under

subsection (f), including counseling for those homeowners who elect not to take out a home equity conversion mortgage, provided that the use of such funds is based upon accepted actuarial principles.

(m) Authority to insure home purchase mortgage

(1) In general

Notwithstanding any other provision of this section, the Secretary may insure, upon application by a mortgagee, a home equity conversion mortgage upon such terms and conditions as the Secretary may prescribe, when the home equity conversion mortgage will be used to purchase a 1- to 4-family dwelling unit, one unit of which the mortgagor will occupy as a primary residence, and to provide for any future payments to the mortgagor, based on available equity, as authorized under subsection (d)(9).

(2) Limitation on principal obligation

A home equity conversion mortgage insured pursuant to paragraph (1) shall involve a principal obligation that does not exceed the dollar amount limitation determined under section 1454(a)(2) of this title for a 1-family residence.

(n) Requirements on mortgage originators

(1) In general

The mortgagee and any other party that participates in the origination of a mortgage to be insured under this section shall—

(A) not participate in, be associated with, or employ any party that participates in or is associated with any other financial or insurance activity; or

(B) demonstrate to the Secretary that the mortgagee or other party maintains, or will maintain, firewalls and other safeguards designed to ensure that—

(i) individuals participating in the origination of the mortgage shall have no involvement with, or incentive to provide the mortgagor with, any other financial or insurance product; and

(ii) the mortgagor shall not be required, directly or indirectly, as a condition of obtaining a mortgage under this section, to purchase any other financial or insurance product.

(2) Approval of other parties

All parties that participate in the origination of a mortgage to be insured under this section shall be approved by the Secretary.

(o) Prohibition against requirements to purchase additional products

The mortgagor or any other party shall not be required by the mortgagee or any other party to purchase an insurance, annuity, or other similar product as a requirement or condition of eligibility for insurance under subsection (c), except for title insurance, hazard, flood, or other peril insurance, or other such products that are customary and normal under subsection (c), as determined by the Secretary.

(p) Study to determine consumer protections and underwriting standards

The Secretary shall conduct a study to examine and determine appropriate consumer protections and underwriting standards to ensure that the purchase of products referred to in subsection (o) is appropriate for the consumer. In conducting such study, the Secretary shall consult with consumer advocates (including recognized experts in consumer protection), industry representatives, representatives of counseling organizations, and other interested parties.

(r) ² Limitation on origination fees

The Secretary shall establish limits on the origination fee that may be charged to a mortgagor under a mortgage insured under this section, which limitations shall—

(1) be equal to 2.0 percent of the maximum claim amount of the mortgage, up to a maximum claim amount of \$200,000 plus 1 percent of any portion of the maximum claim amount that is greater than \$200,000, unless adjusted thereafter on the basis of an analysis of—

- (A) the costs to mortgagors; and
- (B) the impact on the reverse mortgage market;

- (2) be subject to a minimum allowable amount;
- (3) provide that the origination fee may be fully financed with the mortgage;
- (4) include any fees paid to correspondent mortgagees approved by the Secretary;
- (5) have the same effective date as subsection (m)(2) regarding the limitation on principal obligation; and
- (6) be subject to a maximum origination fee of \$6,000, except that such maximum limit shall be adjusted in accordance with the annual percentage increase in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor in increments of \$500 only when the percentage increase in such index, when applied to the maximum origination fee, produces dollar increases that exceed \$500.

(June 27, 1934, ch. 847, title II, §255, as added Pub. L. 100–242, title IV, §417(a), Feb. 5, 1988, 101 Stat. 1908; amended Pub. L. 100–628, title X, §1066, Nov. 7, 1988, 102 Stat. 3275; Pub. L. 101–508, title II, §2106, Nov. 5, 1990, 104 Stat. 1388–20; Pub. L. 101–625, title III, §334(b)–(d), Nov. 28, 1990, 104 Stat. 4141, 4142; Pub. L. 102–389, title II, Oct. 6, 1992, 106 Stat. 1592; Pub. L. 102–550, title V, §§503(c)(2), 520, Oct. 28, 1992, 106 Stat. 3779, 3793; Pub. L. 104–99, title IV, §406, Jan. 26, 1996, 110 Stat. 45; Pub. L. 104–120, §6, Mar. 28, 1996, 110 Stat. 835; Pub. L. 105–276, title V, §593(a)–(e)(1), Oct. 21, 1998, 112 Stat. 2654, 2655; Pub. L. 106–569, title II, §201(a)(1), (b), (c)(1), Dec. 27, 2000, 114 Stat. 2948, 2950; Pub. L. 109–13, div. A, title VI, §6074, May 11, 2005, 119 Stat. 300; Pub. L. 109–289, div. B, §131, Sept. 29, 2006, 120 Stat. 1316; Pub. L. 110–289, div. B, title I, §§2118(b)(2), 2122(a)–(c), July 30, 2008, 122 Stat. 2835–2838; Pub. L. 111–22, div. A, title II, §206, May 20, 2009, 123 Stat. 1654; Pub. L. 113–29, §2, Aug. 9, 2013, 127 Stat. 509.)

EDITORIAL NOTES

AMENDMENTS

2013—Subsec. (h)(3). Pub. L. 113–29 added par. (3).

2009—Subsec. (b)(4)(B). Pub. L. 111–22 added subpar. (B) and struck out former subpar. (B), which read as follows: "under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage."

2008—Subsec. (b)(2). Pub. L. 110–289, §2122(a)(1), inserted " 'real estate,' " after " 'mortgagor,' ".

Subsec. (b)(4). Pub. L. 110–289, §2122(b)(1), in introductory provisions, inserted "a first or subordinate mortgage or lien" before "on all stock", "unit" before "in a residential", and "a first mortgage or first lien" before "on a leasehold".

Subsec. (b)(5). Pub. L. 110–289, §2122(b)(2), inserted "a first or subordinate lien on" before "all stock".

Subsec. (d)(1). Pub. L. 110–289, §2122(a)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "have been made to a mortgagee approved by the Secretary as responsible and able to service the mortgage properly;".

Subsec. (d)(2)(B). Pub. L. 110–289, §2122(a)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "has received adequate counseling by a third party (other than the lender) as provided in subsection (f) of this section;".

Subsec. (f). Pub. L. 110–289, §2122(a)(4), substituted "Counseling services and information for mortgagors" for "Information services for mortgagors" in heading and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: "The Secretary shall provide or cause to be provided by entities other than the lender the information required in subsection (d)(2)(B) of this section. Such information shall be discussed with the mortgagor and shall include—".

Subsec. (g). Pub. L. 110–289, §2122(a)(5), substituted "limitation established under section 1454(a)(2) of this title for a 1-family residence" for "established under section 1709(b)(2) of this title for 1-family residences in the area in which the dwelling subject to the mortgage under this section is located".

Subsec. (i)(2)(A). Pub. L. 110–289, §2118(b)(2), substituted "Mutual Mortgage Insurance Fund" for "General Insurance Fund".

Subsec. (l). Pub. L. 110–289, §2122(a)(8), amended subsec. (l) generally. Prior to amendment, subsec. (l) related to funding for counseling and consumer education and outreach.

Pub. L. 110-289, §2122(a)(6), (7), redesignated subsec. (m) as (l) and struck out former subsec. (l) which related to waiver of up-front premiums for mortgages to fund long-term care insurance.

Subsecs. (m) to (p). Pub. L. 110-289, §2122(a)(9), added subsecs. (m) to (p). Former subsec. (m) redesignated (l).

Subsec. (r). Pub. L. 110-289, §2122(c), added subsec. (r).

2006—Subsec. (g). Pub. L. 109-289 substituted "275,000" for "250,000".

2005—Subsec. (g). Pub. L. 109-13 substituted "250,000" for "150,000".

2000—Subsec. (b)(2). Pub. L. 106-569, §201(b)(1), struck out " 'mortgage'," before " 'mortgagee'".

Subsec. (b)(4), (5). Pub. L. 106-569, §201(b)(2), added pars. (4) and (5).

Subsecs. (k) to (m). Pub. L. 106-569, §201(a)(1), (c)(1), added subsecs. (k) and (l) and redesignated former subsec. (k) as (m).

1998—Pub. L. 105-276, §593(d)(1), struck out "Demonstration program of" before "Insurance" in section catchline.

Subsec. (a). Pub. L. 105-276, §593(d)(2), (3), struck out "demonstration" before "program" in introductory provisions, inserted "and" at end of par. (1), substituted a period for "; and" at end of par. (2), and struck out par. (3) which read as follows: "to require the evaluation of data to determine—

"(A) the extent of the need and demand among elderly homeowners for insured and uninsured home equity conversion mortgages;

"(B) the types of home equity conversion mortgages that best serve the needs and interests of elderly homeowners, the Federal Government, and lenders; and

"(C) the appropriate scope and nature of participation by the Secretary in connection with home equity conversion mortgages for elderly homeowners."

Subsec. (d)(2)(C), (D). Pub. L. 105-276, §593(e)(1)(A), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (d)(11). Pub. L. 105-276, §593(e)(1)(B)–(D), added par. (11).

Subsec. (f). Pub. L. 105-276, §593(b), inserted concluding provisions.

Subsec. (g). Pub. L. 105-276, §593(a), substituted "The aggregate number of mortgages insured under this section may not exceed 150,000." for "No mortgage may be insured under this section after September 30, 2000, except pursuant to a commitment to insure issued on or before such date. The total number of mortgages insured under this section may not exceed 50,000."

Subsec. (i)(1). Pub. L. 105-276, §593(d)(2), struck out "demonstration" before "program" in introductory provisions.

Subsec. (k). Pub. L. 105-276, §593(d)(4), (5), redesignated subsec. (l) as (k) and struck out heading and text of former subsec. (k), which had required interim report not later than Sept. 30, 1989, on design and implementation of demonstration program of insurance of home equity conversion mortgages for elderly homeowners, preliminary evaluation of program incorporating comments and recommendations not later than Mar. 30, 1992, and updated report and evaluation biennially thereafter, including analysis of repayment of home equity conversion mortgages during report period.

Subsec. (l). Pub. L. 105-276, §593(d)(5), redesignated subsec. (l) as (k).

Pub. L. 105-276, §593(c), added subsec. (l).

1996—Subsec. (d)(3). Pub. L. 104-120, §6(c), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "be secured by a dwelling that is designed principally for a 1-family residence and is occupied by the mortgagor;"

Subsec. (g). Pub. L. 104-120, §6(a), (b), substituted "2000" for "1996" and "50,000" for "30,000".

Pub. L. 104-99 substituted "1996" for "1995" and "30,000" for "25,000".

1992—Subsec. (g). Pub. L. 102-389 and Pub. L. 102-550, §503(c)(2), amended subsec. (g) identically, substituting "for 1-family residences in the area in which the dwelling subject to the mortgage under this section is located" for "for a 1-family residence".

Subsec. (j). Pub. L. 102-550, §520, inserted at end "Section 1647(b) of title 15 and any implementing regulations issued by the Board of Governors of the Federal Reserve System shall not apply to a mortgage insured under this section."

1990—Subsec. (d)(7)(A). Pub. L. 101-625, §334(c), added subpar. (A) and struck out former subpar. (A) which read as follows: "the foreclosure sale; or".

Subsec. (d)(9), (10). Pub. L. 101-625, §334(b), added pars. (9) and (10).

Subsec. (e)(2). Pub. L. 101-625, §334(d)(1), substituted "statement informing the homeowner that the liability of the homeowner under the mortgage is limited and" for "statement" and struck out "and" at end.

Subsec. (e)(4). Pub. L. 101-625, §334(d)(2), (3), added par. (4).

Subsec. (g). Pub. L. 101-508, §2106, substituted "September 30, 1995" for "September 30, 1991" and "may

not exceed 25,000" for "may not exceed 2,500".

1988—Subsec. (b)(3). Pub. L. 100–628, §1066(a), made technical amendment to reference to section 3802(2) of this title to correct reference to corresponding provision of original act.

Subsec. (d)(3). Pub. L. 100–628, §1066(b), struck out "and that has a value not to exceed the maximum dollar amount established by the Secretary under section 1709(b)(2) of this title for a 1-family residence" after "by the mortgagor".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–569, title II, §201(c)(2), Dec. 27, 2000, 114 Stat. 2951, provided that: "The provisions of section 255(l) of the National Housing Act [former 12 U.S.C. 1715z–20(l)] (as added by paragraph (1) of this subsection) shall apply only to mortgages closed on or after April 1, 2001."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, §593(f), Oct. 21, 1998, 112 Stat. 2655, provided that: "This section [amending this section and enacting provisions set out as a note below] shall take effect on, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–120 to be construed to have become effective Oct. 1, 1995, see section 13(a) of Pub. L. 104–120, set out as an Effective and Termination Dates of 1996 Amendments note under section 1437d of Title 42, The Public Health and Welfare.

REGULATIONS

Pub. L. 106–569, title II, §201(a)(2), Dec. 27, 2000, 114 Stat. 2949, provided that: "The Secretary shall issue any final regulations necessary to implement the amendments made by paragraph (1) of this subsection [amending this section], which shall take effect not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Dec. 27, 2000]. The regulations shall be issued after notice and opportunity for public comment in accordance with the procedure under section 553 of title 5, United States Code, applicable to substantive rules (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section)."

Pub. L. 100–242, title IV, §417(b), Feb. 5, 1988, 101 Stat. 1912, directed Secretary of Housing and Urban Development, not later than 6 months after Feb. 5, 1988, to consult with lenders, insurers, and organizations and individuals with expertise in home equity conversion in developing proposed regulations implementing this section and not later than 9 months after Feb. 5, 1988, to issue proposed regulations implementing this section.

IMPLEMENTATION OF 1998 AMENDMENT

Pub. L. 105–276, title V, §593(e)(2), Oct. 21, 1998, 112 Stat. 2655, provided that:

"(A) NOTICE.—The Secretary of Housing and Urban Development shall, by interim notice, implement the amendments made by paragraph (1) [amending this section] in an expeditious manner, as determined by the Secretary. Such notice shall not be effective after the date of the effectiveness of the final regulations issued under subparagraph (B) of this paragraph.

"(B) REGULATIONS.—The Secretary shall, not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 21, 1998], issue final regulations to implement the amendments made by paragraph (1). Such regulations shall be issued only after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2) and (b)(3)(B) of such section)."

¹ *So in original. The comma probably should follow the closed quotes.*

² *So in original. No subsec. (q) has been enacted.*

§1715z–21. Delegation of insuring authority to direct endorsement mortgagees

(a) Authority

The Secretary may delegate, to one or more mortgagees approved by the Secretary under the direct endorsement program, the authority of the Secretary under this chapter to insure mortgages involving property upon which there is located a dwelling designed principally for occupancy by 1 to 4 families.

(b) Considerations

In determining whether to delegate authority to a mortgagee under this section, the Secretary shall consider the experience and performance of the mortgagee compared to the default rate of all insured mortgages in comparable markets, and such other factors as the Secretary determines appropriate to minimize risk of loss to the insurance funds under this chapter.

(c) Enforcement of insurance requirements

(1) In general

If the Secretary determines that a mortgage insured by a mortgagee pursuant to delegation of authority under this section was not originated in accordance with the requirements established by the Secretary, and the Secretary pays an insurance claim with respect to the mortgage within a reasonable period specified by the Secretary, the Secretary may require the mortgagee approved under this section to indemnify the Secretary for the loss.

(2) Fraud or misrepresentation

If fraud or misrepresentation was involved in connection with the origination, the Secretary may require the mortgagee approved under this section to indemnify the Secretary for the loss regardless of when an insurance claim is paid.

(d) Termination of mortgagee's authority

If a mortgagee to which the Secretary has made a delegation under this section violates the requirements and procedures established by the Secretary or the Secretary determines that other good cause exists, the Secretary may cancel a delegation of authority under this section to the mortgagee by giving notice to the mortgagee. Such a cancellation shall be effective upon receipt of the notice by the mortgagee or at a later date specified by the Secretary. A decision by the Secretary to cancel a delegation shall be final and conclusive and shall not be subject to judicial review.

(e) Requirements and procedures

Before approving a delegation under this section, the Secretary shall issue regulations establishing appropriate requirements and procedures, including requirements and procedures governing the indemnification of the Secretary by the mortgagee.

(June 27, 1934, ch. 847, title II, §256, as added Pub. L. 104–204, title IV, §427, Sept. 26, 1996, 110 Stat. 2928.)

§1715z–22. Multifamily mortgage credit programs

(a) In general

The Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") shall carry out programs through the Federal Housing Administration to provide new forms of Federal credit enhancement for multifamily loans. In carrying out the programs, the Secretary shall include an evaluation of the effectiveness of entering into partnerships or other contractual arrangements including reinsurance and risk-sharing agreements with State or local housing finance agencies, the Federal Housing Finance Board, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, qualified financial institutions, and other State or local mortgage insurance companies or bank lending consortia.

(b) Risk-sharing program

(1) In general

The Secretary shall carry out a program in conjunction with qualified participating entities to

provide Federal credit enhancement for loans for affordable multifamily housing through a system of risk-sharing agreements with such entities.

(2) Program requirements

(A) In general

In carrying out the program under this subsection, the Secretary shall enter into risk-sharing agreements with qualified participating entities.

(B) Mortgage insurance and reinsurance

Agreements under subparagraph (A) may provide for (i) mortgage insurance through the Federal Housing Administration of loans for affordable multifamily housing originated by or through, or purchased by, qualified participating entities, and (ii) reinsurance, including reinsurance of pools of loans, on affordable multifamily housing. In entering into risk-sharing agreements under this subsection covering mortgages, the Secretary may give preference to mortgages that are not already in the portfolios of qualified participating entities.

(C) Risk apportionment

Agreements entered into under this subsection between the Secretary and a qualified participating entity shall specify the percentage of loss that each of the parties to the agreement will assume in the event of default of the insured or reinsured multifamily mortgage. Such agreements shall specify that the qualified participating entity and the Secretary shall share any loss in accordance with the risk-sharing agreement.

(D) Reimbursement capacity

Agreements entered into under this subsection between the Secretary and a qualified participating entity shall provide evidence acceptable to the Secretary of the capacity of such entity to fulfill any reimbursement obligations made pursuant to this subsection. Evidence of such capacity which may be considered by the Secretary may include—

- (i) a pledge of the full faith and credit of a qualified participating entity to fulfill any obligations entered into by the entity;
- (ii) reserves pledged or otherwise restricted by the qualified participating entity in an amount equal to an agreed upon percentage of the loss assumed by the entity under subparagraph (C);
- (iii) funds pledged through a State or local guarantee fund; or
- (iv) any other form of evidence mutually agreed upon by the Secretary and the qualified participating entity.

(E) Underwriting standards

The Secretary shall allow any qualified participating entity to use its own underwriting standards and loan terms and conditions for purposes of underwriting loans to be insured under this subsection, except as provided in this section, without further review by the Secretary, except that the Secretary may impose additional underwriting criteria and loan terms and conditions for contractual agreements where the Secretary retains more than 50 percent of the risk of loss. Any financing permitted on property insured under this subsection other than the first mortgage shall be expressly subordinate to the insured mortgage.

(F) Authority of Secretary

The Secretary, upon request of a qualified participating entity, may insure or reinsure and make commitments to insure or reinsure under this section any mortgage, advance, loan, or pool of mortgages otherwise eligible under this section, pursuant to a risk-sharing agreement providing that the qualified participating entity will carry out (under a delegation or otherwise, and with or without compensation, but subject to audit, exception, or review requirements) such credit approval, appraisal, inspection, issuance of commitments, approval of insurance of advances, cost certification, servicing, property disposition, or other functions as the Secretary shall approve as consistent with the purpose of this section. All appraisals of property for

mortgage insurance under this section shall be completed by a Certified General Appraiser in accordance with the Uniform Standards of Professional Appraisal Practice.

(G) Disclosure of records

Qualified participating entities shall make available to the Secretary or the Secretary's designee, at the Secretary's request, such financial and other records as the Secretary deems necessary for purposes of review and monitoring for the program under this section.

(3) Development of alternatives

The Secretary shall develop and assess a variety of risk-sharing alternatives, including arrangements under which the Secretary assumes an appropriate share of the risk related to long-term mortgage loans on newly constructed or acquired multifamily rental housing, mortgage refinancings, bridge financing for construction, and other forms of multifamily housing mortgage lending that the Secretary deems appropriate to carry out the purposes of this subsection. Such alternatives shall be designed—

(A) to ensure that other parties bear a share of the risk, in percentage amount and in position of exposure, that is sufficient to create strong, market-oriented incentives for other participating parties to maintain sound underwriting and loan management practices;

(B) to develop credit mechanisms, including sound underwriting criteria, processing methods, and credit enhancements, through which resources of the Federal Housing Administration can assist in increasing multifamily housing lending as needed to meet the expected need in the United States;

(C) to provide a more adequate supply of mortgage credit for sound multifamily rental housing projects in underserved urban and rural markets;

(D) to encourage major financial institutions to expand their participation in mortgage lending for sound multifamily housing, through means such as mitigating uncertainties regarding actions of the Federal Government (including the possible failure to renew short-term subsidy contracts);

(E) to increase the efficiency, and lower the costs to the Federal Government, of processing and servicing multifamily housing mortgage loans insured by the Federal Housing Administration; and

(F) to improve the quality and expertise of Federal Housing Administration staff and other resources, as required for sound management of reinsurance and other market-oriented forms of credit enhancement.

(4) Eligibility standards

The Secretary shall establish and enforce standards for eligibility under this subsection of qualified participating entities under this subsection, as the Secretary determines to be appropriate.

(5) Insurance authority

Using any authority provided in appropriation Acts to insure mortgages under the National Housing Act [12 U.S.C. 1701 et seq.], the Secretary may enter into commitments under this subsection for risk-sharing units.

(6) Fees

The Secretary shall establish and collect premiums and fees under this subsection as the Secretary determines appropriate to (A) achieve the purpose of this subsection, and (B) compensate the Federal Housing Administration for the risks assumed and related administrative costs.

(7) Non-Federal participation

The Secretary shall carry out this subsection, to the maximum extent practicable, with the participation of well-established residential mortgage originators, financial institutions that invest in multifamily housing mortgages, multifamily housing sponsors, and such other private sector experts in multifamily housing finance as the Secretary determines to be appropriate.

(8) Prohibition on Ginnie Mae securitization

The Government National Mortgage Association shall not securitize any multifamily loans insured or reinsured under this subsection.

(9) Qualification as affordable housing

Multifamily housing securing loans insured or reinsured under this subsection shall qualify as affordable only if the housing is occupied by families and bears rents not greater than the gross rent for rent-restricted residential units as determined under section 42(g) of title 26.

(10) Certification of subsidy layering compliance

The requirements of section 3545(d) of title 42 may be satisfied in connection with a commitment to insure a mortgage under this subsection by a certification by a housing credit agency (including an entity established by a State that provides mortgage insurance) to the Secretary that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which a mortgage is to be insured shall not be any greater than is necessary to provide affordable housing.

(11) Implementation

The Secretary shall take any administrative actions necessary to initiate the program under this subsection.

(c) Housing finance agency program

(1) In general

The Secretary shall carry out a specific program in conjunction with qualified housing finance agencies (including entities established by States that provide mortgage insurance) to provide Federal credit enhancement for loans for affordable multifamily housing through a system of risk-sharing agreements with such agencies.

(2) Program requirements

(A) In general

In carrying out the program authorized under this subsection, the Secretary shall enter into risk-sharing agreements with qualified housing finance agencies.

(B) Mortgage insurance

Agreements under subparagraph (A) shall provide for full mortgage insurance through the Federal Housing Administration of the loans for affordable multifamily housing originated by or through qualified housing finance agencies and for reimbursement to the Secretary by such agencies for either all or a portion of the losses incurred on the loans insured.

(C) Risk apportionment

Agreements entered into under this subsection between the Secretary and a qualified housing finance agency shall specify the percentage of loss that each of the parties to the agreement will assume in the event of default of the insured multifamily mortgage. Such agreements shall specify that the qualified housing finance agency and the Secretary shall share any loss in accordance with the risk-sharing agreement.

(D) Reimbursement capacity

Agreements entered into under this subsection between the Secretary and a qualified housing finance agency shall provide evidence of the capacity of such agency to fulfill any reimbursement obligations made pursuant to this subsection. Evidence of such capacity may include—

- (i) a pledge of the full faith and credit of a qualified State or local agency to fulfill any obligations entered into by the qualified housing finance agency;
- (ii) reserves pledged or otherwise restricted by the qualified housing finance agency in an amount equal to an agreed upon percentage of the loss assumed by the housing finance

agency under subparagraph (C);

(iii) funds pledged through a State or local guarantee fund; or

(iv) any other form of evidence mutually agreed upon by the Secretary and the qualified housing finance agency.

(E) Underwriting standards

The Secretary shall allow any qualified housing finance agency to use its own underwriting standards and loan terms and conditions for purposes of underwriting loans to be insured under this subsection without further review by the Secretary, except that the Secretary may impose additional underwriting criteria and loan terms and conditions for contractual agreements where the Secretary retains more than 50 percent of the risk of loss.

(F) Disclosure of records

Qualified housing finance agencies shall make available to the Secretary such financial and other records as the Secretary deems necessary for program review and monitoring purposes.

(3) Mortgage insurance premiums

The Secretary shall establish a schedule of insurance premium payments for mortgages insured under this subsection based on the percentage of loss the Secretary may assume. Such schedule shall reflect lower or nominal premiums for qualified housing finance agencies that assume a greater share of the risk apportioned according to paragraph (2)(C).

(4) Insurance authority

Using any authority provided in appropriation Acts to insure mortgages under the National Housing Act [12 U.S.C. 1701 et seq.], the Secretary may enter into commitments under this subsection for risk-sharing units.

(5) Identity of interest

Notwithstanding any other provision of law, the Secretary shall not apply identity of interest provisions to agreements entered into with qualified State housing finance agencies under this subsection.

(6) Prohibition on Ginnie Mae securitization

The Government National Mortgage Association shall not securitize any multifamily loans insured under this subsection.

(7) Qualification as affordable housing

Multifamily housing securing loans insured under this subsection shall qualify as affordable only if the housing is occupied by families and bears rents not greater than the gross rent for rent-restricted residential units as determined under section 42(g) of title 26.

(8) Regulations

Not later than 90 days after October 28, 1992, the Secretary shall issue such regulations as may be necessary to carry out this subsection.

(9) Environmental and other reviews

(A) Environmental reviews

(i) In general

(I) In order to assure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the insurance of mortgages under subsection (c)(2), and to assure to the public undiminished protection of the environment, the Secretary may, under such regulations, in lieu of the environmental protection procedures otherwise applicable, provide for agreements to endorse for insurance mortgages under subsection (c)(2) upon the request of qualified housing finance agencies under this subsection, if the State or unit of general

local government, as designated by the Secretary in accordance with regulations, assumes all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary may specify, that would otherwise apply to the Secretary with respect to the insurance of mortgages on particular properties.

(II) The Secretary shall issue regulations to carry out this subparagraph only after consultation with the Council on Environmental Quality. Such regulations shall, among other matters, provide—

(aa) for the monitoring of the performance of environmental reviews under this subparagraph;

(bb) subject to the discretion of the Secretary, for the provision or facilitation of training for such performance; and

(cc) subject to the discretion of the Secretary, for the suspension or termination by the Secretary of the qualified housing finance agency's responsibilities under subclause (I).

(III) The Secretary's duty under subclause (II) shall not be construed to limit any responsibility assumed by a State or unit of general local government with respect to any particular property under subclause (I).

(ii) Procedure

The Secretary shall approve a mortgage for the provision of mortgage insurance subject to the procedures authorized by this paragraph only if, not less than 15 days prior to such approval, prior to any approval, commitment, or endorsement of mortgage insurance on the property on behalf of the Secretary, and prior to any commitment by the qualified housing finance agency to provide financing under the risk-sharing agreement with respect to the property, the qualified housing finance agency submits to the Secretary a request for such approval, accompanied by a certification of the State or unit of general local government that meets the requirements of clause (iii). The Secretary's approval of any such certification shall be deemed to satisfy the Secretary's responsibilities under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the provision of mortgage insurance on the property that is covered by such certification.

(iii) Certification

A certification under the procedures authorized by this paragraph shall—

(I) be in a form acceptable to the Secretary;

(II) be executed by the chief executive officer or other officer of the State or unit of general local government who qualifies under regulations of the Secretary;

(III) specify that the State or unit of general local government under this section has fully carried out its responsibilities as described under clause (i); and

(IV) specify that the certifying officer consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and under each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or such other provisions of law apply pursuant to clause (i), and is authorized and consents on behalf of the State or unit of general local government and himself or herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities as such an official.

(iv) Approval by States

In cases in which a unit of general local government carries out the responsibilities described in clause (i), the Secretary may permit the State to perform those actions of the Secretary described in clause (ii) and the performance of such actions by the State, where permitted by the Secretary, shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of clause (ii).

(B) Lead-based paint poisoning prevention

In carrying out the requirements of section 302 of the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. 4822], the Secretary may provide by regulation for the assumption of all or part of the Secretary's duties under such Act [42 U.S.C. 4801 et seq.] by qualified housing finance agencies, for purposes of this section.

(C) Certification of subsidy layering compliance

The requirements of section 3545(d) of title 42 may be satisfied in connection with a commitment to insure a mortgage under this subsection by a certification by a housing credit agency (including an entity established by a State that provides mortgage insurance) to the Secretary that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which a mortgage is to be insured shall not be any greater than is necessary to provide affordable housing.

(10) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Mortgage

The term "mortgage" means a first mortgage on real estate that is—

(i) owned in fee simple; or

(ii) subject to a leasehold interest that—

(I) has a term of not less than 99 years and is renewable; or

(II) has a remaining term that extends beyond the maturity of the mortgage for a period of not less than 10 years.

(B) First mortgage

The term "first mortgage" means a single first lien given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instrument, if any, secured thereby. Any other financing permitted on property insured under this section must be expressly subordinate to the insured mortgage.

(C) Unit of general local government; State

The terms "unit of general local government" and "State" have the same meanings as in section 5302(a) of title 42.

(Pub. L. 102–550, title V, §542, Oct. 28, 1992, 106 Stat. 3794; Pub. L. 103–233, title III, §307(a), (b), Apr. 11, 1994, 108 Stat. 373, 376; Pub. L. 104–120, §8, Mar. 28, 1996, 110 Stat. 836; Pub. L. 104–134, title I, §101(e) [title II, §205], Apr. 26, 1996, 110 Stat. 1321–257, 1321–284; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–18, title II, §10003, June 12, 1997, 111 Stat. 201; Pub. L. 105–276, title II, §211, Oct. 21, 1998, 112 Stat. 2486; Pub. L. 106–74, title II, §226, as added Pub. L. 106–113, div. A, title I, §175(d), Nov. 29, 1999, 113 Stat. 1534; Pub. L. 106–377, §1(a)(1) [title II, §235], Oct. 27, 2000, 114 Stat. 1441, 1441A–35.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Housing Act, referred to in subsecs. (b)(5) and (c)(4), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (c)(9)(A)(i)(I), (ii), (iii)(IV), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Lead-Based Paint Poisoning Prevention Act, referred to in subsec. (c)(9)(B), is Pub. L. 91–695, Jan. 13, 1971, 84 Stat. 2078, which is classified generally to chapter 63 (§4801 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4801 of Title 42 and Tables.

CODIFICATION

Section was formerly set out as a note under section 1707 of this title.

Section was enacted as part of the Multifamily Housing Finance Improvement Act and also as part of the Housing and Community Development Act of 1992, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

2000—Pub. L. 106–377, §1(a)(1) [title II, §235(6)], substituted "programs" for "demonstrations" in section catchline.

Subsec. (a). Pub. L. 106–377, §1(a)(1) [title II, §235(1)], substituted "provide" for "demonstrate the effectiveness of providing" in first sentence and "the programs" for "demonstration programs" in second sentence.

Subsec. (b). Pub. L. 106–377, §1(a)(1) [title II, §235(5)], struck out "pilot" after "Risk-sharing" in heading.

Subsec. (b)(1). Pub. L. 106–377, §1(a)(1) [title II, §235(2)(A)], substituted "provide" for "determine the effectiveness of".

Subsec. (b)(2)(A). Pub. L. 106–377, §1(a)(1) [title II, §235(5)], struck out "pilot" before "program".

Subsec. (b)(5). Pub. L. 106–377, §1(a)(1) [title II, §235(2)(B)], added par. (5) and struck out heading and text of former par. (5). Text read as follows: "Using any authority provided in appropriation Acts to insure loans under the National Housing Act, the Secretary may enter into commitments under this subsection for risk sharing with respect to mortgages on not more than 7,500 units during fiscal year 1996. The demonstration authorized under this subsection shall not be expanded until the reports required under subsection (d) are submitted to Congress, and not more than an additional 25,000 units in each of the fiscal years 1999 and 2000."

Subsec. (c). Pub. L. 106–377, §1(a)(1) [title II, §235(5)], struck out "pilot" after "finance agency" in heading.

Subsec. (c)(1). Pub. L. 106–377, §1(a)(1) [title II, §235(3)(A), (5)], struck out "pilot" before "program" and substituted "provide Federal credit enhancement" for "test the effectiveness of Federal credit enhancement".

Subsec. (c)(2). Pub. L. 106–377, §1(a)(1) [title II, §235(5)], struck out "pilot" after "Program requirements" in heading.

Subsec. (c)(2)(A). Pub. L. 106–377, §1(a)(1) [title II, §235(5)], struck out "pilot" before "program".

Subsec. (c)(4). Pub. L. 106–377, §1(a)(1) [title II, §235(3)(B)], added par. (4) and struck out heading and text of former par. (4). Text read as follows: "Using any authority provided by appropriations Acts to insure mortgages under the National Housing Act, the Secretary may enter into commitments under this subsection with respect to mortgages on not more than 12,000 units during fiscal year 1996, not more than an additional 7,500 units during fiscal year 1997 and not more than an additional 25,000 units in each of fiscal years 1999 and 2000. The demonstration authorized under this subsection shall not be expanded until the reports required under subsection (d) of this section are submitted to the Congress."

Subsec. (d). Pub. L. 106–377, §1(a)(1) [title II, §235(4)], struck out heading and text of subsec. (d) which related to independent studies and reports.

1999—Subsec. (b)(5). Pub. L. 106–74, §226(1), as added by 106–113, §175(d), substituted "in each of the fiscal years 1999 and 2000" for "during fiscal year 1999".

Subsec. (c)(4). Pub. L. 106–74, §226(2), as added by Pub. L. 106–113, §175(d), substituted "in each of fiscal years 1999 and 2000" for "during fiscal year 1999".

1998—Subsec. (b)(5). Pub. L. 105–276, §211(1), inserted before period at end ", and not more than an additional 25,000 units during fiscal year 1999".

Subsec. (c)(4). Pub. L. 105–276, §211(2), substituted "1996," for "1996 and" and inserted "and not more than an additional 25,000 units during fiscal year 1999" after "fiscal year 1997".

1997—Subsec. (c)(4). Pub. L. 105–18 substituted "on not more than 12,000 units during fiscal year 1996 and not more than an additional 7,500 units during fiscal year 1997" for "on not more than 12,000 units during fiscal year 1996".

1996—Subsec. (b)(5). Pub. L. 104–120, §8(a), and Pub. L. 104–134, §101(e) [title II, §205(a)], amended par. (5) identically, substituting "on not more than 7,500 units during fiscal year 1996" for "on not more than 15,000 units over fiscal years 1993 and 1994".

Subsec. (c)(4). Pub. L. 104–120, §8(b), and Pub. L. 104–134, §101(e) [title II, §205(b)], amended par. (4) identically, substituting "on not more than 12,000 units during fiscal year 1996" for "on not to exceed 30,000 units over fiscal years 1993, 1994, and 1995".

1994—Subsec. (b)(1), (2). Pub. L. 103–233, §307(a)(1), added pars. (1) and (2) and struck out headings and

text of former pars. (1) and (2) relating to authority of Secretary for carrying out risk-sharing pilot program and authority of Secretary for reinsurance agreements, respectively.

Subsec. (b)(4). Pub. L. 103-233, §307(a)(2), substituted "eligibility under this subsection of qualified participating entities" for "financial institutions and entities to be eligible to enter into reinsurance agreements".

Subsec. (b)(8). Pub. L. 103-233, §307(a)(3), (4), added par. (8) and struck out heading and text of former par. (8). Text read as follows: "The Secretary shall take any administrative actions necessary to initiate the pilot program under this subsection not later than the expiration of the 8-month period beginning on October 28, 1992."

Subsec. (b)(9), (10). Pub. L. 103-233, §307(a)(4), added pars. (9) and (10).

Subsec. (b)(11). Pub. L. 103-233, §307(a)(3), added par. (11).

Subsec. (c)(1). Pub. L. 103-233, §307(b)(1), inserted "(including entities established by States that provide mortgage insurance)" after "qualified housing finance agencies".

Subsec. (c)(2)(C). Pub. L. 103-233, §307(b)(2)(A), substituted "Such agreements shall specify that the qualified housing finance agency and the Secretary shall share any loss in accordance with the risk-sharing agreement." for "Such agreements shall specify that the qualified housing finance agency and the Secretary shall share equally the full amount of any loss on the insured mortgage."

Subsec. (c)(2)(F). Pub. L. 103-233, §307(b)(2)(B), added subpar. (F).

Subsec. (c)(7). Pub. L. 103-233, §307(b)(3), struck out "very low-income" before "families" and "(2)" after "section 42(g)".

Subsec. (c)(9), (10). Pub. L. 103-233, §307(b)(4), added pars. (9) and (10).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-120 to be construed to have become effective Oct. 1, 1995, see section 13(a) of Pub. L. 104-120, set out as a note under section 1437d of Title 42, The Public Health and Welfare.

§1715z-22a. Definitions

For purposes of this subtitle:

(1) The term "multifamily housing" means housing accommodations on the mortgaged property that are designed principally for residential use, conform to standards satisfactory to the Secretary, and consist of not less than 5 rental units on 1 site. These units may be detached, semidetached, row house, or multifamily structures.

(2) The term "qualified housing finance agency" means any State or local housing finance agency that—

(A) carries the designation of "top tier" or its equivalent, as evaluated by Standard and Poors or any other nationally recognized rating agency;

(B) receives a rating of "A" for its general obligation bonds from a nationally recognized rating agency; or

(C) otherwise demonstrates its capacity as a sound and experienced agency based on, but not limited to, its experience in financing multifamily housing, fund balances, administrative capabilities, investment policy, internal controls and financial management, portfolio quality, and State or local support.

(3) The term "reinsurance agreement" means a contractual obligation under which the Secretary, in exchange for appropriate compensation, agrees to assume a specified portion of the risk of loss that a lender or other party has previously assumed with respect to a mortgage on a multifamily housing property.

(4) The term "Secretary" means the Secretary of Housing and Urban Development.

(5) The term "qualified participating entity" means an entity approved by the Secretary for participation in the pilot program under this subsection, which may include—

(A) the Federal National Mortgage Association;

(B) the Federal Home Loan Mortgage Corporation;

(C) State housing finance and mortgage insurance agencies; and

(D) the Federal Housing Finance Board.

(Pub. L. 102–550, title V, §544, Oct. 28, 1992, 106 Stat. 3801; Pub. L. 103–233, title III, §307(c), Apr. 11, 1994, 108 Stat. 378.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in text, means subtitle C (§§541–544) of Pub. L. 102–550, title V, Oct. 28, 1992, 106 Stat. 3794, known as the Multifamily Housing Finance Improvement Act, which enacted this section and section 1715z–22 of this title and provisions set out as a note under section 1701 of this title. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 1701 of this title and Tables.

CODIFICATION

Section was formerly set out as a note under section 1707 of this title.

Section was enacted as part of the Multifamily Housing Finance Improvement Act and also as part of the Housing and Community Development Act of 1992, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1994—Par. (1). Pub. L. 103–233, §307(c)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: "The term 'multifamily housing' means a property consisting of more than 4 dwelling units."

Par. (5). Pub. L. 103–233, §307(c)(2), added par. (5).

§1715z–23. HOPE for Homeowners Program

(a) Establishment

There is established in the Federal Housing Administration a HOPE for Homeowners Program.

(b) Purpose

The purpose of the HOPE for Homeowners Program is—

(1) to create an FHA program, participation in which is voluntary on the part of homeowners and existing loan holders to insure refinanced loans for distressed borrowers to support long-term, sustainable homeownership;

(2) to allow homeowners to avoid foreclosure by reducing the principle ¹ balance outstanding, and interest rate charged, on their mortgages;

(3) to help stabilize and provide confidence in mortgage markets by bringing transparency to the value of assets based on mortgage assets;

(4) to target mortgage assistance under this section to homeowners for their principal residence;

(5) to enhance the administrative capacity of the FHA to carry out its expanded role under the HOPE for Homeowners Program;

(6) to ensure the HOPE for Homeowners Program remains in effect only for as long as is necessary to provide stability to the housing market; and

(7) to provide servicers of delinquent mortgages with additional methods and approaches to avoid foreclosure.

(c) Establishment and implementation of program requirements

(1) Duties of Secretary

In order to carry out the purposes of the HOPE for Homeowners Program, the Secretary, after consultation with the Board, shall—

(A) establish requirements and standards for the program consistent with section 1709(b) of this title to the maximum extent possible; and

(B) prescribe such regulations and provide such guidance as may be necessary or appropriate to implement such requirements and standards.

(2) Duties of the Secretary

In carrying out any of the program requirements or standards established under paragraph (1), the Secretary may issue such interim guidance and mortgagee letters as the Secretary determines necessary or appropriate.

(3) Duties of Board

The Board shall advise the Secretary regarding the establishment and implementation of the HOPE for Homeowners Program.

(d) Insurance of mortgages

The Secretary is authorized upon application of a mortgagee to make commitments to insure or to insure any eligible mortgage that has been refinanced in a manner meeting the requirements under subsection (e).

(e) Requirements of insured mortgages

To be eligible for insurance under this section, a refinanced eligible mortgage shall comply with all of the following requirements:

(1) Borrower certification

(A) No intentional default or false information

The mortgagor shall provide a certification to the Secretary that the mortgagor has not intentionally defaulted on the existing mortgage or mortgages or any other substantial debt within the last 5 years and has not knowingly, or willfully and with actual knowledge, furnished material information known to be false for the purpose of obtaining the eligible mortgage to be insured and has not been convicted under Federal or State law for fraud during the 10-year period ending upon the insurance of the mortgage under this section.

(B) Liability for repayment

The mortgagor shall agree in writing that the mortgagor shall be liable to repay to the Secretary any direct financial benefit achieved from the reduction of indebtedness on the existing mortgage or mortgages on the residence refinanced under this section derived from misrepresentations made by the mortgagor in the certifications and documentation required under this paragraph, subject to the discretion of the Secretary.

(C) Current borrower debt-to-income ratio

As of the date of application for a commitment to insure or insurance under this section, the mortgagor shall have had, or thereafter is likely to have, due to the terms of the mortgage being reset, a ratio of mortgage debt to income, taking into consideration all existing mortgages of that mortgagor at such time, greater than 31 percent (or such higher amount as the Secretary determines appropriate).

(2) Determination of principal obligation amount

The principal obligation amount of the refinanced eligible mortgage to be insured shall—

(A) be determined by the reasonable ability of the mortgagor to make his or her mortgage payments, as such ability is determined by the Secretary pursuant to section 1709(b)(4) of this title or by any other underwriting standards established by the Secretary; and

(B) not exceed 90 percent of the appraised value of the property to which such mortgage relates (or such higher percentage as the Secretary determines, in the discretion of the Secretary).

(3) Required waiver of prepayment penalties and fees

All penalties for prepayment or refinancing of the eligible mortgage, and all fees and penalties related to default or delinquency on the eligible mortgage, shall be waived or forgiven.

(4) Extinguishment of subordinate liens

(A) Required agreement

All holders of outstanding mortgage liens on the property to which the eligible mortgage relates shall agree to accept the proceeds of the insured loan and any payments made under this paragraph, as payment in full of all indebtedness under the eligible mortgage, and all encumbrances related to such eligible mortgage shall be removed. The Secretary may take such actions as may be necessary and appropriate to facilitate coordination and agreement between the holders of the existing senior mortgage and any existing subordinate mortgages, taking into consideration the subordinate lien status of such subordinate mortgages. Such actions may include making payments, which shall be accepted as payment in full of all indebtedness under the eligible mortgage, to any holder of an existing subordinate mortgage, in lieu of any future appreciation payments authorized under subparagraph (B).

(B) Shared appreciation

(i) In general

The Secretary may establish standards and policies that will allow for the payment to the holder of any existing subordinate mortgage of a portion of any future appreciation in the property secured by such eligible mortgage that is owed to the Secretary pursuant to subsection (k).

(ii) Factors

In establishing the standards and policies required under clause (i), the Secretary shall take into consideration—

- (I) the status of any subordinate mortgage;
- (II) the outstanding principal balance of and accrued interest on the existing senior mortgage and any outstanding subordinate mortgages;
- (III) the extent to which the current appraised value of the property securing a subordinate mortgage is less than the outstanding principal balance and accrued interest on any other liens that are senior to such subordinate mortgage; and
- (IV) such other factors as the Secretary determines to be appropriate.

(C) Voluntary program

This paragraph may not be construed to require any holder of any existing mortgage to participate in the program under this section generally, or with respect to any particular loan.

(5) Term of mortgage

The refinanced eligible mortgage to be insured shall—

- (A) bear interest at a single rate that is fixed for the entire term of the mortgage; and
- (B) have a maturity of not less than 30 years from the date of the beginning of amortization of such refinanced eligible mortgage.

(6) Maximum loan amount

The principal obligation amount of the eligible mortgage to be insured shall not exceed 132 percent of the dollar amount limitation in effect for 2007 under section 1454(a)(2) of this title for a property of the applicable size.

(7) Prohibition on second liens

A mortgagor may not grant a new second lien on the mortgaged property during the first 5 years of the term of the mortgage insured under this section, except as the Secretary determines to be necessary to ensure the maintenance of property standards.

(8) Appraisals

Any appraisal conducted in connection with a mortgage insured under this section shall—

- (A) be based on the current value of the property;
- (B) be conducted in accordance with title XI of the Financial Institutions Reform, Recovery,

and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.);

(C) be completed by an appraiser who meets the competency requirements of the Uniform Standards of Professional Appraisal Practice;

(D) be wholly consistent with the appraisal standards, practices, and procedures under section 1708(e) ² of this title that apply to all loans insured under this chapter; and

(E) comply with the requirements of subsection (g) of this section (relating to appraisal independence).

(9) Documentation and verification of income

In complying with the FHA underwriting requirements under the HOPE for Homeowners Program under this section, the mortgagee shall document and verify the income of the mortgagor or non-filing status in accordance with procedures and standards that the Secretary shall establish (provided that such procedures and standards are consistent with section 1709(b) of this title to the maximum extent possible) which may include requiring the mortgagee to procure a copy of the income tax returns from the Internal Revenue Service, for the two most recent years for which the filing deadline for such years has passed.

(10) Mortgage fraud

(A) Prohibition

The mortgagor shall not have been convicted under Federal or State law for fraud during the 10-year period ending upon the insurance of the mortgage under this section.

(B) Duty of mortgagee

The duty of the mortgagee to ensure that the mortgagor is in compliance with the prohibition under subparagraph (A) shall be satisfied if the mortgagee makes a good faith effort to determine that the mortgagor has not been convicted under Federal or State law for fraud during the period described in subparagraph (A).

(11) Primary residence

The mortgagor shall provide documentation satisfactory in the determination of the Secretary to prove that the residence covered by the mortgage to be insured under this section is occupied by the mortgagor as the primary residence of the mortgagor, and that such residence is the only residence in which the mortgagor has any present ownership interest, except that the Secretary may provide exceptions to such latter requirement (relating to present ownership interest) for any mortgagor who has inherited a property.

(12) Ban on millionaires

The mortgagor shall not have a net worth, as of the date the mortgagor first applies for a mortgage to be insured under the Program under this section, that exceeds \$1,000,000.

(f) Study of auction or bulk refinance program

(1) Study

The Board shall conduct a study of the need for and efficacy of an auction or bulk refinancing mechanism to facilitate refinancing of existing residential mortgages that are at risk for foreclosure into mortgages insured under this section. The study shall identify and examine various options for mechanisms under which lenders and servicers of such mortgages may make bids for forward commitments for such insurance in an expedited manner.

(2) Content

(A) Analysis

The study required under paragraph (1) shall analyze—

(i) the feasibility of establishing a mechanism that would facilitate the more rapid refinancing of borrowers at risk of foreclosure into performing mortgages insured under this section;

(ii) whether such a mechanism would provide an effective and efficient mechanism to

reduce foreclosures on qualified existing mortgages;

(iii) whether the use of an auction or bulk refinance program is necessary to stabilize the housing market and reduce the impact of turmoil in that market on the economy of the United States;

(iv) whether there are other mechanisms or authority that would be useful to reduce foreclosure; and

(v) and any other factors that the Board considers relevant.

(B) Determinations

To the extent that the Board finds that a facility of the type described in subparagraph (A) is feasible and useful, the study shall—

(i) determine and identify any additional authority or resources needed to establish and operate such a mechanism;

(ii) determine whether there is a need for additional authority with respect to the loan underwriting criteria established in this section or with respect to eligibility of participating borrowers, lenders, or holders of liens;

(iii) determine whether such underwriting criteria should be established on the basis of individual loans, in the aggregate, or otherwise to facilitate the goal of refinancing borrowers at risk of foreclosure into viable loans insured under this section.

(3) Report

Not later than the expiration of the 60-day period beginning on July 30, 2008, the Board shall submit a report regarding the results of the study conducted under this subsection to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report shall include a detailed description of the analysis required under paragraph (2)(A) and of the determinations made pursuant to paragraph (2)(B), and shall include any other findings and recommendations of the Board pursuant to the study, including identifying various options for mechanisms described in paragraph (1).

(g) Appraisal independence

(1) Prohibitions on interested parties in a real estate transaction

No mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, nor any other person with an interest in a real estate transaction involving an appraisal in connection with a mortgage insured under this section shall improperly influence, or attempt to improperly influence, through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, nonpayment for services rendered, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with the mortgage.

(2) Civil monetary penalties

The Secretary may impose a civil money penalty for any knowing and material violation of paragraph (1) under the same terms and conditions as are authorized in section 1735f-14(a) of this title.

(h) Standards to protect against adverse selection

(1) In general

The Secretary shall, by rule or order, establish standards and policies to require the underwriter of the insured loan to provide such representations and warranties as the Secretary considers necessary or appropriate to enforce compliance with all underwriting and appraisal standards of the HOPE for Homeowners Program.

(2) Exclusion for violations

The Secretary shall not pay insurance benefits to a mortgagee who violates the representations and warranties, as established under paragraph (1), or in any case in which a mortgagor fails to make the first payment on a refinanced eligible mortgage.

(3) Other authority

The Secretary may establish such other standards or policies as necessary to protect against adverse selection, including requiring loans identified by the Secretary as higher risk loans to demonstrate payment performance for a reasonable period of time prior to being insured under the program.

(i) Premiums

(1) Premiums

For each refinanced eligible mortgage insured under this section, the Secretary shall establish and collect—

(A) at the time of insurance, a single premium payment in an amount not more than 3 percent of the amount of the original insured principal obligation of the refinanced eligible mortgage, which shall be paid from the proceeds of the mortgage being insured under this section, through the reduction of the amount of indebtedness that existed on the eligible mortgage prior to refinancing; and

(B) in addition to the premium required under paragraph (1), an annual premium in an amount not more than 1.5 percent of the amount of the remaining insured principal balance of the mortgage.

(2) Considerations

In setting the premium under this subsection, the Secretary shall consider—

(A) the financial integrity of the HOPE for Homeowners Program; and

(B) the purposes of the HOPE for Homeowners Program described in subsection (b).

(j) Origination fees and interest rate

The Secretary shall establish—

(1) a reasonable limitation on origination fees for refinanced eligible mortgages insured under this section; and

(2) procedures to ensure that interest rates on such mortgages shall be commensurate with market rate interest rates on such types of loans.

(k) Exit fee

(1) Five-year phase-in for equity as a result of sale or refinancing

For each eligible mortgage insured under this section, the Secretary and the mortgagor of such mortgage shall, upon any sale or disposition of the property to which such mortgage relates, or upon the subsequent refinancing of such mortgage, be entitled to the following with respect to any equity created as a direct result of the mortgage being insured under this section:

(A) If such sale or refinancing occurs during the period that begins on the date that such mortgage is insured and ends 1 year after such date of insurance, the Secretary shall be entitled to 100 percent of such equity.

(B) If such sale or refinancing occurs during the period that begins 1 year after such date of insurance and ends 2 years after such date of insurance, the Secretary shall be entitled to 90 percent of such equity and the mortgagor shall be entitled to 10 percent of such equity.

(C) If such sale or refinancing occurs during the period that begins 2 years after such date of insurance and ends 3 years after such date of insurance, the Secretary shall be entitled to 80 percent of such equity and the mortgagor shall be entitled to 20 percent of such equity.

(D) If such sale or refinancing occurs during the period that begins 3 years after such date of insurance and ends 4 years after such date of insurance, the Secretary shall be entitled to 70 percent of such equity and the mortgagor shall be entitled to 30 percent of such equity.

(E) If such sale or refinancing occurs during the period that begins 4 years after such date of insurance and ends 5 years after such date of insurance, the Secretary shall be entitled to 60 percent of such equity and the mortgagor shall be entitled to 40 percent of such equity.

(F) If such sale or refinancing occurs during any period that begins 5 years after such date of insurance, the Secretary shall be entitled to 50 percent of such equity and the mortgagor shall be

entitled to 50 percent of such equity.

(2) Appreciation in value

For each eligible mortgage insured under this section, the Secretary may, upon any sale or disposition of the property to which the mortgage relates, be entitled to up to 50 percent of appreciation, up to the appraised value of the home at the time when the mortgage being refinanced under this section was originally made. The Secretary may share any amounts received under this paragraph with or assign the rights of any amounts due to the Secretary to the holder of the existing senior mortgage on the eligible mortgage, the holder of any existing subordinate mortgage on the eligible mortgage, or both.

(l) Establishment of HOPE Fund

(1) In general

There is established in the Federal Housing Administration a revolving fund to be known as the Home Ownership Preservation Entity Fund, which shall be used by the Secretary for carrying out the mortgage insurance obligations under this section.

(2) Management of Fund

The HOPE Fund shall be administered and managed by the Secretary, who shall establish reasonable and prudent criteria for the management and operation of any amounts in the HOPE Fund.

(m) Limitation on aggregate insurance authority

The aggregate original principal obligation of all mortgages insured under this section may not exceed \$300,000,000,000.

(n) Reports by the Secretary

The Secretary shall submit monthly reports to the Congress identifying the progress of the HOPE for Homeowners Program, which shall contain the following information for each month:

- (1) The number of new mortgages insured under this section, including the location of the properties subject to such mortgages by census tract.
- (2) The aggregate principal obligation of new mortgages insured under this section.
- (3) The average amount by which the principle ¹ balance outstanding on mortgages insured this section was reduced.
- (4) The amount of premiums collected for insurance of mortgages under this section.
- (5) The claim and loss rates for mortgages insured under this section.
- (6) Any other information that the Secretary considers appropriate.

(o) Required outreach efforts

The Secretary shall carry out outreach efforts to ensure that homeowners, lenders, and the general public are aware of the opportunities for assistance available under this section.

(p) Enhancement of FHA capacity

The Secretary shall take such actions as may be necessary to—

- (1) contract for the establishment of underwriting criteria, automated underwriting systems, pricing standards, and other factors relating to eligibility for mortgages insured under this section;
- (2) contract for independent quality reviews of underwriting, including appraisal reviews and fraud detection, of mortgages insured under this section or pools of such mortgages; and
- (3) increase personnel of the Department as necessary to process or monitor the processing of mortgages insured under this section.

(q) GNMA commitment authority

(1) Guarantees

The Secretary shall take such actions as may be necessary to ensure that securities based on and backed by a trust or pool composed of mortgages insured under this section are available to be

guaranteed by the Government National Mortgage Association as to the timely payment of principal and interest.

(2) Guarantee authority

To carry out the purposes of section 1721 of this title, the Government National Mortgage Association may enter into new commitments to issue guarantees of securities based on or backed by mortgages insured under this section, not exceeding \$300,000,000,000. The amount of authority provided under the preceding sentence to enter into new commitments to issue guarantees is in addition to any amount of authority to make new commitments to issue guarantees that is provided to the Association under any other provision of law.

(r) Sunset

The Secretary may not enter into any new commitment to insure any refinanced eligible mortgage, or newly insure any refinanced eligible mortgage pursuant to this section before October 1, 2008 or after September 30, 2011.

(s) Definitions

For purposes of this section, the following definitions shall apply:

(1) Approved financial institution or mortgagee

The term "approved financial institution or mortgagee" means a financial institution or mortgagee approved by the Secretary under section 1709 of this title as responsible and able to service mortgages responsibly.

(2) Board

The term "Board" means the Advisory Board for the HOPE for Homeowners Program. The Board shall be composed of the Secretary, the Secretary of the Treasury, the Chairperson of the Board of Governors of the Federal Reserve System, and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, or their designees.

(3) Eligible mortgage

The term "eligible mortgage" means a mortgage—

(A) the mortgagor of which—

(i) occupies such property as his or her principal residence; and

(ii) cannot, subject to such standards established by the Secretary, afford his or her mortgage payments; and

(B) originated on or before January 1, 2008.

(4) Existing senior mortgage

The term "existing senior mortgage" means, with respect to a mortgage insured under this section, the existing mortgage that has superior priority.

(5) Existing subordinate mortgage

The term "existing subordinate mortgage" means, with respect to a mortgage insured under this section, an existing mortgage that has subordinate priority to the existing senior mortgage.

(6) HOPE for Homeowners Program

The term "HOPE for Homeowners Program" means the program established under this section.

(7) Secretary

The term "Secretary" means the Secretary of Housing and Urban Development, except where specifically provided otherwise.

(t) Requirements related to the Board

(1) Compensation, actual, necessary, and transportation expenses

(A) Federal employees

A member of the Board who is an officer or employee of the Federal Government shall serve without additional pay (or benefits in the nature of compensation) for service as a member of the Board.

(B) Travel expenses

Members of the Board shall be entitled to receive travel expenses, including per diem in lieu of subsistence, equivalent to those set forth in subchapter I of chapter 57 of title 5.

(2) Bylaws

The Board may prescribe, amend, and repeal such bylaws as may be necessary for carrying out the functions of the Board.

(3) Quorum

A majority of the Board shall constitute a quorum.

(4) Staff; experts and consultants

(A) Detail of Government employees

Upon request of the Board, any Federal Government employee may be detailed to the Board without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(B) Experts and consultants

The Board shall procure the services of experts and consultants as the Board considers appropriate.

(u) Rule of construction related to voluntary nature of the program

This section shall not be construed to require that any approved financial institution or mortgagee participate in any activity authorized under this section, including any activity related to the refinancing of an eligible mortgage.

(v) Rule of construction related to insurance of mortgages

Except as otherwise provided for in this section or by action of the Secretary, the provisions and requirements of section 1709(b) of this title shall apply with respect to the insurance of any eligible mortgage under this section. The Secretary shall conform documents, forms, and procedures for mortgages insured under this section to those in place for mortgages insured under section 1709(b) of this title to the maximum extent possible consistent with the requirements of this section.

(w) HOPE Bonds

(1) Issuance and repayment of bonds

Notwithstanding section 504(b) of the Federal Credit Reform Act of 1990 [2 U.S.C. 661c(b)], the Secretary of the Treasury shall—

(A) subject to such terms and conditions as the Secretary of the Treasury deems necessary, issue Federal credit instruments, to be known as "HOPE Bonds", that are callable at the discretion of the Secretary of the Treasury and do not, in the aggregate, exceed the amount specified in subsection (m);

(B) provide the subsidy amounts necessary for loan guarantees under the HOPE for Homeowners Program, not to exceed the amount specified in subsection (m), in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), except as provided in this paragraph; and

(C) use the proceeds from HOPE Bonds only to pay for the net costs to the Federal Government of the HOPE for Homeowners Program, including administrative costs and payments pursuant to subsection (e)(4)(A).

(2) Reimbursements to Treasury

Funds received pursuant to section 4568(b) of this title shall be used to reimburse the Secretary of the Treasury for amounts borrowed under paragraph (1).

(3) Use of reserve fund

If the net cost to the Federal Government for the HOPE for Homeowners Program exceeds the amount of funds received under paragraph (2), remaining debts of the HOPE for Homeowners Program shall be paid from amounts deposited into the fund established by the Secretary under section 4567(e) of this title, remaining amounts in such fund to be used to reduce the National debt.

(4) Reduction of National debt

Amounts collected under the HOPE for Homeowners Program in accordance with subsections (i) and (k) in excess of the net cost to the Federal Government for such Program shall be used to reduce the National debt.

(x) Payments to servicers and originators

The Secretary may establish a payment to the—

- (1) servicer of the existing senior mortgage or existing subordinate mortgage for every loan insured under the HOPE for Homeowners Program; and
- (2) originator of each new loan insured under the HOPE for Homeowners Program.

(y) Auctions

The Secretary, with the concurrence of the Board, shall, if feasible, establish a structure and organize procedures for an auction to refinance eligible mortgages on a wholesale or bulk basis.

(June 27, 1934, ch. 847, title II, §257, as added Pub. L. 110–289, div. A, title IV, §1402(a), July 30, 2008, 122 Stat. 2800; amended Pub. L. 110–343, div. A, title I, §124, Oct. 3, 2008, 122 Stat. 3791; Pub. L. 111–22, div. A, title II, §202(a), May 20, 2009, 123 Stat. 1640.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (e)(8)(B), is Pub. L. 101–73, Aug. 9, 1989, 103 Stat. 183. Title XI of the Act is classified principally to chapter 34A (§3331 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1989 Amendment note set out under section 1811 of this title and Tables.

Section 1708(e) of this title, referred to in subsec. (e)(8)(D), was redesignated section 1708(f) and then 1708(g) of this title by Pub. L. 110–289, div. B, title I, §2116(1)(B), July 30, 2008, 122 Stat. 2832, and Pub. L. 111–22, div. A, title II, §203(b)(1), May 20, 2009, 123 Stat. 1643.

The Federal Credit Reform Act of 1990, referred to in subsec. (w)(1)(B), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, §13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

Section 4568(b) of this title, referred to in subsec. (w)(2), was in the original "section 1338(b) of the Federal Housing Enterprises Regulatory Reform Act of 1992", and was translated as meaning section 1338(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, which is classified to section 4568(b) of this title, to reflect the probable intent of Congress.

CODIFICATION

Pub. L. 111–22, §202(a)(2), which directed amendment of subsections (e), (h)(1), (h)(3), (j), (l), (n), (s)(3), and (v) by substituting "Secretary" for "Board" each place such term appeared, was not executed to subsec. (e)(4)(A), (9), or the heading for subsec. (n), to reflect the probable intent of Congress and the amendments by Pub. L. 111–22, §202(a)(3)(B)(i), (D)(ii), (7). See 2009 Amendment notes below.

Another section 257 of act June 27, 1934, was renumbered section 258 and is classified to section 1715z–24 of this title.

AMENDMENTS

2009—Subsec. (c)(1). Pub. L. 111–22, §202(a)(1)(A), (B), substituted "Secretary" for "the Board" in heading and "Secretary, after consultation with the Board," for "Board" in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 111–22, §202(a)(1)(C), inserted "consistent with section 1709(b) of this title to the maximum extent possible" before semicolon.

Subsec. (c)(3). Pub. L. 111-22, §202(a)(1)(D), added par. (3).

Subsec. (e)(1). Pub. L. 111-22, §202(a)(3)(A), added par. (1) and struck out former par. (1) which related to lack of capacity to pay existing mortgage.

Subsec. (e)(2). Pub. L. 111-22, §202(a)(2), substituted "established by the Secretary" for "established by the Board" in subpar. (A) and "Secretary" for "Board" in two places in subpar. (B).

Subsec. (e)(4)(A). Pub. L. 111-22, §202(a)(3)(B)(i), struck out ", subject to standards established by the Board under subparagraph (B)," after "may take such actions". See Codification note above.

Subsec. (e)(4)(B)(i). Pub. L. 111-22, §202(a)(3)(B)(ii), substituted "may" for "shall".

Pub. L. 111-22, §202(a)(2), substituted "The Secretary" for "The Board".

Subsec. (e)(4)(B)(ii). Pub. L. 111-22, §202(a)(2), substituted "Secretary" for "Board" in introductory provisions and in subcl. (IV).

Subsec. (e)(7). Pub. L. 111-22, §202(a)(3)(C), struck out "; and provided that such new outstanding liens (A) do not reduce the value of the Government's equity in the borrower's home; and (B) when combined with the mortgagor's existing mortgage indebtedness, do not exceed 95 percent of the home's appraised value at the time of the new second lien" after "property standards".

Pub. L. 111-22, §202(a)(2), substituted "Secretary" for "Board".

Subsec. (e)(9). Pub. L. 111-22, §202(a)(3)(D), substituted "in accordance with procedures and standards that the Secretary shall establish (provided that such procedures and standards are consistent with section 1709(b) of this title to the maximum extent possible) which may include requiring the mortgagee to procure" for "by procuring (A) an income tax return transcript of the income tax returns of the mortgagor, or (B)" and struck out "and by any other method, in accordance with procedures and standards that the Board shall establish" before period at end. See Codification note above.

Subsec. (e)(10). Pub. L. 111-22, §202(a)(3)(E), designated existing provisions as subpar. (A), inserted subpar. (A) heading, and added subpar. (B).

Subsec. (e)(11). Pub. L. 111-22, §202(a)(3)(F), inserted ", except that the Secretary may provide exceptions to such latter requirement (relating to present ownership interest) for any mortgagor who has inherited a property" before period at end.

Subsec. (e)(12). Pub. L. 111-22, §202(a)(3)(G), added par. (12).

Subsec. (h)(1). Pub. L. 111-22, §202(a)(2), substituted "Secretary" for "Board" in two places.

Subsec. (h)(2). Pub. L. 111-22, §202(a)(4), substituted "The Secretary shall not pay" for "The Board shall prohibit the Secretary from paying".

Subsec. (h)(3). Pub. L. 111-22, §202(a)(2), substituted "The Secretary" for "The Board".

Subsec. (i). Pub. L. 111-22, §202(a)(5), designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) and (2) as subpars. (A) and (B) of par. (1), respectively, and adjusted margins, substituted "not more than 3 percent" for "equal to 3 percent" in par. (1)(A) and "not more than 1.5 percent" for "equal to 1.5 percent" in par. (1)(B), and added par. (2).

Subsec. (j). Pub. L. 111-22, §202(a)(2), substituted "Secretary" for "Board" in introductory provisions.

Subsec. (k). Pub. L. 111-22, §202(a)(6)(A), substituted "Exit fee" for "Equity and appreciation" in heading.

Subsec. (k)(1). Pub. L. 111-22, §202(a)(6)(B), substituted "the mortgage being insured under this section" for "such sale or refinancing" in introductory provisions.

Subsec. (k)(2). Pub. L. 111-22, §202(a)(6)(C), substituted "may, upon any sale or disposition of the property to which the mortgage relates, be entitled to up to 50 percent of appreciation, up to the appraised value of the home at the time when the mortgage being refinanced under this section was originally made. The Secretary may share any amounts received under this paragraph with or assign the rights of any amounts due to the Secretary to the holder of the existing senior mortgage on the eligible mortgage, the holder of any existing subordinate mortgage on the eligible mortgage, or both." for "and the mortgagor of such mortgage shall, upon any sale or disposition of the property to which such mortgage relates, each be entitled to 50 percent of any appreciation in value of the appraised value of such property that has occurred since the date that such mortgage was insured under this section."

Subsec. (l)(1). Pub. L. 111-22, §202(a)(2), substituted "Secretary" for "Board".

Subsec. (n). Pub. L. 111-22, §202(a)(2), (7), substituted "Secretary" for "the Board" in heading and "Secretary" for "Board" in introductory provisions and in par. (6). See Codification note above.

Subsec. (p). Pub. L. 111-22, §202(a)(8), substituted "The" for "Under the direction of the Board, the" in introductory provisions.

Subsec. (s)(2). Pub. L. 111-22, §202(a)(9)(A), substituted "Advisory Board for" for "Board of Directors of".

Subsec. (s)(3)(A)(ii). Pub. L. 111-22, §202(a)(9)(B), substituted "such" for "subsection (e)(1)(B) and such other".

Pub. L. 111–22, §202(a)(2), substituted "Secretary" for "Board".

Subsec. (v). Pub. L. 111–22, §202(a)(2), (10), substituted "action of the Secretary" for "action of the Board" and inserted at end "The Secretary shall conform documents, forms, and procedures for mortgages insured under this section to those in place for mortgages insured under section 1709(b) of this title to the maximum extent possible consistent with the requirements of this section."

Subsecs. (x), (y). Pub. L. 111–22, §202(a)(11), added subsecs. (x) and (y).

2008—Subsec. (e)(1)(B). Pub. L. 110–343, §124(1)(A), inserted ", or thereafter is likely to have, due to the terms of the mortgage being reset," before "a ratio".

Subsec. (e)(2)(B). Pub. L. 110–343, §124(1)(B), inserted "(or such higher percentage as the Board determines, in the discretion of the Board)" before period at end.

Subsec. (e)(4)(A). Pub. L. 110–343, §124(1)(C), inserted "and any payments made under this paragraph," after "insured loan" and inserted "Such actions may include making payments, which shall be accepted as payment in full of all indebtedness under the eligible mortgage, to any holder of an existing subordinate mortgage, in lieu of any future appreciation payments authorized under subparagraph (B)." at end.

Subsec. (w)(1)(C). Pub. L. 110–343, §124(2), inserted "and payments pursuant to subsection (e)(4)(A)" before period at end.

¹ *So in original. Probably should be "principal".*

² *See References in Text note below.*

§1715z–24. Pilot program for automated process for borrowers without sufficient credit history

(a) Establishment

The Secretary shall carry out a pilot program to establish, and make available to mortgagees, an automated process for providing alternative credit rating information for mortgagors and prospective mortgagors under mortgages on 1- to 4-family residences to be insured under this subchapter who have insufficient credit histories for determining their creditworthiness. Such alternative credit rating information may include rent, utilities, and insurance payment histories, and such other information as the Secretary considers appropriate.

(b) Scope

The Secretary may carry out the pilot program under this section on a limited basis or scope, and may consider limiting the program to first-time homebuyers.

(c) Limitation

In any fiscal year, the aggregate number of mortgages insured pursuant to the automated process established under this section may not exceed 5 percent of the aggregate number of mortgages for 1- to 4-family residences insured by the Secretary under this subchapter during the preceding fiscal year.

(d) Sunset

After the expiration of the 5-year period beginning on July 30, 2008, the Secretary may not enter into any new commitment to insure any mortgage, or newly insure any mortgage, pursuant to the automated process established under this section.

(June 27, 1934, ch. 847, title II, §258, formerly §257, as added Pub. L. 110–289, div. B, title I, §2124(a), July 30, 2008, 122 Stat. 2839; renumbered §258, Pub. L. 111–22, div. A, title II, §202(c), May 20, 2009, 123 Stat. 1643.)

§1715z–25. Mortgage modification data collecting and reporting

(a) Reporting requirements

Not later than 120 days after May 20, 2009, and quarterly thereafter, the Comptroller of the Currency and the Director of the Office of Thrift Supervision,¹ shall jointly submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate,² the Committee on Financial Services of the House of Representatives on the volume of mortgage modifications reported to the Office of the Comptroller of the Currency and the Office of Thrift Supervision, under the mortgage metrics program of each such Office, during the previous quarter, including the following:

(1) A copy of the data collection instrument currently used by the Office of the Comptroller of the Currency and the Office of Thrift Supervision to collect data on loan modifications.

(2) The total number of mortgage modifications in each State that result in each of the following:

(A) Additions of delinquent payments and fees to loan balances.

(B) Interest rate reductions and freezes.

(C) Term extensions.

(D) Reductions of principal.

(E) Deferrals of principal.

(F) Combinations of modifications described in subparagraph (A), (B), (C), (D), or (E).

(3) The total number of mortgage modifications in each State for which the total monthly principal and interest payment resulted in the following:

(A) An increase.

(B) Remained the same.

(C) Decreased less than 10 percent.

(D) Decreased between 10 percent and 20 percent.

(E) Decreased 20 percent or more.

(4) The total number of loans in each State that have been modified and then entered into default, where the loan modification resulted in—

(A) higher monthly payments by the homeowner;

(B) equivalent monthly payments by the homeowner;

(C) lower monthly payments by the homeowner of up to 10 percent;

(D) lower monthly payments by the homeowner of between 10 percent to 20 percent; or

(E) lower monthly payments by the homeowner of more than 20 percent.

(b) Data collection

(1) Required

(A) In general

Not later than 60 days after May 20, 2009, the Comptroller of the Currency and the Director of the Office of Thrift Supervision,¹ shall issue mortgage modification data collection and reporting requirements to institutions covered under the reporting requirement of the mortgage metrics program of the Comptroller or the Director. Not later than 60 days after the date of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Comptroller of the Currency and the Director of the Office of Thrift Supervision shall update such requirements to reflect amendments made to this section by such Act.

(B) Inclusiveness of collections

The requirements under subparagraph (A) shall provide for the collection of all mortgage modification data needed by the Comptroller of the Currency and the Director of the Office of Thrift Supervision to fulfill the reporting requirements under subsection (a).

(2) Report

The Comptroller of the Currency shall report all requirements established under paragraph (1) to each committee receiving the report required under subsection (a).

§1493, July 21, 2010, 124 Stat. 2206.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (b)(1)(A), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, which enacted chapter 53 (§5301 et seq.) of this title and chapters 108 (§8201 et seq.) and 109 (§8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section was enacted as part of the Helping Families Save Their Homes Act of 2009, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111–203, §1493(a)(1), substituted "in each State that result" for "resulting" in introductory provisions.

Subsec. (a)(3). Pub. L. 111–203, §1493(a)(2), inserted "each State for" after "modifications in" in introductory provisions.

Subsec. (a)(4). Pub. L. 111–203, §1493(a)(3), inserted "in each State" after "total number of loans" in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 111–203, §1493(b), inserted at end "Not later than 60 days after the date of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Comptroller of the Currency and the Director of the Office of Thrift Supervision shall update such requirements to reflect amendments made to this section by such Act."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

¹ *So in original. The comma probably should not appear.*

² *So in original. The word "and" probably should appear instead of the comma.*

SUBCHAPTER III—NATIONAL MORTGAGE ASSOCIATIONS

§1716. Declaration of purposes of subchapter

The Congress declares that the purposes of this subchapter are to establish secondary market facilities for residential mortgages, to provide that the operations thereof shall be financed by private capital to the maximum extent feasible, and to authorize such facilities to—

- (1) provide stability in the secondary market for residential mortgages;
- (2) respond appropriately to the private capital market;

(3) provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing;

(4) promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and

(5) manage and liquidate federally owned mortgage portfolios in an orderly manner, with a minimum of adverse effect upon the residential mortgage market and minimum loss to the Federal Government.

(June 27, 1934, ch. 847, title III, §301, 48 Stat. 1252; May 28, 1935, ch. 150, §30, 49 Stat. 300; Feb. 3, 1938, ch. 13, §§4, 5, 52 Stat. 23; June 3, 1939, ch. 175, §§15, 16, 53 Stat. 808; Mar. 28, 1941, ch. 31, §5, 55 Stat. 62; July 1, 1948, ch. 784, §1, 62 Stat. 1206; Aug. 10, 1948, ch. 832, title II, §§201, 202, 62 Stat. 1275; Aug. 8, 1949, ch. 403, §4, 63 Stat. 576; Oct. 25, 1949, ch. 729, §7, 63 Stat. 906; Apr. 20, 1950, ch. 94, title I, §§116, 122, 64 Stat. 57, 59; Sept. 1, 1951, ch. 378, title II, §205, title VI, §608(b), 65 Stat. 303, 315; Apr. 9, 1952, ch. 173, 66 Stat. 51; July 14, 1952, ch. 723, §§3(a), 10(a)(2), 66 Stat. 602, 603; June 30, 1953, ch. 170, §§12, 13(a), 67 Stat. 125; June 29, 1954, ch. 410, §1(1), 68 Stat. 320; Aug. 2, 1954, ch. 649, title II, §201, 68 Stat. 612; Pub. L. 90-448, title VIII, §802(b), Aug. 1, 1968, 82 Stat. 536; Pub. L. 101-73, title VII, §731(m)(1), Aug. 9, 1989, 103 Stat. 435; Pub. L. 102-550, title XIII, §1381(a), Oct. 28, 1992, 106 Stat. 3994.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102-550, §1381(a)(1), substituted "residential" for "home" in introductory provisions.

Par. (1). Pub. L. 102-550, §1381(a)(1), substituted "residential" for "home".

Par. (3). Pub. L. 102-550, §1381(a)(1), (2), substituted "residential" for "home" in two places, substituted "(including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities)" for "(including mortgages securing housing for low- and moderate-income families involving a reasonable economic return)", and struck out "and" at end.

Par. (4). Pub. L. 102-550, §1381(a)(3), (4), added par. (4) and redesignated former par. (4) as (5).

Par. (5). Pub. L. 102-550, §1381(a)(1), (3), redesignated par. (4) as (5) and substituted "residential" for "home".

1989—Pub. L. 101-73 added pars. (1) to (3), struck out subsecs. (a) and (b), and redesignated subsec. (c) as par. (4). Prior to amendment, subsecs. (a) and (b) related to supplementary assistance to the secondary market and to provision of special assistance, respectively.

1968—Pub. L. 90-448 struck out provisions which established in the Federal Government a secondary market facility for home mortgages in view of section 1716b of this title which created two separate and distinct corporations.

1954—Act Aug. 2, 1954, amended section generally, substituting entirely new provisions for provisions now covered by section 1717 of this title and other sections in this subchapter.

Subsec. (a)(1)(G). Act June 29, 1954, substituted in first sentence "August 1, 1954" for "July 1, 1954".

1953—Subsec. (a)(1)(E). Act June 30, 1953, §12, in cl. (2), substituted "principal amount to be paid therefor" for "unpaid principal balance thereof", and "aggregate principal amount" for "aggregate amount"; and substituted three provisos for former proviso which made such cl. (2) and any terms therein inapplicable to any defense or disaster mortgages as defined in subpar. (G) of par. (1).

Subsec. (a)(1)(G). Act June 30, 1953, §13(a), substituted in first sentence "July 1, 1954" for "July 1, 1953".

1952—Subsec. (a)(1). Act July 14, 1952, §3(a)(1), authorized the FNMA to purchase Government-insured or guaranteed home mortgages other than defense or disaster mortgages if they are insured after Feb. 29, 1952.

Subsec. (a)(1)(E). Act July 14, 1952, §3(a)(2), (3), changed the base date from Apr. 30, 1948 to Feb. 29, 1952, and exempted defense or disaster mortgages from the limitation of this subparagraph.

Subsec. (a)(1)(G). Act July 14, 1952, §3(a)(4), increased the FNMA commitment powers from \$252,000,000 to \$1,152,000,000 outstanding at any one time if the commitments relate to defense or disaster mortgages.

S.J. Res. Apr. 9, 1952, increased the \$200,000,000 authorization to \$252,000,000 and struck out Dec. 31, 1951, deadline, (1) with respect to programed defense housing for which applications were received prior to Dec. 28, 1951, and (2) with respect to subchapter VIII military housing if the commitment to insure the mortgage was issued after Dec. 27 and before Dec. 31, 1951.

Subsec. (c)(4). Act July 14, 1952, inserted "Guam," after "District of Columbia".

1951—Subsec. (a)(1). Act Sept. 1, 1951, §205, inserted reference to subchapter X of this chapter.

Subsec. (a)(1)(G). Act Sept. 1, 1951, §608(b), inserted proviso.

1950—Act Apr. 20, 1950, §122, substituted "Commissioner" for "Administrator" wherever appearing.

Subsec. (a)(1). Act Apr. 20, 1950, §116(1), (2), inserted "or section 1706c of this title" and first proviso.

Subsec. (a)(1)(E). Act Apr. 20, 1950, §116(3), substituted new proviso for former proviso.

Subsec. (a)(1)(F). Act Apr. 20, 1950, §116(4), substituted provision that no loan made to finance the purchase price or construction cost of a dwelling was to be purchased by the Federal National Mortgage Association unless the Administrator of Veterans' Affairs certifies that such dwelling conforms with minimum construction requirements prescribed by the Administrator for former provision that such certification was to be given by the mortgagee and that minimum construction standards were to be determined by the provisions within the National Housing Act.

Subsec. (a)(1)(G). Act Apr. 20, 1950, §116(5), added par. (1)(G).

1949—Subsec. (a). Act Aug. 8, 1949, inserted reference to subchapter VIII in par. (1), and inserted proviso at end of par. (1)(E).

Subsec. (a)(1)(E). Joint Res. Oct. 25, 1949, struck out proviso and inserted new proviso.

1948—Act July 1, 1948, amended section generally to create a Federal National Mortgage Association with power to purchase, service, or sell insured or guaranteed mortgage, provide for the powers and succession of the Association, and to eliminate the former national mortgage association.

Subsec. (a)(1). Act Aug. 10, 1948, §§201, 202, substituted "subchapter II or VI of this chapter" for "section 1709 or 1738 of this title", inserted "after April 30, 1948", after "or guaranteed", and substituted "50" for "25" in cl. (2) of par. (1) (E).

1941—Subsec. (a)(2). Act Mar. 28, 1941, substituted "subchapters II and VI" for "subchapter II".

1939—Subsec. (b). Act June 3, 1939, amended last sentence.

Subsec. (c)(4). Act June 3, 1939, inserted "Alaska, Hawaii or Puerto Rico".

1938—Subsec. (a). Act Feb. 3, 1938, amended provisions generally, and among other changes, substituted "60 per centum" in subsec. (a)(3), for "80 per centum".

Subsec. (d). Act Feb. 3, 1938, substituted "\$2,000,000" for "\$5,000,000," and "that at least 25 per centum thereof has been paid in cash," for "paid in full in cash", and inserted "or in first mortgages or such other first liens as are described in section 301 (a) hereof, which mortgages or liens shall be taken at such value as the Administrator may determine, not exceeding (except as to mortgages insured under title II of this Act) 60 per centum of the appraised value of the property as of the date of subscription, and that the remainder of the subscription to such capital stock is payable in the same manner and at such time as may be determined by the Administrator: *Provided*, That no association shall issue notes, bonds, debentures, or other such obligations until such time as such subscriptions are paid in full in cash or Government securities at their par value or in mortgages or other liens as hereinbefore set forth".

1935—Subsec. (d). Act May 28, 1935, substituted "\$5,000,000" for "\$2,000,000".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by title VIII of Pub. L. 90–448, see section 808 of Pub. L. 90–448, set out as an Effective Date note under section 1716b of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Joint Res. Oct. 25, 1949, ch. 729, §7, 63 Stat. 906, provided in part: "That the amendment made by this section 7 with respect to mortgages guaranteed under section 501 of the Servicemen's Readjustment Act of 1944, as amended [this section], shall apply only to such mortgages guaranteed after the date of enactment of this Act [Oct. 25, 1949]."

SERVICE OR SALE OF MORTGAGES PURCHASED PRIOR TO JULY 1, 1948; FULFILLMENT OF PRIOR COMMITMENTS

Act July 1, 1948, ch. 784, §2, 62 Stat. 1209, provided that: "Nothing in the amendment made by the first section of this Act [amending sections 1716, 1717 to 1721 of this title] shall limit the authority of the Federal National Mortgage Association to service or sell any mortgage purchased prior to the date of the enactment of this Act [July 1, 1948], or to purchase, service, or sell any mortgage with respect to which a commitment to purchase was made prior to the date of the enactment of this Act [July 1, 1948]."

EXECUTIVE DOCUMENTS

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Housing and Urban Development, see Ex. Ord. No. 11732, July 30, 1973, 38 F.R. 20429, set out as a note under section 301 of Title 3, The President.

§§1716–1, 1716a. Repealed. Aug. 2, 1954, ch. 649, title II, §206, 68 Stat. 622

Section 1716–1, acts Oct. 30, 1951, ch. 642, 65 Stat. 599; June 30, 1953, ch. 170, §14, 67 Stat. 125, related to special authority of the Federal National Mortgage Association to make advance commitments, under certain conditions, with respect to insured cooperative-housing mortgages under section 1715e of this title.

Section 1716a, act Sept. 1, 1951, ch. 378, title VI, §608(a), 65 Stat. 315, required that one of the persons constituting the Board of Directors of the Federal National Mortgage Association be appointed by the Administrator of Veterans' Affairs from among personnel of the Veterans' Administration.

§1716b. Partition of Federal National Mortgage Association into Federal National Mortgage Association and Government National Mortgage Association; assets and liabilities; operations

The purposes of this title include the partition of the Federal National Mortgage Association as heretofore existing into two separate and distinct corporations, each of which shall have continuity and corporate succession as a separated portion of the previously existing corporation. One of such corporations, to be known as Federal National Mortgage Association, will be a Government-sponsored private corporation, will retain the assets and liabilities of the previously existing corporation accounted for under section 1719 of this title, and will continue to operate the secondary market operations authorized by such section 1719. The other, to be known as Government National Mortgage Association, will remain in the Government, will retain the assets and liabilities of the previously existing corporation accounted for under sections 1720 ¹ and 1721 of this title, and will continue to operate the special assistance functions and management and liquidating functions authorized by such sections 1720 ¹ and 1721.

(Pub. L. 90–448, title VIII, §801, Aug. 1, 1968, 82 Stat. 536.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in text, means title VIII of Pub. L. 90–448, which enacted this section, amended sections 24, 378, 1431, 1436, 1464, 1716, 1717 to 1723a, 1723c and 1757 of this title, section 709 of Title 18, Crimes and Criminal Procedure, section 846 of former Title 31, Money and Finance, section 1820 [now 3720] of Title 38, Veterans' Benefits, section 612 of former Title 40, Public Buildings, Property, and Works, and sections 1452b, 3534 and 3535 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under this section and section 1721 of this title.

Section 1720 of this title, referred to in text, was repealed by Pub. L. 98–181, title I [title IV, §483(a)], Nov. 30, 1983, 97 Stat. 1240.

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1968, and not as part of the National Housing Act which comprises this chapter or the Federal National Mortgage Association Charter Act which comprises this subchapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 90-448, title VIII, §808, Aug. 1, 1968, 82 Stat. 545, provided that: "The amendments made by this title [enacting this section and amending sections 24, 378, 1431, 1436, 1464, 1716, 1717 to 1723a, 1723c and 1757 of this title, section 709 of Title 18, Crimes and Criminal Procedure, section 846 of former Title 31, Money and Finance, section 1820 [now 3720] of Title 38, Veterans' Benefits, section 612 of former Title 40, Public Buildings, Property, and Works, sections 1452b, 3534 and 3535 of Title 42, The Public Health and Welfare, and notes under this section and section 1721 of this title] shall be effective from and after a date, no more than one hundred and twenty days following the date of enactment of this Act [Aug. 1, 1968], as established by the Secretary of Housing and Urban Development. Notice of the establishment of such effective date shall be published in the Federal Register at least thirty days prior thereto."

SAVINGS PROVISION

Pub. L. 90-448, title VIII, §809, Aug. 1, 1968, 82 Stat. 545, provided that:

"(a) No cause of action by or against the Federal National Mortgage Association existing prior to the effective date established pursuant to section 808 [set out above] shall abate by reason of the enactment of this title. Any such cause of action may thereafter be asserted by or against the appropriate corporate body named in section 302(a)(2) of the National Housing Act [section 1717(a)(2) of this title].

"(b) No suit, action, or other proceeding commenced by or against the Federal National Mortgage Association, or any officer thereof in his official capacity, prior to the effective date established pursuant to section 808 shall abate by reason of the enactment of this title. A court may at any time thereafter during the pendency of any such litigation, on its own motion or that of any party, order that the litigation may be maintained by or against the appropriate corporate body named in section 302(a)(2) of the National Housing Act [section 1717(a)(2) of this title] or the appropriate corresponding officer thereof."

TRANSITIONAL PROVISIONS

Pub. L. 90-448, title VIII, §810, Aug. 1, 1968, 82 Stat. 545, as amended by Pub. L. 91-609, title IX, §901(e), Dec. 31, 1970, 84 Stat. 1807; Pub. L. 93-383, title VIII, §806(l), Aug. 22, 1974, 88 Stat. 728; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) On the effective date established pursuant to section 808 of this Act [set out above], each share of outstanding nonvoting common stock, with a par value of \$100 per share, of the Federal National Mortgage Association shall be changed into and shall become one share of voting common stock, without par value, of such corporation. For the purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, Title 26], no gain or loss is recognized by the holders of such stock on such change, and the basis and holding period of such stock in the hands of the stockholders immediately after such change are the same as the basis and holding period of such stock in their hands immediately prior to such change.

"(b), (c). [Repealed. Pub. L. 93-383, title VIII, §806(l), Aug. 22, 1974, 88 Stat. 728].

"(d) Those persons who are the officers and employees of the Federal National Mortgage Association immediately prior to the effective date established pursuant to section 808 [set out as a note above] shall become the officers and employees of the Government National Mortgage Association on such date. The Federal National Mortgage Association and the Government National Mortgage Association shall provide by contract for the conditions and methods under which and by which the Federal National Mortgage Association during the transitional period may employ those individuals who are employees of the Government National Mortgage Association on such effective date; and may provide by contract for the operation by either of such corporations of any of the functions of the other. The Secretary of Housing and Urban Development shall make every reasonable effort to place in other comparable Federal positions any individuals who are career or career-conditional employees of the Government National Mortgage Association on such effective date and who are subsequently during the transitional period neither employed by the Federal National Mortgage Association nor retained by the Government National Mortgage Association."

¹ [See References in Text note below.](#)

§1717. Federal National Mortgage Association and Government National Mortgage Association

(a) Creation; succession; principal and other offices

(1) There is created a body corporate to be known as the "Federal National Mortgage Association", which shall be in the Department of Housing and Urban Development. The

Association shall have succession until dissolved by Act of Congress. It shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. Agencies or offices may be established by the Association in such other place or places as it may deem necessary or appropriate in the conduct of its business.

(2) On September 1, 1968, the body corporate described in the foregoing paragraph shall cease to exist in that form and is hereby partitioned into two separate and distinct bodies corporate, each of which shall have continuity and corporate succession as a separated portion of the previously existing body corporate, as follows:

(A) One of such separated portions shall be a body corporate without capital stock to be known as Government National Mortgage Association (hereinafter referred to as the "Association"), which shall be in the Department of Housing and Urban Development and which shall retain the assets and liabilities acquired and incurred under sections 1720 ¹ and 1721 of this title prior to such date, including any and all liabilities incurred pursuant to subsection (c). The Association shall have succession until dissolved by Act of Congress. It shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. Agencies or offices may be established by the Association in such other place or places as it may deem necessary or appropriate in the conduct of its business.

(B) The other such separated portion shall be a body corporate to be known as Federal National Mortgage Association (hereinafter referred to as the "corporation"), which shall retain the assets and liabilities acquired and incurred under sections 1718 and 1719 of this title prior to such date. The corporation shall have succession until dissolved by Act of Congress. It shall maintain its principal office in the District of Columbia or the metropolitan area thereof and shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation.

(3) The partition transaction effected pursuant to the foregoing paragraph constitutes a reorganization within the meaning of section 368(a)(1)(E) of title 26; and for the purposes of such title 26, no gain or loss is recognized by the previously existing body corporate by reason of the partition, and the basis and holding period of the assets of the corporation immediately following such partition are the same as the basis and holding period of such assets immediately prior to such partition.

(b) Purchase and sale of insured and conventional mortgages; transactions in loans and advances of credit

(1) For the purposes set forth in section 1716 of this title and subject to the limitations and restrictions of this subchapter, each of the bodies corporate named in subsection (a)(2) is authorized pursuant to commitments or otherwise, to purchase, service, sell, or otherwise deal in any mortgages which are insured under this chapter or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or which are insured or guaranteed under the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38; and to purchase, service, sell, or otherwise deal in any loans made or guaranteed under part B of title VI of the Public Health Service Act [42 U.S.C. 291j-1 et seq.]; and the corporation is authorized to lend on the security of any such mortgages and to purchase, sell, or otherwise deal in any securities guaranteed by the Association under section 1721(g) of this title: *Provided*, That (1) the Association may not purchase any mortgage at a price exceeding 100 per centum of the unpaid principal amount thereof at the time of purchase, with adjustments for interest and any comparable items; (2) the Association may not purchase any mortgage, except a mortgage insured under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], if it is offered by, or covers property held by, a State, territorial, or municipal instrumentality; and (3) the Association may not purchase any mortgage under section 1720 ¹ of this title, except a mortgage insured under section 1715k of this title or subchapter VIII or section 1709(k) of this title, or under subchapter IX-A ¹ with respect to a new community approved under section 1749cc-1 ¹ of this title, or insured under section 1715e of this title and covering property located in an urban renewal area, or a mortgage covering property located in Alaska, Guam, or Hawaii, if the original principal obligation thereof exceeds or exceeded \$55,000 in the case of property upon which is located a dwelling designed principally for a

one-family residence; or \$60,000 in the case of a two- or three-family residence; or \$68,750 in the case of a four-family residence; or, in the case of a property containing more than four dwelling units, \$38,000 per dwelling unit (or such higher amount not in excess of \$45,000 per dwelling unit as the Secretary may by regulation specify in any geographical area where the Secretary finds that cost levels so require) for that part of the property attributable to dwelling use. Notwithstanding the provisions of clause (3) of the preceding sentence, the Association may purchase a mortgage under section 1720¹ of this title with an original principal obligation which exceeds the otherwise applicable maximum amount per dwelling unit if the mortgage is insured under section 1713(c)(3), 1715e(b)(2), 1715k(d)(3)(B)(iii), 1715l(d)(3)(ii), 1715l(d)(4)(ii), 1715v(c)(2), 1715y(e)(3), or 1715z-1 of this title. For the purposes of this subchapter, the terms "mortgages" and "home mortgages" shall be inclusive of any mortgages or other loans insured under any of the provisions of this chapter or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.].

(2) For the purposes set forth in section 1716(a) of this title, the corporation is authorized, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in mortgages which are not insured or guaranteed as provided in paragraph (1) (such mortgages referred to hereinafter as "conventional mortgages"). No such purchase of a conventional mortgage secured by a property comprising one- to four-family dwelling units shall be made if the outstanding principal balance of the mortgage at the time of purchase exceeds 80 per centum of the value of the property securing the mortgage, unless (A) the seller retains a participation of not less than 10 per centum in the mortgage; (B) for such period and under such circumstances as the corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the corporation in the event that the mortgage is in default; or (C) that portion of the unpaid principal balance of the mortgage which is in excess of such 80 per centum is guaranteed or insured by a qualified insurer as determined by the corporation. The corporation shall not issue a commitment to purchase a conventional mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (A) of such sentence. The corporation may purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller is the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit Union Administration, or any other seller currently engaged in mortgage lending or investing activities. For the purpose of this section, the term "conventional mortgages" shall include a mortgage, lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member of a cooperative housing corporation, as defined in section 216 of title 26, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation. The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the corporation. Such limitations shall not exceed \$417,000 for a mortgage secured by a single-family residence, \$533,850 for a mortgage secured by a 2-family residence, \$645,300 for a mortgage secured by a 3-family residence, and \$801,950 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning after the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, subject to the limitations in this paragraph. Each adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase, during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Federal Housing Finance Agency (pursuant to section 4542 of this title). If the change in such house price index during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment is a decrease, then no adjustment shall be made for the next year, and the next adjustment shall take into account prior declines in the house price index, so that any adjustment shall reflect the net change in the house price index since the last adjustment. Declines in the house price index shall

be accumulated and then reduce increases until subsequent increases exceed prior declines. The foregoing limitations may be increased by not to exceed 50 per centum with respect to properties located in Alaska, Guam, Hawaii, and the Virgin Islands. Such foregoing limitations shall also be increased, with respect to properties of a particular size located in any area for which 115 percent of the median house price for such size residence exceeds the foregoing limitation for such size residence, to the lesser of 150 percent of such limitation for such size residence or the amount that is equal to 115 percent of the median house price in such area for such size residence.

(3) The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in loans or advances of credit for the purchase and installation of home improvements, including energy conserving improvements or solar energy systems described in the last paragraph of section 1703(a) of this title and residential energy conservation measures as described in section 210(11) of the National Energy Conservation Policy Act [42 U.S.C. 8211(11)] ¹ and financed by a public utility in accordance with the requirements of title II of such Act [42 U.S.C. 8211 et seq.]. To be eligible for purchase, any such loan or advance of credit (other than a loan or advance made with respect to energy conserving improvements or solar energy systems or residential energy conservation measures) not insured under subchapter I of this chapter shall be secured by a lien against the property to be improved.

(4) The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in loans or advances of credit secured by mortgages or other liens against manufactured homes.

(5)(A) The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in (i) conventional mortgages that are secured by a subordinate lien against a one- to four-family residence that is the principal residence of the mortgagor; and (ii) conventional mortgages that are secured by a subordinate lien against a property comprising five or more family dwelling units. If the corporation, pursuant to paragraphs (1) through (4), shall have purchased, serviced, sold, or otherwise dealt with any other outstanding mortgage secured by the same residence, the aggregate original amount of such other mortgage and the mortgage authorized to be purchased, serviced, sold, or otherwise dealt with under this paragraph shall not exceed the applicable limitation determined under paragraph (2).

(B) The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages described in subparagraph (A). In any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of such mortgage described in subparagraph (A) and not merely with respect to the interest purchased by the corporation. Such limitations shall not exceed (i) with respect to mortgages described in subparagraph (A)(i), 50 per centum of the single-family residence mortgage limitation determined under paragraph (2); and (ii) with respect to mortgages described in subparagraph (A)(ii), the applicable limitation determined under paragraph (2).

(C) No subordinate mortgage against a one- to four-family residence shall be purchased by the corporation if the total outstanding indebtedness secured by the property as a result of such mortgage exceeds 80 per centum of the value of such property unless (i) that portion of such total outstanding indebtedness that exceeds such 80 per centum is guaranteed or insured by a qualified insurer as determined by the corporation; (ii) the seller retains a participation of not less than 10 per centum in the mortgage; or (iii) for such period and under such circumstances as the corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the corporation in the event that the mortgage is in default. The corporation shall not issue a commitment to purchase a subordinate mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (ii) of such sentence.

(6) The corporation may not implement any new program (as such term is defined in section 4502 of this title) before obtaining the approval of the Secretary under section 4542 ¹ of this title.

(7)(A) DEFINITIONS.—In this paragraph—

(i) the term "credit score" means a numerical value or a categorization created by a third party derived from a statistical tool or modeling system used by a person who makes or arranges a loan

to predict the likelihood of certain credit behaviors, including default; and

(ii) the term "residential mortgage" has the meaning given the term in section 1451 of this title.

(B) USE OF CREDIT SCORES.—The corporation shall condition purchase of a residential mortgage by the corporation under this subsection on the provision of a credit score for the borrower only if—

(i) the credit score is derived from any credit scoring model that has been validated and approved by the corporation under this paragraph; and

(ii) the corporation provides for the use of the credit score by all of the automated underwriting systems of the corporation and any other procedures and systems used by the corporation to purchase residential mortgages that use a credit score.

(C) VALIDATION AND APPROVAL PROCESS.—The corporation shall establish a validation and approval process for the use of credit score models, under which the corporation may not validate and approve a credit score model unless the credit score model—

(i) satisfies minimum requirements of integrity, reliability, and accuracy;

(ii) has a historical record of measuring and predicting default rates and other credit behaviors;

(iii) is consistent with the safe and sound operation of the corporation;

(iv) complies with any standards and criteria established by the Director of the Federal Housing Finance Agency under section 4548(1) of this title; and

(v) satisfies any other requirements, as determined by the corporation.

(D) REPLACEMENT OF CREDIT SCORE MODEL.—If the corporation has validated and approved 1 or more credit score models under subparagraph (C) and the corporation validates and approves an additional credit score model, the corporation may determine that—

(i) the additional credit score model has replaced the credit score model or credit score models previously validated and approved; and

(ii) the credit score model or credit score models previously validated and approved shall no longer be considered validated and approved for the purposes of subparagraph (B).

(E) PUBLIC DISCLOSURE.—Upon establishing the validation and approval process required under subparagraph (C), the corporation shall make publicly available a description of the validation and approval process.

(F) APPLICATION.—Not later than 30 days after the effective date of this paragraph, the corporation shall solicit applications from developers of credit scoring models for the validation and approval of those models under the process required under subparagraph (C).

(G) TIMEFRAME FOR DETERMINATION; NOTICE.—

(i) IN GENERAL.—The corporation shall make a determination with respect to any application submitted under subparagraph (F), and provide notice of that determination to the applicant, before a date established by the corporation that is not later than 180 days after the date on which an application is submitted to the corporation.

(ii) EXTENSIONS.—The Director of the Federal Housing Finance Agency may authorize not more than 2 extensions of the date established under clause (i), each of which shall not exceed 30 days, upon a written request and a showing of good cause by the corporation.

(iii) STATUS NOTICE.—The corporation shall provide notice to an applicant regarding the status of an application submitted under subparagraph (F) not later than 60 days after the date on which the application was submitted to the corporation.

(iv) REASONS FOR DISAPPROVAL.—If an application submitted under subparagraph (F) is disapproved, the corporation shall provide to the applicant the reasons for the disapproval not later than 30 days after a determination is made under this subparagraph.

(H) AUTHORITY OF DIRECTOR.—If the corporation elects to use a credit score model under this paragraph, the Director of the Federal Housing Finance Agency shall require the corporation to

periodically review the validation and approval process required under subparagraph (C) as the Director determines necessary to ensure that the process remains appropriate and adequate and complies with any standards and criteria established pursuant to section 4548(1) of this title.

(I) EXTENSION.—If, as of the effective date of this paragraph, a credit score model has not been approved under subparagraph (C), the corporation may use a credit score model that was in use before the effective date of this paragraph, if necessary to prevent substantial market disruptions, until the earlier of—

- (i) the date on which a credit score model is validated and approved under subparagraph (C); or
- (ii) the date that is 2 years after the effective date of this paragraph.

(c) Administration of trusts; obligations of departments and agencies of the United States; exemption of interest income from taxation; authorization of appropriations for differential reimbursements

(1) Notwithstanding any other provision of this chapter or of any other law, the Association is authorized under section 1721 of this title to create, accept, execute, and otherwise administer in all respects such trusts, receiverships, conservatorships, liquidating or other agencies, or other fiduciary and representative undertakings and activities, hereinafter in this subsection called "trusts", as might be appropriate for financing purposes; and in relation thereto the Association may acquire, hold and manage, dispose of, and otherwise deal in any mortgages or other types of obligations in which any department or agency of the United States listed in paragraph (2) of this subsection may have a financial interest. The Association may join in any such undertakings and activities, hereinafter in this subsection called "trusts"; notwithstanding that it is also serving in a fiduciary or representative capacity; and is authorized to guarantee any participations or other instruments, whether evidence of property rights or debt, issued for such financing purposes. Participations or other instruments issued by the Association pursuant to this subsection shall to the same extent as securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission. The amounts of any mortgages and their obligations acquired by the Association under section 1721 of this title, pursuant to this subsection, shall not be included in the total amounts set forth in section 1721(c) of this title.

(2) Subject to the limitations provided in paragraph (4) of this subsection, one or more trusts may be established as provided in this subsection by each of the following departments or agencies:

(A) The Farmers Home Administration of the Department of Agriculture, but only with respect to operating loans, direct farm ownership loans, direct housing loans, and direct soil and water loans. Such trusts may not be established with respect to loans for housing for the elderly under sections 502 and 515(a) of the Housing Act of 1949 [42 U.S.C. 1472 and 1485(a)], nor with respect to loans for nonfarm recreational development.

(B) The Department of Education, but only with respect to loans made by the Secretary of Education for construction of academic facilities, and loans to help finance student loan programs.

(C) The Department of Housing and Urban Development.

(D) The Department of Veterans Affairs.

(E) The Export-Import Bank.

(F) The Small Business Administration.

The head of each such department or agency, hereinafter in this subsection called the "trustor," is authorized to set aside a part or all of any obligations held by the trustor and subject them to a trust or trusts and, incident thereto, shall guarantee to the trustee timely payment thereof. The trust instrument may provide for the issuance and sale of beneficial interests or participations, by the trustee, in such obligations or in the right to receive interest and principal collections therefrom; and may provide for the substitution or withdrawal of such obligations, or for the substitution of cash for obligations. The trust or trusts shall be exempt from all taxation. The trust instrument may also contain other appropriate provisions in keeping with the purposes of this subsection. The Association shall be named and shall act as trustee of any such trusts and, for the purposes thereof, the title to such obligations shall be deemed to have passed to the Association in trust. The trust instrument shall

provide that custody, control, and administration of the obligations shall remain in the trustor subjecting the obligations to the trust, subject to transfer to the trustee in event of default or probable default, as determined by the trustee, in the payment of principal and interest of the beneficial interests or participations. Collections from obligations subject to the trust shall be dealt with as provided in the instrument creating the trust. The trust instrument shall provide that the trustee will promptly pay to the trustor the full net proceeds of any sale of beneficial interests or participations to the extent they are based upon such obligations or collections. Such proceeds shall be dealt with as otherwise provided by law for sales or repayment of such obligations. The effect of both past and future sales of any issue of beneficial interests or participations shall be the same, to the extent of the principal of such issue, as the direct sale with recourse of the obligations subject to the trust. Any trustor creating a trust or trusts hereunder is authorized to purchase, through the facilities of the trustee, outstanding beneficial interests or participations to the extent of the amount of the trustor's responsibility to the trustee on beneficial interests or participations outstanding, and to pay the trustor's proper share of the costs and expenses incurred by the Association as trustee pursuant to the trust instrument.

(3) When any trustor guarantees to the trustee the timely payment of obligations the trustor subjects to a trust pursuant to this subsection, and it becomes necessary for such trustor to meet his responsibilities under such guaranty, the trustor is authorized to fulfill such guaranty.

(4) Beneficial interests or participations shall not be issued for the account of any trustor in an aggregate principal amount greater than is authorized with respect to such trustor in an appropriation Act. Any such authorization shall remain available only for the fiscal year for which it is granted and for the succeeding fiscal year.

(5) The Association, as trustee, is authorized to issue and sell beneficial interests or participations under this subsection, notwithstanding that there may be an insufficiency in aggregate receipts from obligations subject to the related trust to provide for the payment by the trustee (on a timely basis out of current receipts or otherwise) of all interest or principal on such interests or participations (after provision for all costs and expenses incurred by the trustee, fairly prorated among trustors). There are authorized to be appropriated without fiscal year limitation such sums as may be necessary to enable any trustor to pay the trustee such insufficiency as the trustee may require on account of outstanding beneficial interests or participations authorized to be issued pursuant to paragraph (4) of this subsection. Such trustor shall make timely payments to the trustee from such appropriations, subject to and in accord with the trust instrument. In the event that the insufficiency required by the trustee is on account of principal maturities of outstanding beneficial interests or participations authorized to be issued pursuant to paragraph (4) of this subsection, or pursuant hereto, the trustee is authorized to elect to issue additional beneficial interests or participations for refinancing purposes in lieu of requiring any trustor or trustors to make payments to the trustee from appropriated funds or other sources. Each such issue of beneficial interests or participations shall be in an amount determined by the trustee but not in excess of the aggregate amount which the trustee would otherwise require the trustor or trustors to pay from appropriated funds or other sources, and may be issued without regard to the provisions of paragraph (4) of this subsection. All refinancing issues of beneficial interests or participations shall be deemed to have been issued pursuant to the authority contained in the appropriation Act or Acts under which the beneficial interests or participations were originally issued.

(June 27, 1934, ch. 847, title III, §302, 48 Stat. 1254; May 28, 1935, ch. 150, §31, 49 Stat. 300; Feb. 3, 1938, ch. 13, §6, 52 Stat. 24; Mar. 28, 1941, ch. 31, §6, 55 Stat. 62; July 1, 1948, ch. 784, §1, 62 Stat. 1208; July 19, 1949, ch. 351, §1, 63 Stat. 446; Oct. 25, 1949, ch. 729, §1(3), 63 Stat. 905; Apr. 20, 1950, ch. 94, title I, §117, 64 Stat. 57; July 14, 1952, ch. 723, §3(b), 66 Stat. 602; June 30, 1953, ch. 170, §13(b), 67 Stat. 125; Aug. 2, 1954, ch. 649, title II, §201, 68 Stat. 613; Aug. 7, 1956, ch. 1029, title II, §201, 70 Stat. 1096; Pub. L. 85-857, §13(g), Sept. 2, 1958, 72 Stat. 1265; Pub. L. 86-372, title III, §301, Sept. 23, 1959, 73 Stat. 669; Pub. L. 87-70, title I, §102(c), title VI, §§602, 603(a), June 30, 1961, 75 Stat. 158, 176; Pub. L. 88-560, title VII, §§701(a), 702, Sept. 2, 1964, 78 Stat. 800, 802; Pub. L. 89-117, title I, §102(d), title II, §201(b)(1), title VIII, §§802(a), 803, 804, title X, §1004(a), Aug. 10, 1965, 79 Stat. 454, 465, 493, 494, 501; Pub. L. 89-429, §2, May 24, 1966, 80

Stat. 164; Pub. L. 89–751, §7, Nov. 3, 1966, 80 Stat. 1236; Pub. L. 89–754, title IV, §405, Nov. 3, 1966, 80 Stat. 1273; Pub. L. 90–19, §1(a)(2), (3), (j)(1), May 25, 1967, 81 Stat. 17, 18; Pub. L. 90–448, title VIII, §§802(c)–(g), 803, Aug. 1, 1968, 82 Stat. 536, 537, 542; Pub. L. 91–152, title I, §114, Dec. 24, 1969, 83 Stat. 385; Pub. L. 91–296, title II, §202, June 30, 1970, 84 Stat. 350; Pub. L. 91–351, title II, §201(a), title IV, §402, July 24, 1970, 84 Stat. 450, 458; Pub. L. 91–609, title IX, §901(d), Dec. 31, 1970, 84 Stat. 1807; Pub. L. 93–383, title VIII, §§806(a)–(f), 807, Aug. 22, 1974, 88 Stat. 727, 728; Pub. L. 93–541, §2, Dec. 26, 1974, 88 Stat. 1739; Pub. L. 95–128, title IV, §408(a), Oct. 12, 1977, 91 Stat. 1138; Pub. L. 95–557, title I, §101(c)(3), title III, §318(a), Oct. 31, 1978, 92 Stat. 2083, 2100; Pub. L. 95–619, title II, §246, Nov. 9, 1978, 92 Stat. 3233; Pub. L. 96–153, title III, §317, Dec. 21, 1979, 93 Stat. 1119; Pub. L. 96–294, title V, §534(b), June 30, 1980, 94 Stat. 741; Pub. L. 96–399, title III, §§309, 313(a), 339(a)(1), (b)(1), Oct. 8, 1980, 94 Stat. 1641, 1644, 1657; Pub. L. 97–110, title II, §202(c), Dec. 26, 1981, 95 Stat. 1514; Pub. L. 98–440, title II, §§201(a), 203(a), 205(a), 206(a), Oct. 3, 1984, 98 Stat. 1692, 1693, 1695; Pub. L. 98–479, title II, §§201(b), 204(a)(16), Oct. 17, 1984, 98 Stat. 2227, 2232; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–122, §2(b)(1), Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title IV, §443(a), Feb. 5, 1988, 101 Stat. 1922; Pub. L. 100–628, title X, §1068(a), Nov. 7, 1988, 102 Stat. 3276; Pub. L. 101–73, title VII, §731(f)(1), Aug. 9, 1989, 103 Stat. 433; Pub. L. 102–54, §13(d)(2)(A), June 13, 1991, 105 Stat. 274; Pub. L. 102–550, title XIII, §1381(b), (c), (s)(1), Oct. 28, 1992, 106 Stat. 3995, 4001; Pub. L. 105–276, title V, §582(a)(14), Oct. 21, 1998, 112 Stat. 2644; Pub. L. 110–289, div. A, title I, §1124(a)(1), (2), July 30, 2008, 122 Stat. 2691, 2692; Pub. L. 115–174, title III, §310(a), May 24, 2018, 132 Stat. 1351.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1720 of this title, referred to in subsecs. (a)(2)(A) and (b)(1), was repealed by Pub. L. 98–181, title I [title IV, §483(a)], Nov. 30, 1983, 97 Stat. 1240.

The Housing Act of 1949, referred to in subsec. (b)(1), is act July 15, 1949, ch. 338, 63 Stat. 413. Title V of the Housing Act of 1949 is classified generally to subchapter III (§1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Servicemen's Readjustment Act of 1944, referred to in subsec. (b)(1), is act June 22, 1944, ch. 268, 58 Stat. 284, which was classified generally to chapter 11C (§§693 to 697g) of former Title 38, Pensions, Bonuses, and Veterans' Relief, and which was repealed by section 14(87) of Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1273, the first section of which enacted Title 38, Veterans' Benefits. For distribution of sections 693 to 697g of former Title 38 to Title 38, Veterans' Benefits, see Table preceding section 101 of Title 38, Veterans' Benefits.

The Public Health Service Act, referred to in subsec. (b)(1), is act July 1, 1944, ch. 373, 58 Stat. 682. Part B of title VI of the Public Health Service Act is classified generally to part B (§291j–1 et seq.) of subchapter IV of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

Subchapter IX–A of this chapter and section 1749cc–1 of this title, referred to in subsec. (b)(1), were repealed by Pub. L. 101–235, title I, §133(a), Dec. 15, 1989, 103 Stat. 2027.

The effective date of the Federal Housing Finance Regulatory Reform Act of 2008, referred to in subsec. (b)(2), probably means the date of enactment of div. A of Pub. L. 110–289, which was approved July 30, 2008.

The National Energy Conservation Policy Act, referred to in subsec. (b)(3), is Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3208. Title II of the National Energy Conservation Policy Act is classified principally to subchapter II (§8211 et seq.) of chapter 91 of Title 42, The Public Health and Welfare. Section 210 of the Act [42 U.S.C. 8211] was omitted from the Code pursuant to section 8229 of Title 42 which terminated authority under that section on June 30, 1989. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of Title 42 and Tables.

Section 4542 of this title, referred to in subsec. (b)(6), was repealed and a new section 4542 was added by Pub. L. 110–289, div. A, title I, §§1122, 1124(d), July 30, 2008, 122 Stat. 2693. The new section 4542 does

not relate to obtaining the approval of the Secretary.

The effective date of this paragraph, referred to in subsec. (b)(7)(F), (I), is 180 days after May 24, 2018, see section 310(d) of Pub. L. 115-174, set out as an Effective Date of 2018 Amendment note under section 1454 of this title.

AMENDMENTS

2018—Subsec. (b)(7). Pub. L. 115-174 added par. (7).

2008—Subsec. (b)(2). Pub. L. 110-289 inserted last sentence and substituted seventh through ninth sentences for former seventh and eighth sentences which read as follows: "Such limitations shall not exceed \$93,750 for a mortgage secured by a single-family residence, \$120,000 for a mortgage secured by a two-family residence, \$145,000 for a mortgage secured by a three-family residence, and \$180,000 for a mortgage secured by a four-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning with 1981. Each such adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase during the twelve-month period ending with the previous October in the national average one-family house price in the monthly survey of all major lenders conducted by the Federal Housing Finance Board."

1998—Subsec. (b)(2). Pub. L. 105-276 struck out penultimate sentence which read as follows: "With respect to mortgages secured by property comprising five or more family dwelling units, such limitations shall not exceed 125 per centum of the dollar amounts set forth in section 1713(c)(3) of this title, except that such limitations may be increased by the corporation (taking into account construction costs) to not to exceed 240 per centum of such dollar amounts in any geographical area for which the Secretary of Housing and Urban Development determines under such section that cost levels require any increase in the dollar amount limitations under such section."

1992—Subsec. (b)(2). Pub. L. 102-550, §1381(b), (c)(1), in first sentence, struck out "and with the approval of the Secretary of Housing and Urban Development," before "the corporation" and in last sentence, substituted "Hawaii, and the Virgin Islands" for "and Hawaii".

Subsec. (b)(3), (4). Pub. L. 102-550, §1381(c)(2), (3), struck out ", with the approval of the Secretary of Housing and Urban Development," after "corporation is authorized".

Subsec. (b)(6). Pub. L. 102-550, §1381(c)(4), added par. (6).

Subsec. (c)(2). Pub. L. 102-550, §1381(s)(1)(A), in first sentence of concluding provisions, substituted "the trustor" for "him" after "obligations held by" and in last sentence, substituted "the trustor's" for "his" in two places.

Subsec. (c)(3). Pub. L. 102-550, §1381(s)(1)(B), substituted "the trustor" for "he" after "obligations" and "guaranty,".

1991—Subsec. (c)(2)(D). Pub. L. 102-54 substituted "Department of Veterans Affairs" for "Veterans' Administration".

1989—Subsec. (b)(2). Pub. L. 101-73 substituted "Resolution Trust Corporation" for "Federal Savings and Loan Insurance Corporation" and "Federal Housing Finance Board" for "Federal Home Loan Bank Board".

1988—Subsec. (b)(5)(A)(i). Pub. L. 100-242 struck out "through March 15, 1988," before "conventional mortgages".

Subsec. (b)(5)(A)(ii). Pub. L. 100-628 struck out "until October 1, 1985," before "conventional mortgages".

1987—Subsec. (b)(5)(A)(i). Pub. L. 100-200 substituted "March 15, 1988" for "December 16, 1987".

Pub. L. 100-179 substituted "December 16, 1987" for "December 2, 1987".

Pub. L. 100-170 substituted "December 2, 1987" for "November 15, 1987".

Pub. L. 100-154 substituted "November 15, 1987" for "October 31, 1987".

Pub. L. 100-122 substituted "through October 31, 1987" for "until October 1, 1987".

1986—Subsecs. (a)(3), (b)(2). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1984—Subsec. (b)(2). Pub. L. 98-479, §204(a)(16), substituted "corporation" for "Corporation" in fourth sentence after "The".

Subsec. (b)(2). Pub. L. 98-440, §§201(a), 205(a), 206(a), in second sentence substituted "No such purchase of a conventional mortgage secured by a property comprising one- to four-family dwelling units" for "No such purchase of a conventional mortgage", in sixth sentence substituted "The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the corporation" for "The corporation shall establish limitations governing

the maximum principal obligation of conventional mortgages purchased by it", and in penultimate sentence inserted provision that the limitations set forth in section 1713(c)(3) of this title may be increased by the corporation (taking into account construction costs) to not to exceed 240 per centum of such dollar amounts in any geographical area for which the Secretary of Housing and Urban Development determines under such section that cost levels require any increase in the dollar amount limitations under such section.

Subsec. (b)(5). Pub. L. 98-440, §203(a), added par. (5).

Subsec. (c)(2)(B). Pub. L. 98-479, §201(b), substituted "Department of Education" for "Department of Health, Education, and Welfare" and "Secretary of Education" for "Commissioner of Education".

1981—Subsec. (b)(2). Pub. L. 97-110 substituted provisions empowering the Corporation to purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller is the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration, or any other seller currently engaged in mortgage lending or investing activities for provisions which had empowered the Corporation to purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller was currently engaged in mortgage lending or investing activities and if, as a result thereof, the cumulative aggregate of the principal balances of all conventional mortgages purchased by the Corporation which were originated more than one year prior to the date of purchase did not exceed 20 per centum of the cumulative aggregate of the principal balances of all conventional mortgages purchased by the Corporation.

1980—Subsec. (b)(1). Pub. L. 96-399, §309, struck out "(1)" before "the mortgage" and cl. (2) relating to requirement respecting assistance under contracts authorized by section 1437f of title 42 for at least 20 per centum of covered units.

Subsec. (b)(2). Pub. L. 96-399, §313(a), substituted provisions defining term "conventional mortgages", and limitations respecting amounts, adjustments, etc., for such mortgages, for provisions establishing limitations for the maximum principal obligation of conventional mortgages purchased by the corporation and maximum amount of such limitations.

Subsec. (b)(3). Pub. L. 96-399, §339(a)(1), substituted provisions relating to authority, with the approval of the Secretary of Housing and Urban Development, to deal in loans or advances of credit for the purchase and installation of home improvements, and provisions respecting eligibility for purchases of loans or advances of credit, for provisions relating to authority to deal in loans or advances of credit made for energy conserving improvements and solar energy systems, etc., and provisions respecting eligibility for purchases of loans.

Pub. L. 96-294 inserted provisions relating to loans or advances of credit by public utilities for purpose of financing residential energy conservation measures in a residential building.

Subsec. (b)(4). Pub. L. 96-399, §339(b)(1), added par. (4).

1979—Subsec. (b)(1). Pub. L. 96-153 substituted "(1) if the mortgage is insured under section 1713(c)(3), 1715e(b)(2), 1715k(d)(3)(B)(iii), 1715l(d)(3)(ii), 1715l(d)(4)(ii), 1715v(c)(2), 1715y(e)(3), or 1715z-1 of this title, and (2) at least 20 per centum of the units covered by such mortgage are assisted under contracts authorized by section 1437f of title 42" for "if the mortgage (1) is insured under section 1715z-1 of this title or is a below-market interest rate mortgage insured under section 1715l(d)(3) of this title, and (2) covers property which has the benefit of local tax abatement in an amount determined by the Secretary of Housing and Urban Development to be sufficient to make possible rentals not in excess of those that could be approved by the Secretary if the mortgage amount did not exceed the otherwise applicable maximum amount per dwelling unit and if local tax abatement were not provided".

1978—Subsec. (b)(3). Pub. L. 95-619 added par. (3).

Subsec. (b)(1). Pub. L. 95-557 substituted "or subchapter VIII or section 1709(k) of this title" for "or subchapter VIII" and "if the original principal obligation thereof exceeds or exceeded \$55,000 in the case of property upon which is located a dwelling designed principally for a one-family residence; or \$60,000 in the case of a two- or three-family residence; or \$68,750 in the case of a four-family residence; or, in the case of a property containing more than four dwelling units, \$38,000 per dwelling unit (or such higher amount not in excess of \$45,000 per dwelling unit as the Secretary may by regulation specify in any geographical area where the Secretary finds that cost levels so require) for that part of the property attributable to dwelling use" for "if the original principal obligation thereof exceeds or exceeded \$33,000 (or such higher amount not in excess of \$38,000 as the Secretary may by regulation specify in any geographical area where he finds that cost levels so require), for each family residence or dwelling unit covered by the mortgage (plus an additional \$2,500 for each such family residence or dwelling unit which has four or more bedrooms)".

1977—Subsec. (b)(2). Pub. L. 95-128 inserted "by more than 25 per centum" after "exceed" in last sentence.

1974—Subsec. (a)(2). Pub. L. 93-383, §806(a)(1), substituted "September 1, 1968" for "the effective date established pursuant to section 808 of the Housing and Urban Development Act of 1968".

Subsec. (a)(2)(A). Pub. L. 93-383, §806(a)(2), struck out "effective" before "date".

Subsec. (a)(2)(B). Pub. L. 93-383, §806(a)(2), (b), struck out "effective" before "date", inserted "or metropolitan area thereof" before "and shall" and "jurisdiction" before "venue", and substituted "District of Columbia corporation" for "resident thereof".

Subsec. (b)(1). Pub. L. 93-541 substituted "or guaranteed under part B of title VI of the Public Health Service Act" for "to a public agency under part B of title VI of the Public Health Service Act".

Pub. L. 93-383, §807, substituted "\$33,000 (or such higher amount not in excess of \$38,000 as the Secretary may by regulation specify in any geographical area where he finds that cost levels so require)" for "\$22,000".

Subsec. (b)(2). Pub. L. 93-383, §806(c)-(f), substituted "80" for "75" and "exceed 20" for "exceed 10", struck out "private" before "insurer" in cl. (C), and substituted provisions relating to limitations contained in first proviso of first sentence of section 1464(c) of this title, for provisions relating to limitations applicable to mortgages insured under sections 1709(b) or 1713 of this title.

1970—Subsec. (a)(3). Pub. L. 91-609 added par. (3).

Subsec. (b). Pub. L. 91-351, §§201(a), 402, designated existing provisions as par. (1), inserted "is insured under section 1715z-1 of this title or" before "is a below-market interest rate mortgage insured under section 1715l(d)(3) of this title", and added par. (2).

Pub. L. 91-296 inserted provisions authorizing the purchase, service, sale, or other dealing in loans made to a public agency under part B of title VI of the Public Health Service Act.

1969—Subsec. (b). Pub. L. 91-152 substituted "\$22,000" or "the otherwise applicable maximum amount" for "\$17,500" wherever appearing.

1968—Subsec. (a)(1). Pub. L. 90-448, §802(c)(1), (2), designated existing provisions as par. (1), and struck out "(hereinafter referred to as the 'Association')".

Subsec. (a)(2). Pub. L. 90-448, §802(c)(3), added par. (2).

Subsec. (b). Pub. L. 90-448, §802(d), substituted "each of the bodies corporate named in subsection (a) (2) of this section is authorized" for "the Association is authorized", and inserted provisions empowering the corporation to purchase, sell, or otherwise deal in any securities guaranteed by the Association under section 1721(g) of this title.

Subsec. (c)(1). Pub. L. 90-448, §802(e), struck out ", consistent with section 1722 of this title," before "to guarantee any participations".

Subsec. (c)(2). Pub. L. 90-448, §802(f), (g), struck out provisions from par. (C) which prohibited the Department of Housing and Urban Development from exercising the authority with respect to secondary market operations of the Federal National Mortgage Association, and in last sentence substituted "incurred by the Association" for "incurred by the Federal National Mortgage Association".

Subsec. (c)(5). Pub. L. 90-448, §803, inserted provisions authorizing the trustee, in the event that the insufficiency required by the trustee is on account of principal maturities of outstanding beneficial interests or participations to be issued pursuant to paragraph (4) of this subsection, or pursuant hereto, to elect to issue additional beneficial interests or participations for refinancing purposes in lieu of requiring any trustor or trustors to make payments to the trustee from appropriated funds or other sources, limiting each such issue of beneficial interests or participations, and directing that all refinancing issues be deemed to have been issued pursuant to the authority contained in the appropriation Act or Acts under which the beneficial interests or participations were originally issued.

1967—Subsec. (a). Pub. L. 90-19, §1(j)(1), substituted "in the Department of Housing and Urban Development" for "a constituent agency of the Housing and Home Finance Agency".

Subsec. (b). Pub. L. 90-19, §1(a)(2), (3), substituted "Secretary of Housing and Urban Development" and "Secretary" for "Federal Housing Commissioner" and "Commissioner", respectively.

1966—Subsec. (b). Pub. L. 89-754 inserted "or under subchapter IX-A with respect to a new community approved under section 1749cc-1 of this title".

Subsec. (c). Pub. L. 89-429 designated existing provisions as par. (1), gave the name "trusts", for the purpose of the entire subsection, to trusts, receiverships, conservatorships, liquidating or other agencies, or other fiduciary and representative undertakings which the Association is authorized to administer, expanded the types of securities in which the Association is authorized to deal so as to include an expanded array of obligations in which any department or agency of the United States listed in par. (2) of the subsection might have a financial interest, exempted participation certificates or other instruments issued pursuant to this subsection from all regulation by the Securities and Exchange Commission, repealed existing authority for issuance of participations based on below-market interest rate mortgages insured under section 1715l(d)(3) of this title, and added pars. (2) to (5).

Subsec. (c)(2)(B). Pub. L. 89-751 substituted "The Department of Health, Education, and Welfare, but only

with respect to loans made by the Commissioner of Education for construction of academic facilities, and loans to help finance student loan programs" for "The Office of Education of the Department of Health, Education, and Welfare, but only with respect to loans for construction of academic facilities".

1965—Subsec. (b). Pub. L. 89-117, §§201(b)(1), 802(a)(1), 803, 804, and 1004(a), defined "home mortgages", removed mortgages offered by or covering property held by a federal instrumentality from the list of prohibited purchases, inserted parenthetical material which, in the case of family dwelling units having four or more bedrooms, placed an additional amount of \$2,500 to the \$17,500 per unit limit on purchasable mortgages, inserted provision excepting below-market mortgages from the \$17,500 per unit limit on purchasable mortgages if local tax abatement were granted sufficient to keep rentals at the level where they would be if the mortgage amount did not exceed \$17,500 per dwelling unit, and authorized the Association to purchase loans insured under subchapter III of chapter 8A of Title 42 in its secondary market operations.

Subsec. (c). Pub. L. 89-117, §§102(d), 802(a)(2), (3), authorized appropriations to reimburse the Association for differential amounts resulting when mortgages bearing a below-market interest rate and insured under section 1715l(d)(3) of this title after August 10, 1965, are included within one or more of the trusts or other agencies created under this section authorized the Association to deal, in addition to first mortgages, in obligations offered to it by the Housing and Home Finance Agency or its Administrator, or by such Agency's constituent units or agencies or the heads thereof, and inserted "and other obligations" after "mortgages" in last sentence.

1964—Subsec. (b). Pub. L. 88-560, §702, substituted "any mortgage under section 1720 of this title" for "any mortgage" and deleted proviso reading "*Provided*, That with respect to mortgages purchased under section 1719 of this title the principal obligation shall not exceed \$20,000".

Subsec. (c). Pub. L. 88-560, §701(a), added subsec. (c).

1961—Subsec. (b). Pub. L. 87-70 substituted "authorized, pursuant to commitments or otherwise, to purchase, lend (under section 1719 of this title) on the security of, service, sell, or otherwise deal in any mortgages which are insured" for "authorized to make commitments to purchase and to purchase, service, or sell, any residential or home mortgages (or participations therein) which are insured", and "section 1715k of this title or subchapter VIII" for "section 1715k or 1748b of this title", permitted the purchase of mortgages insured under section 1715e of this title and covering property located in an urban renewal area, and defined term "mortgage".

1959—Subsec. (b). Pub. L. 86-372 included within cl. (3) mortgages insured under section 1715k of this title, increased the limitation on the original principal obligation from \$15,000 to \$17,500, and established a limitation of not more than \$20,000 with respect to mortgages purchased under section 1719 of this title.

1958—Subsec. (b). Pub. L. 85-857 inserted ", chapter 37 of title 38" after "Servicemen's Readjustment Act of 1944, as amended".

1956—Subsec. (b). Act Aug. 7, 1956, substituted "(2)" for "and (2)", "if" for "if (i)"; and "(3) the Association may not purchase any mortgage, except a mortgage insured under section 1748b of this title or a mortgage covering property located in Alaska, Guam, or Hawaii, if" for "or (ii)".

1954—Act Aug. 2, 1954, amended section generally to recharter the Association, substituting provisions formerly covered in section 1716 of this title for provisions now covered by sections 1719 to 1721 of this title.

1953—Act June 30, 1953, struck out proviso at end of first sentence, which limited purchase of mortgages other than defense or disaster mortgages to \$2,750,000,000.

1952—Act July 14, 1952, increased purchasing power of the Association from \$2,750,000,000 to \$3,650,000,000 but limited purchases of mortgages other than defense or disaster mortgages to \$2,750,000,000.

1950—Act Apr. 20, 1950, substituted "\$2,750,000,000" for "\$2,500,000,000".

1949—Joint Res. Oct. 25, 1949, substituted "\$2,500,000,000" for "\$1,500,000,000" in first sentence.

Act July 19, 1949, increased authorization to \$1,500,000,000 which would be based on the outstanding amount of mortgage purchases and commitments in place of the former complicated formula.

1948—Act July 1, 1948, amended section generally to make it applicable to the Association instead of to the former national mortgage associations, and increased the borrowing capacity from twenty times to forty times the capital and surplus.

1941—Act Mar. 28, 1941, inserted "and VI" in cl. (2).

1938—Act Feb. 3, 1938, among other changes, substituted "twenty times the amount of its paid-up capital and surplus" for "twelve times the aggregate par value of its outstanding capital stock", and inserted last sentence and proviso.

1935—Act May 28, 1935, substituted "twelve times" for "ten times" in cl. (1).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–174 effective 180 days after May 24, 2018, see section 310(d) of Pub. L. 115–174, set out as a note under section 1454 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. A, title I, §1124(a)(3), July 30, 2008, 122 Stat. 2692, provided that: "The amendments made by paragraphs (1) and (2) of this subsection [amending this section] shall take effect upon the expiration of the date described in section 201(a) of the Economic Stimulus Act of 2008 (Public Law 110–185) [122 Stat. 619; probably means Dec. 31, 2008]."

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 101(c)(3) of Pub. L. 95–557 effective Oct. 1, 1978, see section 104 of Pub. L. 95–557, set out as a note under section 1709 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by title VIII of Pub. L. 90–448, see section 808 of Pub. L. 90–448, set out as an Effective Date note under section 1716b of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–857, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding Part I of Title 38, Veterans' Benefits.

TRANSFER OF FUNCTIONS

For retransfer of functions described in section 2 of Reorg. Plan No. 22 of 1950, set out below, from Housing and Home Finance Administrator to Federal National Mortgage Association, see section 1723d of this title.

PROPOSAL BY FEDERAL NATIONAL MORTGAGE ASSOCIATION RESPECTING AUTHORITY TO IMPLEMENT SECTION 339(A)(1), (B)(1) OF PUB. L. 96–399; APPROVAL, ETC.

Pub. L. 96–399, title III, §339(a)(2), (b)(2), Oct. 8, 1980, 94 Stat. 1657, provided that when Federal National Mortgage Association submits its proposal to Secretary of Housing and Urban Development to implement authority granted by amendment of this section, Secretary of Housing and Urban Development shall, within 75 days, approve such proposal or transmit to Congress a report explaining why such proposal has not been approved.

WAIVER OF CERTAIN LIMITATIONS APPLICABLE TO THE PURCHASE OF MORTGAGES BY THE GOVERNMENT NATIONAL MORTGAGE ASSOCIATION UNTIL OCTOBER 1, 1974

Pub. L. 92–213, §3, Dec. 22, 1971, 85 Stat. 775, as amended by Pub. L. 92–335, §6, July 1, 1972, 86 Stat. 405; Pub. L. 92–503, §2, Oct. 18, 1972, 86 Stat. 906; Pub. L. 93–85, §3, Aug. 10, 1973, 87 Stat. 221; Pub. L. 93–117, §4, Oct. 2, 1973, 87 Stat. 422, provided that when the Secretary of Housing and Urban Development determined that such action was necessary to avoid excessive discounts on federally insured or guaranteed mortgages, the Government National Mortgage Association could, until Oct. 1, 1974, issue commitments to purchase mortgages with original principal obligations not more than 50 per centum in excess of the limitations imposed by clause (3) of the proviso to the first sentence of section 302(b)(1) of the National Housing Act [subsec. (b)(1) of this section], and it could purchase the mortgages so committed to be purchased.

EXCEPTION TO LIMITATION ON PRINCIPAL AMOUNT OF PARTICIPATIONS IN GOVERNMENT MORTGAGE LIQUIDATION TRUST AND SMALL BUSINESS ADMINISTRATION TRUST SOLD DURING FISCAL 1966

Pub. L. 89-429, §9, May 24, 1966, 80 Stat. 168, authorized Federal National Mortgage Association during fiscal year 1966 to sell (1) additional participations in Government Mortgage Liquidation Trust, and (2) participations in a trust to be established by Small Business Administration, each without regard to the provisions of subsec. (c)(4) of this section.

TRUST AGREEMENTS WITH ADMINISTRATOR OF VETERANS' AFFAIRS

Pub. L. 89-429, §6(a), May 24, 1966, 80 Stat. 167, provided that: "Nothing in this Act [enacting section 1717a of this title and section 745 of Title 20, Education, amending this section and sections 1720, 1749, and 1757 of this title, section 1988 of Title 7, Agriculture, and section 743 of Title 20, and enacting material set out as notes under this section] shall be construed to repeal or modify the provisions of section 1820(e) [now 3720(e)] of title 38, United States Code, respecting the authority of the Administrator of Veterans' Affairs [now Secretary of Veterans Affairs]."

EXECUTIVE DOCUMENTS

REORGANIZATION PLAN NO. 22 OF 1950

EFF. JULY 9, 1950, 15 F.R. 4365, 64 STAT. 1277

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 9, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see 5 U.S.C. 901 et seq.].

FEDERAL NATIONAL MORTGAGE ASSOCIATION

SECTION 1. TRANSFER OF ASSOCIATION AND ITS FUNCTIONS

The Federal National Mortgage Association, together with its functions, is hereby transferred from the Reconstruction Finance Corporation to the Housing and Home Finance Agency and shall be administered subject to the direction and control of the Housing and Home Finance Administrator.

SEC. 2. TRANSFERS TO THE HOUSING ADMINISTRATOR

There are hereby transferred from the Reconstruction Finance Corporation to the Housing and Home Finance Administrator—

- (1) the notes of the Federal National Mortgage Association payable to the Reconstruction Finance Corporation;
- (2) the capital stock of the Federal National Mortgage Association;
- (3) the function of the Reconstruction Finance Corporation of making payments on its notes issued to the Secretary of the Treasury in an amount equal to (a) the unpaid principal of, and accrued interest on, the notes of the Federal National Mortgage Association transferred under (1) above, (b) any funds of the Reconstruction Finance Corporation transferred under the provisions of section 5 hereof, (c) the book value of any office furniture and equipment of the Reconstruction Finance Corporation transferred under the provisions of section 5 hereof, and (d) the par value of the capital stock of the Federal National Mortgage Association plus the amount of its surplus paid in by the Reconstruction Finance Corporation;
- (4) the function of issuing notes or other obligations to the Secretary of the Treasury, which may be purchased by the Secretary, under section 7 of the Reconstruction Finance Corporation Act, as amended [15 U.S.C. 606], in an amount not in excess of that necessary to finance at any one time the outstanding balances of the investments, loans, and purchases held by the Federal National Mortgage Association, taking into consideration other balance-sheet items;
- (5) except as otherwise provided in this reorganization plan, all other functions of the Reconstruction Finance Corporation (including functions of the Board of Directors of such Corporation and functions of the Chairman of the Board of Directors of such Corporation) with respect to the Federal National Mortgage Association; and
- (6) all functions of the Federal Housing Commissioner with respect to the Federal National Mortgage Association.

SEC. 3. BOARD OF DIRECTORS AND OFFICERS

Functions with respect to serving, including eligibility to serve, as members of the Board of Directors of the Federal National Mortgage Association and as officers of such Association are hereby transferred from the members of the Board of Directors of, and from the officers and employees of, the Reconstruction Finance

Corporation to the officers and employees of the Housing and Home Finance Agency (including those of the constituent agencies of the Housing and Home Finance Agency.)

SEC. 4. PERFORMANCE OF FUNCTIONS OF ADMINISTRATOR

The Housing and Home Finance Administrator may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Housing and Home Finance Agency of any function transferred to such Administrator by the provisions of this reorganization plan.

SEC. 5. TRANSFER OF RECORDS, PROPERTY, PERSONNEL, AND FUNDS

There are hereby transferred with the functions transferred by this reorganization plan, respectively, all of the assets, liabilities, contracts, property, records, and unexpended balances of authorizations, allocations and other funds, available or to be made available, of the Federal National Mortgage Association, and so much of the assets, liabilities, contracts, property, records, personnel, and unexpended balances of authorizations, allocations, and other funds, available or to be made available, of the Reconstruction Finance Corporation and relating to functions transferred by the provisions of this reorganization plan, as the Director of the Bureau of the Budget shall determine to be necessary for the administration of such functions, excluding, however, (1) the members of the Board of Directors of the Federal National Mortgage Association in office immediately prior to the taking effect of the provisions of this reorganization plan, and (2) the officers of the Association then in office. Such further measures and dispositions as the Director of the Bureau of the Budget shall determine to be necessary in order to effectuate the transfers provided for in this section shall be carried out in such manner as the Director shall direct and by such agencies as he shall designate.

SEC. 6. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect 60 days after they would take effect under section 6(a) of the Reorganization Act of 1949 in the absence of this section [Eff. date July 9, 1950, in operation Sept. 7, 1950].

[Housing and Home Finance Agency lapsed and functions were transferred to Secretary of Housing and Urban Development, see section 9(c) of Pub. L. 89-174, Sept. 9, 1965, 79 Stat. 670, set out as a note under 42 U.S.C. 3531.]

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

¹ See References in Text note below.

§1717a. Prohibition against sale of obligations by Federal departments and agencies after June 30, 1966, without compliance with requirements of section 1717(c) of this title or without approval by Secretary of the Treasury; exemption

After June 30, 1966, no department or agency listed in section 1717(c)(2) of this title may sell any obligation held by it except as provided in section 1717(c) of this title, or as approved by the Secretary of the Treasury, except that this prohibition shall not apply to the Government National Mortgage Association.

(Pub. L. 89-429, §6(b), May 24, 1966, 80 Stat. 167; Pub. L. 90-448, title VIII, §807(g), Aug. 1, 1968, 82 Stat. 545.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as a part of the Participation Sales Act of 1966, and not as a part of the National Housing Act, which comprises this chapter or the Federal National Mortgage Association Charter Act which comprises this subchapter.

AMENDMENTS

1968—Pub. L. 90-448 substituted "the Government National Mortgage Association" for "secondary market operations carried on by the Federal National Mortgage Association".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by Pub. L. 90-448, see section 808 of Pub. L. 90-448, set out as an Effective Date note under section 1716b of this title.

§1718. Capitalization of Federal National Mortgage Association

(a) Common stock; preferred stock; transferability of shares

The corporation shall have common stock, without par value, which shall be vested with all voting rights, each share being entitled to one vote with rights of cumulative voting at all elections of directors. The corporation may eliminate such rights of cumulative voting by a resolution adopted by its board of directors and approved by the holders of a majority of the shares of common stock voting in person or by proxy at the annual meeting, or other special meeting, at which such resolution is considered. The corporation may have preferred stock on such terms and conditions as the board of directors shall prescribe. The free transferability of the stock at all times to any person, firm, corporation, or other entity shall not be restricted except that, as to the corporation, it shall be transferable only on the books of the corporation. The corporation may issue shares of common stock in return for appropriate payments into capital or capital and surplus.

(b) Fees and charges; annual transfer of earnings to general surplus account

(1) The corporation may impose charges or fees, which may be regarded as elements of pricing, with the objective that all costs and expenses of the operations of the corporation should be within its income derived from such operations and that such operations should be fully self-supporting.

(2) All earnings from the operations of the corporation shall annually be transferred to the general surplus account of the corporation. At any time, funds of the general surplus account may, in the discretion of the board of directors, be transferred to reserves.

(c) Capital distributions from general surplus account; minimum capitalization levels

(1) Except as provided in paragraph (2), the corporation may make such capital distributions (as such term is defined in section 4502 of this title) as may be declared by the board of directors. All capital distributions shall be charged against the general surplus account of the corporation.

(2) The corporation may not make any capital distribution that would decrease the total capital of the corporation (as such term is defined in section 4502 of this title) to an amount less than the risk-based capital level for the corporation established under section 4611 of this title or that would decrease the core capital of the corporation (as such term is defined in section 4502 of this title) to an amount less than the minimum capital level for the corporation established under section 4612 of this title, without prior written approval of the distribution by the Director of the Federal Housing Finance Agency.

(d) Institutions eligible to purchase stock

Notwithstanding any other provision of law, any institution, including a national bank or State member bank of the Federal Reserve System or any member of the Federal Deposit Insurance Corporation, trust company, or other banking organization, organized under any law of the United

States, including the laws relating to the District of Columbia, shall be authorized to purchase shares of common stock of the corporation and to hold or dispose of such stock, subject to the provisions of this subchapter.

(June 27, 1934, ch. 847, title III, §303, 48 Stat. 1254; Feb. 3, 1938, ch. 13, §7, 52 Stat. 24; July 1, 1948, ch. 784, §1, 62 Stat. 1206; Aug. 2, 1954, ch. 649, title II, §201, 68 Stat. 613; Aug. 7, 1956, ch. 1029, title II, §202, 70 Stat. 1096; Pub. L. 85-10, §1(a), (b), Mar. 27, 1957, 71 Stat. 7; Pub. L. 85-104, title II, §§201, 202, July 12, 1957, 71 Stat. 298; Pub. L. 87-70, title VI, §603(b), (c), June 30, 1961, 75 Stat. 176; Pub. L. 89-117, title X, §1004(b), Aug. 10, 1965, 79 Stat. 501; Pub. L. 89-566, §2, Sept. 10, 1966, 80 Stat. 738; Pub. L. 90-19, §1(j)(2), (l), May 25, 1967, 81 Stat. 18; Pub. L. 90-448, title VIII, §802 (i)-(n), (s), Aug. 1, 1968, 82 Stat. 537, 538; Pub. L. 91-609, title IX, §902, Dec. 31, 1970, 84 Stat. 1808; Pub. L. 93-383, title VIII, §806(g)-(i), Aug. 22, 1974, 88 Stat. 727, 728; Pub. L. 97-320, title VII, §707(a), Oct. 15, 1982, 96 Stat. 1540; Pub. L. 100-242, title IV, §442, Feb. 5, 1988, 101 Stat. 1921; Pub. L. 102-550, title XIII, §1381(d), Oct. 28, 1992, 106 Stat. 3995; Pub. L. 110-289, div. A, title I, §1161(b)(1), July 30, 2008, 122 Stat. 2779.)

EDITORIAL NOTES

AMENDMENTS

2008—Subsec. (c)(2). Pub. L. 110-289 substituted "Director of the Federal Housing Finance Agency" for "Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development".

1992—Subsec. (a). Pub. L. 102-550, §1381(d)(1), inserted at end "The corporation may issue shares of common stock in return for appropriate payments into capital or capital and surplus."

Subsecs. (b), (c). Pub. L. 102-550, §1381(d)(2), added subsecs. (b) and (c) and struck out former subsec. (b) which related to accumulation of surplus, fees and charges, and transfer of surplus funds to reserves and former subsec. (c) which related to issuance of common stock for capital contributions and payment of dividends.

Subsecs. (d), (f). Pub. L. 102-550, §1381(d)(3), (4), redesignated subsec. (f) as (d), struck out "to make payments to the corporation of the nonrefundable capital contributions referred to in subsection (b) of this section, to receive stock of the corporation evidencing such capital contributions," after "shall be authorized", and substituted "shares of common stock of the corporation" for "additional shares of such stock,".

1988—Subsec. (a). Pub. L. 100-242 inserted after first sentence "The corporation may eliminate such rights of cumulative voting by a resolution adopted by its board of directors and approved by the holders of a majority of the shares of common stock voting in person or by proxy at the annual meeting, or other special meeting, at which such resolution is considered."

1982—Subsec. (a). Pub. L. 97-320, §707(a)(1), inserted provision that the corporation may have preferred stock on such terms and conditions as the board of directors shall prescribe.

Pub. L. 97-320, §707(a)(2), struck out "common" before "stock at all times".

1974—Subsec. (a). Pub. L. 93-383, §806(g), struck out provisions relating to issuance, par value, retirement, etc., of nonvoting preferred stock.

Subsec. (c). Pub. L. 93-383, §806(h), substituted provisions relating to purchases subsequent to Sept. 1, 1968, for provisions relating to purchases subsequent to the effective date established under section 808 of the Housing and Urban Development Act of 1968, and struck out provisions relating to retirement of all outstanding preferred stock.

Subsec. (d). Pub. L. 93-383, §806(i), struck out subsec. (d) authorizing issuance of preferred stock to Secretary of the Treasury.

Subsec. (e). Pub. L. 93-383, §806(i), struck out subsec. (e) relating to exchange of preferred stock delivered to Secretary of the Treasury pursuant to subsec. (d) of this section.

1970—Subsec. (b). Pub. L. 91-609 substituted "may accumulate" and "private sources" for "shall accumulate" and "private and other sources", respectively, struck out "nor less than 1 per centum" after "2 per centum", and inserted "with the approval of the Secretary of Housing and Urban Development" after "as determined from time to time by the corporation".

1968—Subsec. (a). Pub. L. 90-448, §802(i), (s)(1), changed common stock of the Association from nonvoting common stock with a par value of \$100 to common stock, without par value, vested with all voting rights and each share entitled to one vote with rights of cumulative voting at all elections of directors, provided that the free transferability of the common stock shall not be restricted except that, as to the

corporation, it shall be transferable only on the books of the corporation, struck out provisions which permitted retirement of the preferred stock only out of funds of the capital surplus and the general surplus accounts of the Association, and which prohibited retirements of common stock if, as a consequence, the amount thereof remaining outstanding would be less than \$100,000,000, and substituted provisions requiring retirement of preferred stock to be made as rapidly as possible subsequent to the effective date of section 808 of the Housing and Urban Development Act of 1968, for provisions which required retirement as rapidly as the Association shall deem feasible, and "corporation" for "Association" in six places.

Subsec. (b). Pub. L. 90-448, §802(j), (s)(1), substituted "corporation" for "Association" in six places, and "fees, which may be regarded as elements of pricing, with" for "fees for its services with", and struck out sentence which stated this subsection shall be subject to the exceptions set forth in section 1722 of this title.

Subsec. (c). Pub. L. 90-448, §802(k), (s)(1), substituted "corporation" for "Association" in five places, and "the aggregate amount of cash dividends paid on account of any share of such stock shall not exceed any rate which may be determined from time to time by the Secretary of Housing and Urban Development to be a fair rate of return after consideration of the current earnings and capital condition of the corporation" for "the general surplus account of the Association shall not be reduced through the payment of dividends applicable to such common stock which exceed in the aggregate 5 per centum of the par value of the outstanding common stock of the Association", inserted provisions authorizing the corporation to issue additional shares in return for appropriate payments into capital or capital and surplus, directing the corporation to require each services of its mortgages to own a minimum amount of common stock of the corporation, and prescribing the minimum amount, and struck out provisions which related to issuance of common stock only in denominations of \$100 or multiples thereof.

Subsec. (d). Pub. L. 90-448, §802(l), (s), substituted "corporation" for "Association" in six places, and "corporation's" for "Association's", and inserted provisions prohibiting issuance of preferred stock subsequent to the effective date established pursuant to section 808 of the Housing and Urban Development Act of 1968.

Subsec. (e). Pub. L. 90-448, §802(s), substituted "corporation" for "Association" in four places, and "corporation's" for "Association's".

Subsec. (f). Pub. L. 90-448, §802(m), (s)(1), substituted "corporation" for "Association" in two places and inserted provisions authorizing purchase of additional shares of stock of the corporation.

Subsec. (g). Pub. L. 90-448, §802(n), repealed subsec. (g) which directed Secretary of Housing and Urban Development to transmit recommendations for eventual transfer of operations to private shareholders.

1967—Subsec. (a). Pub. L. 90-19, §1(j)(2), substituted "Secretary of the Treasury's" for "Secretary's" in last sentence.

Subsec. (g). Pub. L. 90-19, §1(l), substituted "Secretary of Housing and Urban Development" for "Housing and Home Finance Administrator".

1966—Subsec. (d). Pub. L. 89-566, §2(a), raised from \$115,000,000 to \$225,000,000 the amount of the par value of the preferred stock of the Association which the Secretary of the Treasury is authorized and directed to accept in addition to the original \$21,000,000.

Subsec. (e). Pub. L. 89-566, §2(b), substituted "\$225,000,000" for "\$115,000,000" in second sentence.

1965—Subsec. (b). Pub. L. 89-117 inserted "other" sources to private sources as the areas from which the Association shall accumulate funds for its capital surplus account.

1961—Subsec. (b). Pub. L. 87-70, §603(b), directed the Association to require each borrower to make payments, equal to not more than one-half of one per centum of the amount lent to the borrower under section 1719 of this title.

Subsec. (c). Pub. L. 87-70, §603(c), required issuance of stock to borrowers and inserted "(adjusted by reason of any payments into surplus required by the Association)".

1957—Subsec. (b). Pub. L. 85-104, §201, substituted provisions which fixed capital contributions payments at maximum of 2 percent and minimum of 1 percent of unpaid principal amounts of mortgages purchased or to be purchased under section 1719 of this title, for former provisions which provided for capital contributions payments equal to 2 percent of the unpaid principal amounts of mortgages purchased by the Association or equal to such greater or lesser percentage but not less than 1 percent, as the Association might determine.

Subsec. (d). Pub. L. 85-104, §202(a), substituted "\$115,000,000" for "\$50,000,000" in second sentence.

Pub. L. 85-10, §1(a), inserted sentence directing Secretary of the Treasury to accept additional \$50,000,000 of preferred stock issued by Association.

Subsec. (e). Pub. L. 85-104, §202(b), substituted "\$115,000,000" for "\$50,000,000" in second sentence.

Pub. L. 85-10, §1(b), inserted "the first sentence of" before "subsection (d)" in first sentence, and inserted sentence providing that Association stock delivered to Treasury pursuant to second sentence of subsec. (d) of this section be in exchange for Association notes of \$50,000,000.

1956—Subsec. (b). Act Aug. 7, 1956, substituted provisions which required mortgage sellers to make contributions equal to not more than 2 percent of the unpaid principal amount of mortgages or greater or lesser percentage as the Association may determine, but not less than 1 percent, for former provisions that contributions equal 3 percent of the unpaid amount of the mortgages or such greater percentage as from time to time the Association may determine.

1954—Act Aug. 2, 1954, amended section generally to substitute provisions relating to capitalization (formerly covered in section 1716 of this title) and to general financial arrangements and operations for provisions relating merely to use and investment of moneys not invested in mortgages or in operating facilities (such provisions now being covered by section 1723b of this title), and the maintenance of necessary reserves.

1948—Act July 1, 1948, made section applicable to the Association instead of to any of the national mortgage associations.

1938—Act Feb. 3, 1938, inserted "or in bonds or other obligations" and inserted "and may purchase in the open market notes, bonds, debentures, or such other obligations issued under section 1717 of this title".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by title VIII of Pub. L. 90-448, see section 808 of Pub. L. 90-448, set out as an Effective Date note under section 1716b of this title.

SPECIAL ASSISTANCE FUNDS OF ASSOCIATION FOR FINANCING LOW-COST HOMES

Pub. L. 89-754, title X, §1006, Nov. 3, 1966, 80 Stat. 1285, provided that the Congress found that the sharp decline in new home construction over the past year threatened to undercut the present high level of prosperity and employment as such declines had in the past; that the substantial reduction which had taken place had its greatest impact on families of modest income who were seeking to achieve the goal of homeownership; that this decline in homebuilding was due primarily to the shortage of mortgage financing on terms which moderate income families could afford; and that national policy objectives in the field of housing and community development were thereby being thwarted. The Congress therefore expressed its intent that the special assistance funds made available to the Federal National Mortgage Association for the financing of new low-cost homes by the Act of September 10, 1966 (Public Law 89-556) [amending sections 1718, 1719, and 1720 of this title], should be released immediately to halt the continuing decline in the construction of new homes for families of moderate incomes.

§1719. Secondary market operations

(a) Purchase and sale of mortgages; secondary market operations; advance of funds or origination of loans; settlement or extinguishment of borrower's rights

(1) To carry out the purposes set forth in paragraph (a) ¹ of section 1716 of this title, the operations of the corporation under this section shall be confined, so far as practicable, to mortgages which are deemed by the corporation to be of such quality, type, and class as to meet, generally, the purchase standards imposed by private institutional mortgage investors. In the interest of assuring sound operation, the prices to be paid by the corporation for mortgages purchased in its secondary market operations under this section, should be established, from time to time, within the range of market prices for the particular class of mortgages involved, as determined by the corporation. The volume of the corporation's purchases and sales, and the establishment of the purchase prices, sale prices, and charges or fees, in its secondary market operations under this section, should be determined by the corporation from time to time, and such determinations should be consistent with the objectives that such purchases and sales should be effected only at such prices and on such terms as will reasonably prevent excessive use of the corporation's facilities, and that the operations of the corporation under this section should be within its income derived from such operations and that such operations should be fully self-supporting. Nothing in this subchapter shall prohibit the corporation from purchasing, and making commitments to purchase, any mortgage with respect to which the Secretary of Housing and Urban Development has entered into a contract with the corporation to make interest subsidy payments under section 1715z-8 of this title.

(2) The volume of the corporation's lending activities and the establishment of its loan ratios, interest rates, maturities, and charges or fees, in its secondary market operations under this section, should be determined by the corporation from time to time; and such determinations, in conjunction with determinations made under paragraph (1), should be consistent with the objectives that the lending activities should be conducted on such terms as will reasonably prevent excessive use of the corporation's facilities, and that the operations of the corporation under this section should be within its income derived from such operations and that such operations should be fully self-supporting. The corporation shall not be permitted to use its lending authority (A) to advance funds to a mortgage seller on an interim basis, using mortgage loans as collateral, pending the sale of the mortgages in the secondary market; or (B) to originate mortgage loans. Notwithstanding any Federal, State, or other law to the contrary, the corporation is empowered, in connection with any loan under this section, whether before or after any default, to provide by contract with the borrower for the settlement or extinguishment, upon default, of any redemption, equitable, legal, or other right, title, or interest of the borrower in any mortgage or mortgages that constitute the security for the loan; and with respect to any such loan, in the event of default and pursuant otherwise to the terms of the contract, the mortgages that constitute such security shall become the absolute property of the corporation.

(b) Obligations of the Corporation

For the purposes of this section, the corporation is authorized to issue, upon the approval of the Secretary of the Treasury, and have outstanding at any one time obligations having such maturities and bearing such rate or rates of interest as may be determined by the corporation with the approval of the Secretary of the Treasury, to be redeemable at the option of the corporation before maturity in such manner as may be stipulated in such obligations. The corporation shall insert appropriate language in all of its obligations issued under this subsection clearly indicating that such obligations, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the corporation. The corporation is authorized to purchase in the open market any of its obligations outstanding under this subsection at any time and at any price.

(c) Purchase of obligations by Treasury; conditions and restrictions

The Secretary of the Treasury is authorized in the Secretary's discretion to purchase any obligations issued pursuant to subsection (b) of this section, as now or hereafter in force, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include such purchases. The Secretary of the Treasury shall not at any time purchase any obligations under this subsection if such purchase would increase the aggregate principal amount of the Secretary's then outstanding holdings of such obligations under this subsection to an amount greater than \$2,250,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the making of such purchase. The Secretary of the Treasury may, at any time, sell, upon such terms and conditions and at such price or prices as the Secretary shall determine, any of the obligations acquired by the Secretary under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

(d) Mortgage-backed securities; issuance; maturities; rates of interest; exempt securities; adequacy of mortgages to permit principal and interest payments; statement in securities

To provide a greater degree of liquidity to the mortgage investment market and an additional means of financing its operations under this section, the corporation is authorized to set aside any mortgages held by it under this section, and, upon approval of the Secretary of the Treasury, to issue

and sell securities based upon the mortgages so set aside. Securities issued under this subsection may be in the form of debt obligations or trust certificates of beneficial interest, or both. Securities issued under this subsection shall have such maturities and bear such rate or rates of interest as may be determined by the corporation with the approval of the Secretary of the Treasury. Securities issued by the corporation under this subsection shall, to the same extent as securities which are direct obligations of or obligations guaranteed as to principal and interest by the United States, be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission. Mortgages set aside pursuant to this subsection shall at all times be adequate to enable the corporation to make timely principal and interest payments on the securities issued and sold pursuant to this subsection. The corporation shall insert appropriate language in all of the securities issued under this subsection clearly indicating that such securities, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the corporation.

(e) Subordinated or convertible obligations; issuance; maturities; rate of interest; redemption; exempt securities; debt or obligation of United States; purchases in open market

For the purposes of this section, the corporation is authorized to issue, upon the approval of the Secretary of the Treasury, obligations which are subordinated to any or all other obligations of the corporation, including subsequent obligations. The obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as may be determined by the corporation with the approval of the Secretary of the Treasury and may be made redeemable at the option of the corporation before maturity in such manner as may be stipulated in such obligations. Any of such obligations may be made convertible into shares of common stock in such manner, at such price or prices, and at such time or times as may be stipulated therein. Obligations issued by the corporation under this subsection shall, to the same extent as securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission. The corporation shall insert appropriate language in all of its obligations issued under this subsection clearly indicating that such obligations, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than the corporation. The corporation is authorized to purchase in the open market any of its obligations outstanding under this subsection at any time and at any price.

(f) Prohibition on assessment or collection of fee or charge by United States

Except for fees paid pursuant to section 1723a(g) of this title and assessments pursuant to section 4516 of this title, no fee or charge may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States) on or with regard to the purchase, acquisition, sale, pledge, issuance, guarantee, or redemption of any mortgage, asset, obligation, trust certificate of beneficial interest, or other security by the corporation. No provision of this subsection shall affect the purchase of any obligation by the Secretary of the Treasury pursuant to subsection (c).

(g) Temporary authority of Treasury to purchase obligations and securities; conditions

(1) Authority to purchase

(A) General authority

In addition to the authority under subsection (c) of this section, the Secretary of the Treasury is authorized to purchase any obligations and other securities issued by the corporation under any section of this chapter, on such terms and conditions as the Secretary may determine and in such amounts as the Secretary may determine. Nothing in this subsection requires the corporation to issue obligations or securities to the Secretary without mutual agreement between the Secretary and the corporation. Nothing in this subsection permits or authorizes the Secretary, without the agreement of the corporation, to engage in open market purchases of the common securities of the corporation.

(B) Emergency determination required

In connection with any use of this authority, the Secretary must determine that such actions are necessary to—

- (i) provide stability to the financial markets;
- (ii) prevent disruptions in the availability of mortgage finance; and
- (iii) protect the taxpayer.

(C) Considerations

To protect the taxpayers, the Secretary of the Treasury shall take into consideration the following in connection with exercising the authority contained in this paragraph:

- (i) The need for preferences or priorities regarding payments to the Government.
- (ii) Limits on maturity or disposition of obligations or securities to be purchased.
- (iii) The corporation's plan for the orderly resumption of private market funding or capital market access.
- (iv) The probability of the corporation fulfilling the terms of any such obligation or other security, including repayment.
- (v) The need to maintain the corporation's status as a private shareholder-owned company.
- (vi) Restrictions on the use of corporation resources, including limitations on the payment of dividends and executive compensation and any such other terms and conditions as appropriate for those purposes.

(D) Reports to Congress

Upon exercise of this authority, the Secretary shall report to the Committees on the Budget, Financial Services, and Ways and Means of the House of Representatives and the Committees on the Budget, Finance, and Banking, Housing, and Urban Affairs of the Senate as to the necessity for the purchase and the determinations made by the Secretary under subparagraph (B) and with respect to the considerations required under subparagraph (C), and the size, terms, and probability of repayment or fulfillment of other terms of such purchase.

(2) Rights; sale of obligations and securities

(A) Exercise of rights

The Secretary of the Treasury may, at any time, exercise any rights received in connection with such purchases.

(B) Sale of obligation and securities

The Secretary of the Treasury may, at any time, subject to the terms of the security or otherwise upon terms and conditions and at prices determined by the Secretary, sell any obligation or security acquired by the Secretary under this subsection.

(C) Deficit reduction

The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

- (i) dedicated for the sole purpose of deficit reduction; and
- (ii) prohibited from use as an offset for other spending increases or revenue reductions.

(D) Application of sunset to purchased obligations or securities

The authority of the Secretary of the Treasury to hold, exercise any rights received in connection with, or sell, any obligations or securities purchased is not subject to the provisions of paragraph (4).

(3) Funding

For the purpose of the authorities granted in this subsection, the Secretary of the Treasury may use the proceeds of the sale of any securities issued under chapter 31 of Title 31, and the purposes for which securities may be issued under chapter 31 of Title 31 are extended to include such

purchases and the exercise of any rights in connection with such purchases. Any funds expended for the purchase of, or modifications to, obligations and securities, or the exercise of any rights received in connection with such purchases under this subsection shall be deemed appropriated at the time of such purchase, modification, or exercise.

(4) Termination of authority

The authority under this subsection (g), with the exception of paragraphs (2) and (3) of this subsection, shall expire December 31, 2009.

(5) Authority of the Director with respect to executive compensation

The Director shall have the power to approve, disapprove, or modify the executive compensation of the corporation, as defined under Regulation S-K, 17 C.F.R. 229.

(June 27, 1934, ch. 847, title III, §304, 48 Stat. 1254; July 1, 1948, ch. 784, §1, 62 Stat. 1206; Aug. 2, 1954, ch. 649, title II, §201, 68 Stat. 615; Aug. 7, 1956, ch. 1029, title II, §§203, 204, 70 Stat. 1096; Pub. L. 85-10, §1(c), Mar. 27, 1957, 71 Stat. 7; Pub. L. 85-104, title II, §203, July 12, 1957, 71 Stat. 298; Pub. L. 86-372, title III, §§302, 305(a), Sept. 23, 1959, 73 Stat. 669, 670; Pub. L. 87-70, title VI, §603(d), (e), June 30, 1961, 75 Stat. 176, 177; Pub. L. 88-560, title VII, §§701(b)(2), 703, 704, Sept. 2, 1964, 78 Stat. 800, 802; Pub. L. 89-566, §1, Sept. 10, 1966, 80 Stat. 738; Pub. L. 89-754, title X, §1007, Nov. 3, 1966, 80 Stat. 1285; Pub. L. 90-448, title VIII, §§802(p)-(s), 804(a), 805, Aug. 1, 1968, 82 Stat. 538, 542, 543; Pub. L. 91-351, title V, §504, July 24, 1970, 84 Stat. 461; Pub. L. 93-383, title VIII, §806(j), Aug. 22, 1974, 88 Stat. 728; Pub. L. 97-320, title VII, §707(b), Oct. 15, 1982, 96 Stat. 1540; Pub. L. 98-479, title II, §203(a)(1), Oct. 17, 1984, 98 Stat. 2229; Pub. L. 100-242, title IV, §441(a), Feb. 5, 1988, 101 Stat. 1921; Pub. L. 101-73, title VII, §731(m)(2), Aug. 9, 1989, 103 Stat. 436; Pub. L. 102-550, title XIII, §1381(e)-(g), (s)(2), Oct. 28, 1992, 106 Stat. 3996, 4001; Pub. L. 110-289, div. A, title I, §1117(a), July 30, 2008, 122 Stat. 2683; Pub. L. 111-203, title XIII, §1304(a), July 21, 2010, 124 Stat. 2134.)

EDITORIAL NOTES

REFERENCES IN TEXT

Paragraph (a) of section 1716 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 101-73, title VII, §731(m)(1)(A), Aug. 9, 1989, 103 Stat. 435. See section 1716(3) of this title.

AMENDMENTS

2010—Subsec. (g)(2)(C), (D). Pub. L. 111-203 added subpar. (C) and redesignated former subpar. (C) as (D).

2008—Subsec. (g). Pub. L. 110-289 added subsec. (g).

1992—Subsec. (b). Pub. L. 102-550, §1381(e)(1), substituted a period for "; but the aggregate amount of obligations of the corporation under this subsection outstanding at any one time shall not exceed fifteen times the sum of its capital, capital surplus, general surplus, reserves, and undistributed earnings unless a greater ratio shall be fixed at any time or from time to time by the Secretary of Housing and Urban Development. In no event shall any such obligations be issued if, at the time of such proposed issuance, and as a consequence thereof, the resulting aggregate amount of its outstanding obligations under this subsection would exceed the amount of the corporation's ownership pursuant to this section, free from any liens or encumbrances, of cash, mortgages or other security holdings, and obligations of the United States or guaranteed thereby, or obligations, participations, or other instruments which are lawful investments for fiduciary, trust, or public funds." after "in such obligations".

Subsec. (c). Pub. L. 102-550, §1381(s)(2), substituted "the Secretary's" for "his" in two places, "the Secretary" for "he" after "such price or prices as", and "the Secretary" for "him" after "the obligations acquired by".

Subsec. (d). Pub. L. 102-550, §1381(f), inserted at end "The corporation shall insert appropriate language in all of the securities issued under this subsection clearly indicating that such securities, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the corporation."

Subsec. (e). Pub. L. 102-550, §1381(e)(2), struck out after third sentence "The outstanding total principal amount of such obligations, which are entirely subordinated to the obligations of the corporation issued or to

be issued under subsection (b) of this section, shall be deemed to be capital of the corporation for the purpose of determining the aggregate amount of obligations issued under subsection (b) of this section which may be outstanding at any one time."

Subsec. (f). Pub. L. 102-550, §1381(g), inserted "of this title and assessments pursuant to section 4516 of this title" in first sentence.

1989—Subsec. (a)(2). Pub. L. 101-73 inserted after third sentence "The corporation shall not be permitted to use its lending authority (A) to advance funds to a mortgage seller on an interim basis, using mortgage loans as collateral, pending the sale of the mortgages in the secondary market; or (B) to originate mortgage loans." and struck out first two sentences which read as follows: "In the further interest of assuring sound operation, any loan made by the corporation in its secondary market operations under this section, and any extension or renewal thereof, shall not exceed 90 per centum of the unpaid principal balances of the mortgages securing the loan, and shall bear interest at a rate consistent with general loan policies established from time to time by the corporation's board of directors. Any such loan shall mature in not more than twelve months and the term of any extension or renewal shall not exceed twelve months."

1988—Subsec. (f). Pub. L. 100-242 added subsec. (f).

1984—Subsec. (c). Pub. L. 98-479 substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as now or hereafter in force" in two places.

1982—Subsec. (e). Pub. L. 97-320 struck out provision that the total principal amount of subordinated obligations which could be outstanding at any one time could not exceed two times the sum of (1) the capital of the corporation represented by its outstanding common stock and (2) its surplus and undistributed earnings at such time.

1974—Subsec. (a)(1). Pub. L. 93-383 substituted "section 243 of the National Housing Act", classified to section 1715z-8 of this title, for "section 502 of the Emergency Home Finance Act of 1970", which enacted such section 1715z-8. For purposes of amendment of subsec. (a)(1) of this section no change in text was required.

1970—Subsec. (a)(1). Pub. L. 91-351 inserted provision that nothing in this subchapter shall prohibit the corporation from purchasing, and making commitments to purchase, any mortgage with respect to which the Secretary of Housing and Urban Development has entered into a contract with the corporation to make interest subsidy payments pursuant to section 1715z-8 of this title.

1968—Subsec. (a)(1). Pub. L. 90-448, §802(p), (s), substituted "corporation" for "Association" in six places, and "corporation's" for "Association's" in two places, and struck out provisions which prohibited the Association from purchasing any mortgage insured or guaranteed prior to Aug. 2, 1954.

Subsec. (a)(2). Pub. L. 90-448, §802(s), substituted "corporation" for "Association" in five places, and "corporation's" for "Association's", in three places.

Subsec. (b). Pub. L. 90-448, §802(q), (s), substituted "corporation" for "Association" in seven places, and "corporation's" for "Association's", and inserted provisions permitting the Secretary to establish a greater ratio than fifteen times for the aggregate amount of obligations outstanding.

Subsec. (c). Pub. L. 90-448, §802(r), struck out provisions which prohibited the Secretary of the Treasury from purchasing obligations under this subsection if all of the preferred stock of the Association held by him has been retired.

Subsec. (d). Pub. L. 90-448, §804(a), added subsec. (d). A prior subsec. (d) was repealed by Pub. L. 88-560.

Subsec. (e). Pub. L. 90-448, §805, added subsec. (e).

1966—Subsec. (a)(1). Pub. L. 89-754 struck out requirement that Association's advance commitments to purchase mortgages in its secondary market operations be issued at prices which are sufficient to facilitate home financing, but which are sufficiently below the price then offered by the Association for immediate purchase to prevent excessive sales to the Association pursuant to such commitments.

Subsec. (b). Pub. L. 89-566 raised limit on maximum amount of obligations outstanding under the subsection from ten times the sum of capital, capital surplus, general surplus, reserves, and undistributed earnings to fifteen times that sum.

1964—Subsec. (a)(2). Pub. L. 88-560, §703, substituted "90 per centum" for "80 per centum".

Subsec. (b). Pub. L. 88-560, §701(b)(2), substituted "or obligations, participations, or other instruments which are lawful investments" for "or obligations which are lawful investments".

Subsec. (d). Pub. L. 88-560, §704, repealed provisions which prohibited the Association from purchasing participations in its operations under this section.

1961—Subsec. (a). Pub. L. 87-70, §603(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 87-70, §603(e), inserted "or other security holdings" after "mortgages".

1959—Subsec. (a). Pub. L. 86-372, §302, substituted "home financing" for "advance planning of home

construction" after "sufficient to facilitate".

Subsec. (b). Pub. L. 86-372, §305(a), substituted "and obligations of the United States or guaranteed thereby, or obligations which are lawful investments for fiduciary, trust, or public funds" for "and bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by, the United States".

1957—Subsec. (c). Pub. L. 85-104 substituted "\$2,250,000,000" for "\$1,350,000,000".

Pub. L. 85-10 substituted "\$1,350,000,000" for "\$500,000,000 plus an amount equal to the total of such reductions in the maximum dollar amount prescribed by section 1721(c) of this title as have theretofore been effected pursuant to that section: *Provided*, That such aggregate principal amount under this subsection shall in no event exceed \$1,000,000,000".

1956—Subsec. (a). Act Aug. 7, 1956, §§203, 204(a), substituted in second sentence "within the range of market prices" for "at the market prices"; and inserted sentence that advance commitments to purchase mortgages in secondary market operations shall be issued only at prices which are sufficient to facilitate advance planning of home construction but sufficiently below price then offered by Association for immediate purchase to prevent excessive sales to the Association pursuant to such commitments.

Subsec. (d). Act Aug. 7, 1956, §204(b), struck out provisions prohibiting Association from making advance contracts or commitments to purchase mortgages but allowed Association to issue a purchase contract in an amount not exceeding the amount of the sale of mortgages purchased from the Association, entitling the holder to sell to the Association mortgages in the amount of the contract, upon terms prescribed by the Association.

1954—Act Aug. 2, 1954, amended section generally to substitute new provisions (formerly covered in sections 1716 and 1717 of this title) for provisions which related to exemption from taxation. See section 1723a(c) of this title.

1948—Act July 1, 1948, amended section generally to provide for exemption from taxation for the Association.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by title VIII of Pub. L. 90-448, see section 808 of Pub. L. 90-448, set out as an Effective Date note under section 1716b of this title.

¹ [*See References in Text note below.*](#)

§1720. Repealed. Pub. L. 98-181, title I [title IV, §483(a)], Nov. 30, 1983, 97 Stat. 1240

Section, acts June 27, 1934, ch. 847, title III, §305, 48 Stat. 1254; July 1, 1948, ch. 784, §1, 62 Stat. 1206; Apr. 20, 1950, ch. 94, title I, §118, 64 Stat. 57; Aug. 2, 1954, ch. 649, title II, §201, 68 Stat. 616; Aug. 11, 1955, ch. 783, title I, §103, title IV, §402, 69 Stat. 636, 651; Aug. 7, 1956, ch. 1029, title II, §§205-208, 70 Stat. 1096; Pub. L. 85-10, §2, Mar. 27, 1957, 71 Stat. 8; Pub. L. 85-104, title II, §§204-207, July 12, 1957, 71 Stat. 298; Pub. L. 85-364, §§2, 3(a), 4, Apr. 1, 1958, 72 Stat. 73, 74; Pub. L. 86-372, title III, §§303(a), 304, Sept. 23, 1959, 73 Stat. 669; Pub. L. 87-70, title I, §101(c), title VI, §601(a), (b), June 30, 1961, 75 Stat. 153, 175, 176; Pub. L. 88-560, title I, §109(b), Sept. 2, 1964, 78 Stat. 777; Pub. L. 89-117, title VIII, §801, Aug. 10, 1965, 79 Stat. 493; Pub. L. 89-429, §3(a), May 24, 1966, 80 Stat. 166; Pub. L. 89-566, §3, Sept. 10, 1966, 80 Stat. 738; Pub. L. 89-754, title III, §310(d), title X, §§1005, 1020(c), Nov. 3, 1966, 80 Stat. 1270, 1285, 1296; Pub. L. 90-19, §1(a)(2), May 25, 1967, 81 Stat. 17; Pub. L. 90-448, title II, §201(g), title VIII, §806, Aug. 1, 1968, 82 Stat. 503, 544; Pub. L. 91-152, §2, title I, §115, Dec. 24, 1969, 83 Stat. 379, 385; Pub. L. 91-351, title IV, §401, July 24, 1970, 84 Stat. 458; Pub. L. 95-557, title III, §318(b), Oct. 31, 1978, 92 Stat. 2101; Pub. L. 96-399, title III, §338, Oct. 8, 1980, 94 Stat. 1657; Pub. L. 97-35, title III, §333(a)(1), (2), Aug. 13, 1981, 95 Stat. 413, related to the special assistance functions of the Government National Mortgage Association.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SAVINGS PROVISION

Pub. L. 98-181, title I [title IV, §483(b)], Nov. 30, 1983, 97 Stat. 1240, provided that: "Any purchase or commitment to purchase any mortgage pursuant to section 305 or 313 of the Federal National Mortgage Association Charter Act [former sections 1720 and 1723e of this title] made before the date of the enactment of this Act [Nov. 30, 1983], and the servicing and disposition of any such mortgage, shall continue to be governed by the provisions of such sections as they existed immediately before the effective date of this section [Nov. 30, 1983]."

§1721. Management and liquidation functions of Government National Mortgage Association

(a) Separate accountability of assets and liabilities

To carry out the purposes set forth in paragraph (c) ¹ of section 1716 of this title, the Association is authorized and directed, as of the close of the cutoff date determined by the Association pursuant to section 1718(d) ¹ of this title, to establish separate accountability for all of its assets and liabilities (exclusive of capital, surplus, surplus reserves, and undistributed earnings to be evidenced by preferred stock as provided in section 1718(d) ¹ of this title, but inclusive of all rights and obligations under any outstanding contracts), and to maintain such separate accountability for the management and orderly liquidation of such assets and liabilities as provided in this section.

(b) Issuance of obligations to expedite substitution of private financing

For the purposes of this section and to assure that, to the maximum extent, and as rapidly as possible, private financing will be substituted for Treasury borrowings otherwise required to carry mortgages held under the aforesaid separate accountability, the Association is authorized to issue, upon the approval of the Secretary of the Treasury, and have outstanding at any one time obligations having such maturities and bearing such rate or rates of interest as may be determined by the Association with the approval of the Secretary of the Treasury, to be redeemable at the option of the Association before maturity in such manner as may be stipulated in such obligations; but in no event shall any such obligations be issued if, at the time of such proposed issuance, and as a consequence thereof, the resulting aggregate amount of its outstanding obligations under this subsection would exceed the amount of the Association's ownership under the aforesaid separate accountability, free from any liens or encumbrances, of cash, mortgages, and obligations of the United States or guaranteed thereby, or obligations, participations, or other instruments which are lawful investments for fiduciary, trust or public funds. The proceeds of any private financing effected under this subsection shall be paid to the Secretary of the Treasury in reduction of the indebtedness of the Association to the Secretary of the Treasury under the aforesaid separate accountability. The Association shall insert appropriate language in all of its obligations issued under this subsection clearly indicating that such obligations, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than the Association. The Association is authorized to purchase in the open market any of its obligations outstanding under this subsection at any time and at any price.

(c) Cutoff date as controlling purchases; total amount of mortgages and commitments

No mortgage shall be purchased by the Association in its operations under this section except pursuant to and in accordance with the terms of a contract or commitment to purchase the same made prior to the cutoff date provided for in section 1718(d) ¹ of this title, which contract or commitment became a part of the aforesaid separate accountability, and the total amount of mortgages and commitments held by the Association under this section shall not, in any event, exceed \$3,350,000,000: *Provided*, That such maximum amount shall be progressively reduced by the

amount of cash realizations on account of principal of mortgages held under the aforesaid separate accountability and by cancellation of any commitments to purchase mortgages thereunder, as reflected by the books of the Association, with the objective that the entire aforesaid maximum amount shall be eliminated with the orderly liquidation of all mortgages held under the aforesaid separate accountability: *And provided further*, That nothing in this subsection shall preclude the Association from granting such usual and customary increases in the amounts of outstanding commitments (resulting from increased costs or otherwise) as have theretofore been covered by like increases in commitments granted by the agencies of the Federal Government insuring or guaranteeing the mortgages. There shall be excluded from the total amounts set forth in this subsection the amounts of any mortgages which, subsequent to May 31, 1954, are transferred by law to the Association and held under the aforesaid separate accountability.

(d) Issuance of obligations sufficient to carry out functions; character; purchase

The Association may issue to the Secretary of the Treasury its obligations in an amount outstanding at any one time sufficient to enable the Association to carry out its functions under this section, such obligations to mature not more than five years from their respective dates of issue, to be redeemable at the option of the Association before maturity in such manner as may be stipulated in such obligations. Each such obligation shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of the obligation of the Association. The Secretary of the Treasury is authorized to purchase any obligations of the Association to be issued under this section, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include any purchases of the Association's obligations hereunder.

(e) Acquisition of mortgages offered by Secretary of Housing and Urban Development

Notwithstanding any other provision of law, the Association is authorized, under the aforesaid separate accountability, to make commitments to purchase, and to purchase, service, or sell any obligations offered to it by the Secretary of Housing and Urban Development, or any mortgages covering residential property offered to it by any Federal instrumentality, or the head thereof. These shall be excluded from the total amounts set forth in subsection (c) the amounts of any obligations or mortgages purchased by the Association pursuant to this subsection.

(f) Transfer of funds

Notwithstanding any of the provisions of this chapter or of any other law, an amount equal to the net decrease for the preceding fiscal year in the aggregate principal amount of all mortgages owned by the Association under this section shall, as of July 1 of each of the years 1961 through 1964, be transferred to and merged with the authority provided under section 1720(a) ¹ of this title, and the amount of such authority as specified in section 1720(c) ¹ of this title shall be increased by any amounts so transferred.

(g) Guarantee of principal and interest on trust certificates and other securities; fees and charges; subrogation; contract for extinguishment of right, title, or interest in mortgages; protection of interests; full faith and credit; commitments limited; limitation on fees or charges

(1) The Association is authorized, upon such terms and conditions as it may deem appropriate, to guarantee the timely payment of principal of and interest on such trust certificates or other securities as shall (i) be issued by the corporation under section 1719(d) of this title, or by any other issuer approved for the purposes of this subsection by the Association, and (ii) be based on and backed by a trust or pool composed of mortgages which are insured under this chapter, or which are insured or guaranteed under the Servicemen's Readjustment Act of 1944, title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or chapter 37 of title 38, or which are guaranteed under title XIII of the Public Health Service Act [42 U.S.C. 300e et seq.]; ² or guaranteed under section 1715z-13a of this title.

The Association shall collect from the issuer a reasonable fee for any guaranty under this subsection and shall make such charges as it may determine to be reasonable for the analysis of any trust or other security arrangement proposed by the issuer. In the event the issuer is unable to make any payment of principal or interest on any security guaranteed under this subsection, the Association shall make such payment as and when due in cash, and thereupon shall be subrogated fully to the rights satisfied by such payment. In any case in which (I) Federal law requires the reduction of the interest rate on any mortgage backing a security guaranteed under this subsection, (II) the mortgagor under the mortgage is a person in the military service, and (III) the issuer of such security fails to receive from the mortgagor the full amount of interest payment due, the Association may make payments of interest on the security in amounts not exceeding the difference between the amount payable under the interest rate on the mortgage and the amount of interest actually paid by the mortgagor. The Association is hereby empowered, in connection with any guaranty under this subsection, whether before or after any default, to provide by contract with the issuer for the extinguishment, upon default by the issuer, of any redemption, equitable, legal, or other right, title, or interest of the issuer in any mortgage or mortgages constituting the trust or pool against which the guaranteed securities are issued; and with respect to any issue of guaranteed securities, in the event of default and pursuant otherwise to the terms of the contract, the mortgages that constitute such trust or pool shall become the absolute property of the Association subject only to the unsatisfied rights of the holders of the securities based on and backed by such trust or pool. No State or local law, and no Federal law (except Federal law enacted expressly in limitation of this subsection after October 8, 1980), shall preclude or limit the exercise by the Association of (A) its power to contract with the issuer on the terms stated in the preceding sentence, (B) its rights to enforce any such contract with the issuer, or (C) its ownership rights, as provided in the preceding sentence, in the mortgages constituting the trust or pool against which the guaranteed securities are issued. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guaranty under this subsection. There shall be excluded from the total amounts set forth in subsection (c) the amounts of any mortgages acquired by the Association as a result of its operations under this subsection.

(2) Notwithstanding any other provision of law and subject only to the absence of qualified requests for guarantees, to the authority provided in this subsection, and to the extent of or in such amounts as any funding limitation approved in appropriation Acts, the Association shall enter into commitments to issue guarantees under this subsection in an aggregate amount of \$110,000,000,000 during fiscal year 1996. There are authorized to be appropriated to cover the costs (as such term is defined in section 661a of title 2) of guarantees issued under this chapter by the Association such sums as may be necessary for fiscal year 1996.

(3)(A) No fee or charge in excess of 6 basis points may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States) on or with regard to any guaranty of the timely payment of principal or interest on securities or notes based on or backed by mortgages that are secured by 1- to 4-family dwellings and (i) insured by the Federal Housing Administration under subchapter II of this chapter; or (ii) insured or guaranteed under the Serviceman's Readjustment Act of 1944, chapter 37 of title 38, or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.].

(B) The fees charged for the guaranty of securities or on notes based on or backed by mortgages not referred to in subparagraph (A), as authorized by other provisions of law, shall be set by the Association at a level not more than necessary to create reserves sufficient to meet anticipated claims based upon actuarial analysis, and for no other purpose.

(C) Fees or charges for the issuance of commitments or miscellaneous administrative fees of the Association shall not be on a competitive auction basis and shall remain at the level set for such fees or charges as of September 1, 1985, except that such fees or charges may be increased if reasonably related to the cost of administering the program, and for no other purpose.

(D) Not less than 90 days before increasing any fee or charge under subparagraph (B) or (C), the Secretary shall submit to the Congress a certification that such increase is solely for the purpose specified in such subparagraph.

(E)(i) Notwithstanding subparagraphs (A) through (D), fees charged for the guarantee of, or commitment to guarantee, multiclass securities backed by a trust or pool of securities or notes guaranteed by the Association under this subsection, and other related fees shall be charged by the Association in an amount the Association deems appropriate. The Association shall take such action as may be necessary to reasonably assure that such portion of the benefit, resulting from the Association's multiclass securities program, as the Association determines is appropriate accrues to mortgagors who execute eligible mortgages after August 10, 1993.

(ii) The Association shall provide for the initial implementation of the program for which fees are charged under the first sentence of clause (i) by notice published in the Federal Register. The notice shall be effective upon publication and shall provide an opportunity for public comment. Not later than 12 months after publication of the notice, the Association shall issue regulations for such program based on the notice, comments received, and the experience of the Association in carrying out the program during such period.

(iii) The Association shall consult with persons or entities in such manner as the Association deems appropriate to ensure the efficient commencement and operation of the multiclass securities program.

(iv) No State or local law, and no Federal law (except Federal law enacted expressly in limitation of this clause after August 10, 1993) shall preclude or limit the exercise by the Association of its power to contract with persons or entities, and its rights to enforce such contracts, for the purpose of ensuring the efficient commencement and continued operation of the multiclass securities program.

(June 27, 1934, ch. 847, title III, §306, 48 Stat. 1255; July 1, 1948, ch. 784, §1, 62 Stat. 1209; Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Aug. 2, 1954, ch. 649, title II, §201, 68 Stat. 618; Aug. 7, 1956, ch. 1029, title II, §209, 70 Stat. 1097; Pub. L. 86–372, title III, §§305(a), 306(a), Sept. 23, 1959, 73 Stat. 670; Pub. L. 87–70, title VI, §601(c), June 30, 1961, 75 Stat. 176; Pub. L. 88–560, title VII, §701(b)(2), Sept. 2, 1964, 78 Stat. 800; Pub. L. 89–117, title VIII, §802(b), Aug. 10, 1965, 79 Stat. 494; Pub. L. 90–19, §1(k), May 25, 1967, 81 Stat. 18; Pub. L. 90–448, title VIII, §804(b), Aug. 1, 1968, 82 Stat. 542; Pub. L. 93–222, §7(c), Dec. 29, 1973, 87 Stat. 936; Pub. L. 96–399, title III, §335, Oct. 8, 1980, 94 Stat. 1654; Pub. L. 97–35, title III, §333(a)(3), Aug. 13, 1981, 95 Stat. 413; Pub. L. 98–181, title I [title IV, §481], Nov. 30, 1983, 97 Stat. 1239; Pub. L. 98–479, title II, §203(a)(2), Oct. 17, 1984, 98 Stat. 2229; Pub. L. 100–14, Mar. 24, 1987, 101 Stat. 128; Pub. L. 100–242, title IV, §446, Feb. 5, 1988, 101 Stat. 1922; Pub. L. 101–625, title III, §339, Nov. 28, 1990, 104 Stat. 4147; Pub. L. 102–550, title V, §§531, 532, Oct. 28, 1992, 106 Stat. 3793; Pub. L. 103–66, title III, §3004, Aug. 10, 1993, 107 Stat. 339; Pub. L. 103–120, §10, Oct. 27, 1993, 107 Stat. 1151; Pub. L. 104–120, §7, Mar. 28, 1996, 110 Stat. 836; Pub. L. 104–330, title VII, §701(k), Oct. 26, 1996, 110 Stat. 4050; Pub. L. 105–244, title IX, §972(a), Oct. 7, 1998, 112 Stat. 1837; Pub. L. 107–326, §4, Dec. 4, 2002, 116 Stat. 2793; Pub. L. 108–199, div. A, title VII, §774, Jan. 23, 2004, 118 Stat. 40; Pub. L. 115–174, title III, §309(b), May 24, 2018, 132 Stat. 1350; Pub. L. 116–33, §2(a), July 25, 2019, 133 Stat. 1038.)

EDITORIAL NOTES

REFERENCES IN TEXT

Paragraph (c) of section 1716 of this title, referred to in subsec. (a), was redesignated par. (4) of section 1716 by Pub. L. 101–73, title VII, §731(m)(1)(B), Aug. 9, 1989, 103 Stat. 435. Par. (4) of section 1716 was redesignated par. (5) by Pub. L. 102–550, title XIII, §1381(a)(3), Oct. 28, 1992, 106 Stat. 3994.

Section 1718(d) of this title, referred to in subsecs. (a) and (c), authorizing the issuance of preferred stock to the Secretary of the Treasury, was repealed by Pub. L. 93–383, title VIII, §806(i), Aug. 22, 1974, 88 Stat. 728.

Section 1720 of this title, referred to in subsec. (f), was repealed by Pub. L. 98–181, title I [title IV, §483(a)], Nov. 30, 1983, 97 Stat. 1240.

The Housing Act of 1949, referred to in subsec. (g)(1), (3)(A), is act July 15, 1949, ch. 338, 63 Stat. 413. Title V of the Housing Act of 1949 is classified generally to subchapter III (§1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Servicemen's Readjustment Act of 1944, referred to in subsec. (g)(1), (3)(A), is act June 22, 1944, ch.

268, 58 Stat. 284, which was classified generally to chapter 11C (§§693 to 697g) of former Title 38, Pensions, Bonuses, and Veterans' Relief, and which was repealed by section 14(87) of Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1273, the first section of which enacted Title 38, Veterans' Benefits. For distribution of sections 693 to 697g of former Title 38 to Title 38, Veterans' Benefits, see Table preceding section 101 of Title 38.

The Public Health Service Act, referred to in subsec. (g)(1), is act July 1, 1944, ch. 373, 58 Stat. 682. Title XIII of the Public Health Service Act, is title XIII of act July 1, 1944, ch. 373, as added by act Dec. 29, 1973, Pub. L. 93-222, §2, 87 Stat. 914, which is classified generally to subchapter XI (§300e et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

AMENDMENTS

2019—Subsec. (g)(1). Pub. L. 116-33 struck out "The Association may not guarantee the timely payment of principal and interest on a security that is backed by a mortgage insured or guaranteed under chapter 37 of title 38 and that was refinanced until the later of the date that is 210 days after the date on which the first monthly payment is made on the mortgage being refinanced and the date on which 6 full monthly payments have been made on the mortgage being refinanced." after "guaranteed under section 1715z-13a of this title."

2018—Subsec. (g)(1). Pub. L. 115-174 inserted "The Association may not guarantee the timely payment of principal and interest on a security that is backed by a mortgage insured or guaranteed under chapter 37 of title 38 and that was refinanced until the later of the date that is 210 days after the date on which the first monthly payment is made on the mortgage being refinanced and the date on which 6 full monthly payments have been made on the mortgage being refinanced." after "guaranteed under section 1715z-13a of this title."

2004—Subsec. (g)(1). Pub. L. 108-199, in first sentence, struck out "or title V of the Housing Act of 1949" after "mortgages which are insured under this chapter" and inserted ", title V of the Housing Act of 1949," after "1944".

2002—Subsec. (g)(3)(A). Pub. L. 107-326 repealed Pub. L. 105-244, §972(a). See 1998 Amendment note below.

1998—Subsec. (g)(3)(A). Pub. L. 105-244, §972(a), which directed amendment of subpar. (A), effective Oct. 1, 2004, by substituting "The Association shall assess and collect a fee in an amount equal to nine basis points" for "No fee or charge in excess of 6 basis points may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States)", was repealed by Pub. L. 107-326. See 2002 Amendment note above and Effective Date of 1998 Amendment note below.

1996—Subsec. (g)(1). Pub. L. 104-330 inserted before period at end of first sentence "; or guaranteed under section 1715z-13a of this title".

Subsec. (g)(2). Pub. L. 104-120 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Notwithstanding any other provision of law and subject only to the absence of qualified requests for guarantees, to the authority provided in this subsection, and to the extent of or in such amounts as any funding limitation approved in appropriation Acts, the Association shall enter into commitments to issue guarantees under this subsection in an aggregate amount of \$107,700,000,000 during fiscal year 1993 and \$91,696,000,000 during fiscal year 1994. There is authorized to be appropriated such sums as may be necessary to cover the costs (as such term is defined in section 661a of title 2) of guarantees issued under this chapter by the Association."

1993—Subsec. (g)(2). Pub. L. 103-120 substituted "\$107,700,000,000" for "\$88,000,000,000".

Subsec. (g)(3)(E). Pub. L. 103-66 added subpar. (E).

1992—Subsec. (g)(1). Pub. L. 102-550, §532, inserted after third sentence "In any case in which (I) Federal law requires the reduction of the interest rate on any mortgage backing a security guaranteed under this subsection, (II) the mortgagor under the mortgage is a person in the military service, and (III) the issuer of such security fails to receive from the mortgagor the full amount of interest payment due, the Association may make payments of interest on the security in amounts not exceeding the difference between the amount payable under the interest rate on the mortgage and the amount of interest actually paid by the mortgagor."

Subsec. (g)(2). Pub. L. 102-550, §531, amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Notwithstanding any other provision of law and subject only to the absence of qualified requests for guarantees, to the authority provided in this subsection, and to the extent of or in such amounts as any funding limitation approved in appropriation Acts, the Association shall enter into commitments to issue guarantees under this subsection in an aggregate amount of \$84,982,000,000 during fiscal year 1991 and \$88,296,000,000 during fiscal year 1992."

1990—Subsec. (g)(2). Pub. L. 101-625 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Notwithstanding any other provision of law and subject only to the absence of qualified requests for

guarantees, to the authority provided in this subsection, and to any funding limitation approved in appropriation Acts, the Association shall enter into commitments to issue guarantees under this subsection in an aggregate amount of \$150,000,000,000 for fiscal year 1988, and \$156,000,000,000 for fiscal year 1989."

1988—Subsec. (g)(2). Pub. L. 100–242 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Notwithstanding any other provision of law and subject only to the absence of qualified requests for guarantees, to the authority provided in this subsection, and to any funding limitation approved in appropriation Acts, the Association shall enter into commitments for each of the fiscal years 1984 and 1985 to issue guarantees under this subsection for each such fiscal year in an aggregate amount of \$68,250,000,000."

1987—Subsec. (g)(3). Pub. L. 100–14 added par. (3).

1984—Subsec. (d). Pub. L. 98–479 substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as now or hereafter in force" in two places.

1983—Subsec. (g)(2). Pub. L. 98–181 substituted "Notwithstanding any other provision of law and subject only to the absence of qualified requests for guarantees, to the authority provided in this subsection, and to any funding limitation approved in appropriation Acts, the Association shall enter into commitments for each of the fiscal years 1984 and 1985 to issue guarantees under this subsection for each such fiscal year in an aggregate amount of \$68,250,000,000" for "During fiscal year 1982, the Association may not enter into commitments to issue guarantees under this subsection in an aggregate amount in excess of \$69,542,000,000".

1981—Subsec. (g). Pub. L. 97–35 redesignated existing provisions as par. (1), substituted "(i)" for "(1)" and "(ii)" for "(2)", and added par. (2).

1980—Subsec. (g). Pub. L. 96–399 inserted provisions relating to Federal, State, or local law, and substituted "The Association is hereby" for "Any Federal, State, or other law to the contrary notwithstanding, the Association is hereby".

1973—Subsec. (g). Pub. L. 93–222 included mortgages which are guaranteed under title XIII of the Public Health Service Act.

1968—Subsec. (g). Pub. L. 90–448 added subsec. (g).

1967—Subsec. (e). Pub. L. 90–19 substituted "Secretary of Housing and Urban Development" for "Housing and Home Finance Agency or its Administrator, or by such Agency's constituent units or agencies or the heads thereof".

1965—Subsec. (e). Pub. L. 89–117 authorized Association to deal in any obligations offered to it by Housing and Home Finance Agency or its Administrator or by such Agency's units or agencies or by heads thereof as well as residential mortgages offered to it by any Federal instrumentality, or head thereof.

1964—Subsec. (b). Pub. L. 88–560 substituted "or obligations, participations, or other instruments which are lawful investments" for "or obligations which are lawful investments".

1961—Subsec. (f). Pub. L. 87–70 added subsec. (f).

1959—Subsec. (b). Pub. L. 86–372, §305(a), substituted "and obligations of the United States or guaranteed thereby, or obligations which are lawful investments for fiduciary, trust, or public funds" for "and bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by, the United States".

Subsec. (e). Pub. L. 86–372, §306(a), added subsec. (e).

1956—Subsec. (c). Act Aug. 7, 1956, §209(a), struck out "and subsection (e) of this section" after "set forth in this subsection" in last sentence.

Subsec. (e). Act Aug. 7, 1956, §209(b), repealed provisions which related to applicability of prior authorized total amount of investments, etc., to functions under this section and section 1720 of this title.

1954—Act Aug. 2, 1954, amended section generally by substituting new provisions and subdividing section into subsecs. (a) to (e).

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator" wherever appearing.

1948—Act July 1, 1948, amended section generally to provide for liquidation of Association.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–244, title IX, §972(b), Oct. 7, 1998, 112 Stat. 1837, which provided that the amendment made by section 972 was effective Oct. 1, 2004, was repealed by Pub. L. 107–326, §4, Dec. 4, 2002, 116 Stat. 2793.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–120 to be construed to have become effective Oct. 1, 1995, see section 13(a) of Pub. L. 104–120, set out as an Effective and Termination Dates of 1996 Amendments note under section

1437d of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by title VIII of Pub. L. 90–448, see section 808 of Pub. L. 90–448, set out as an Effective Date note under section 1716b of this title.

CONSTRUCTION OF 2019 AMENDMENT

Pub. L. 116–33, §2(c), July 25, 2019, 133 Stat. 1039, provided that: "Nothing in this Act [see Short Title of 2019 Amendment note set out under section 1701 of this title] may be construed to restrict or otherwise modify the authorities of the Government National Mortgage Association."

AUTHORIZATION TO ENTER INTO ADDITIONAL COMMITMENTS TO INSURE LOANS AND GUARANTEE MORTGAGE-BACKED SECURITIES DURING SPECIFIC FISCAL YEARS; TEMPORARY EXTENSION OF CERTAIN PROGRAMS RELATING TO HOUSING AND COMMUNITY DEVELOPMENT

Fiscal year 1988—Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327, provided: "That each provision of law amended by Public Law 100–179 [set out below] is amended by striking 'December 16, 1987' each place it appears and inserting 'March 15, 1988'."

Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018, provided: "That each provision of law amended by Public Law 100–170 [set out below] is amended by striking 'December 2, 1987' each place it appears and inserting 'December 16, 1987'."

Pub. L. 100–170, Nov. 17, 1987, 100 Stat. 914, provided: "That each provision of law amended by Public Law 100–154 [set out below] is amended by striking 'November 15, 1987' and inserting 'December 2, 1987'."

Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890, provided: "That each provision of law amended by Public Law 100–122 [set out below], including those provisions amended by section 2 of such Public Law, is amended by striking out 'October 31, 1987' wherever it appears and inserting in lieu thereof 'November 15, 1987'."

Pub. L. 100–122, §1, Sept. 30, 1987, 101 Stat. 793, provided that: "Each provision of law amended by Public Law 99–430 [set out below] is amended by striking out 'September 30, 1987' wherever it appears and inserting in lieu thereof 'October 31, 1987'."

Fiscal year 1987—Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986, provided: "That each provision of law amended by Public Law 99–345 [set out below] is amended by striking out 'September 30, 1986' wherever it appears and inserting in lieu thereof 'September 30, 1987'."

Fiscal year 1986—Pub. L. 99–349, title I, July 2, 1986, 100 Stat. 728, provided that: "The applicable limitation on additional commitments to insure mortgages and loans to carry out the purposes of the National Housing Act [12 U.S.C. 1701 et seq.] during fiscal year 1986 is increased by an additional \$57,580,000,000 of mortgage and loan principal." and

"The applicable limitation on new commitments to issue guarantees to carry out the purposes of section 306 of the National Housing Act [12 U.S.C. 1721] during fiscal year 1986 is increased by an additional \$49,000,000,000 of principal."

Pub. L. 99–345, June 24, 1986, 100 Stat. 673, provided that:

"SECTION 1. Each provision of law amended by Public Law 99–289 [set out below], is amended by striking out 'June 6, 1986' wherever it appears and inserting in lieu thereof 'September 30, 1986'.

"SEC. 2. The applicable limitation on additional commitments to insure mortgages and loans to carry out the purposes of the National Housing Act [12 U.S.C. 1701 et seq.] during fiscal year 1986 is increased by an additional \$9,500,000,000 of mortgage and loan principal."

Pub. L. 99–289, May 2, 1986, 100 Stat. 412, provided that:

"SECTION 1. FEDERAL HOUSING ADMINISTRATION FUND.

"(a) The applicable limitation on additional commitments to insure mortgages and loans to carry out the purposes of the National Housing Act [12 U.S.C. 1701 et seq.] during fiscal year 1986 is increased by an additional \$17,000,000,000 of mortgage and loan principal.

"(b) Each provision of law amended by Public Law 99–267 [amending sections 1703, 1715h, 1715l, 1715z, 1715z–9, 1715z–10, 1715z–14, 1748h–1, 1748h–2, 1749bb, 1749aaa, 1749bbb, and 2811 of this title and sections 1452b, 1485, 1490, 1490c, 4026, 4056, 4101, and 5302 of Title 42, The Public Health and Welfare,

and provisions set out as a note under section 1701q of this title] is amended by striking out 'April 30, 1986' wherever it appears and inserting in lieu thereof 'June 6, 1986'.

"SEC. 2. GOVERNMENT NATIONAL MORTGAGE ASSOCIATION GUARANTEES OF MORTGAGE-BACKED SECURITIES.

"The applicable limitation on new commitments to issue guarantees to carry out the purposes of section 306 of the National Housing Act [12 U.S.C. 1721] during fiscal year 1986 is increased by an additional \$60,684,750,000 of principal.

"SEC. 3. ADMINISTRATIVE PROVISION.

"(a) The Secretary of Housing and Urban Development (hereinafter referred to as the 'Secretary') shall estimate the rates at which the authority to make commitments to insure mortgages and loans under the National Housing Act [12 U.S.C. 1701 et seq.], and the authority to make commitments to issue guarantees under section 306(g) of that Act [12 U.S.C. 1721(g)], are likely to be used for the remainder of any fiscal year. The Secretary shall make these estimates at such times as the Secretary deems appropriate, but not less frequently than monthly.

"(b) If an estimate under subsection (a) indicates that either limitation on authority to make commitments for a fiscal year referred to in subsection (a) will be reached before the end of that fiscal year, or in any event whenever 75 per centum of either authority to make commitments has been utilized, the Secretary shall promptly so notify the Committee on Appropriations and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Appropriations and the Committee on Banking, Finance and Urban Affairs [now Committee on Financial Services] of the House of Representatives."

SPECIAL ASSISTANCE FUNCTIONS FUND; TRANSFER OF FUNDS

Pub. L. 98-371, title I, July 18, 1984, 98 Stat. 1218, directed Secretary to transfer all assets acquired and liabilities incurred pursuant to section 1720 of this title to management and liquidating functions fund established pursuant to this section, and that on Oct. 1, 1984, each outstanding obligation issued by Secretary of Housing and Urban Development to Secretary of the Treasury pursuant to section 1720(d) of this title, together with any promise to repay principal and unpaid interest which had accrued on each obligation, and any other term or condition specified by each such obligation, was canceled.

EMERGENCY MORTGAGE PURCHASE ASSISTANCE; TRANSFER OF FUNDS

For transfer of all assets acquired and liabilities incurred pursuant to section 1723e of this title to management and liquidating functions fund established by this section, with provision for cancellation of obligations, see title I [part] of Pub. L. 98-371, set out as a note under section 1723e of this title.

ADMINISTRATIVE EXPENSES IN CONNECTION WITH THE SALE OF CERTAIN MORTGAGES TO THE FEDERAL NATIONAL MORTGAGE ASSOCIATION

Pub. L. 86-372, title III, §306(b), Sept. 23, 1959, 73 Stat. 670, as amended by Pub. L. 90-19, §16(b), May 25, 1967, 81 Stat. 25; Pub. L. 90-448, title VIII, §807(a), Aug. 1, 1968, 82 Stat. 544, provided that: "In connection with the sale of any mortgages to the Government National Mortgage Association pursuant to section 306(e) of the Federal National Mortgage Association Charter Act [subsection (e) of this section], the Secretary of Housing and Urban Development is authorized, and any other official, unit, or agency selling such mortgages thereunder is directed, to transfer to the Association from time to time, from authorizations, limitations, and funds available for administrative expenses of such official, unit, or agency in connection with the same mortgages, such amounts thereof as said Secretary determines to be required for administrative expenses of the Association in connection with the purchase, servicing, and sale of such mortgages: *Provided*, That no such transfer shall be made after a budget estimate of the Association with respect to the same mortgages has been submitted to and finally acted upon by the Congress."

¹ [*See References in Text note below.*](#)

² [*So in original. The semicolon probably should be a comma.*](#)

§1722. Benefits and burdens incident to administration of functions and operations under sections 1720 and 1721

All of the benefits and burdens incident to the administration of the functions and operations of the Association under sections 1720 and 1721, respectively, of this title, after allowance for related obligations of the Association, its prorated expenses, and the like, including amounts required for the establishment of such reserves as the Secretary of Housing and Urban Development shall deem appropriate, shall inure solely to the Secretary of the Treasury, and such related earnings or other amounts as become available shall be paid annually by the Association to the Secretary of the Treasury for covering into miscellaneous receipts.

(June 27, 1934, ch. 847, title III, §307, as added Aug. 2, 1954, ch. 649, title II, §201, 68 Stat. 619; amended Pub. L. 90-448, title VIII, §802(v), (w), Aug. 1, 1968, 82 Stat. 539.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1720 of this title, referred to in text, was repealed by Pub. L. 98-181, title I [title IV, §483(a)], Nov. 30, 1983, 97 Stat. 1240.

PRIOR PROVISIONS

A prior section 307 of act June 27, 1934, ch. 847, title III, 48 Stat. 1255; amended Feb. 3, 1938, ch. 13, §8, 52 Stat. 24, related to exemption from taxation, prior to the general amendment of this subchapter by act July 1, 1948, ch. 784, §1, 62 Stat. 1206, and was subsequently covered by section 1719 of this title until the general amendment of this subchapter by act Aug. 2, 1954. See section 1723a(c) of this title.

AMENDMENTS

1968—Pub. L. 90-448 repealed subsecs. (a) and (b) which related to separate accountability and to functions of the Association under sections 1720 and 1721 of this title, redesignated subsec. (c) as the entire section, and substituted "Secretary of Housing and Urban Development" for "board of directors of the Association".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by title VIII of Pub. L. 90-448, see section 808 of Pub. L. 90-448, set out as an Effective Date note under section 1716b of this title.

§1723. Management

(a) Government National Mortgage Association

All the powers and duties of the Government National Mortgage Association shall be vested in the Secretary of Housing and Urban Development and the Association shall be administered under the direction of the Secretary. Within the limitations of law, the Secretary shall determine the general policies which shall govern the operations of the Association, and shall have power to adopt, amend, and repeal bylaws governing the performance of the powers and duties granted to or imposed upon it by law. There is hereby established in the Department of Housing and Urban Development the position of President, Government National Mortgage Association, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary shall select and effect the appointment of qualified persons to fill the offices of vice president, and such other offices as may be provided for in the bylaws. Persons appointed under the preceding sentence shall perform such executive functions, powers, and duties as may be prescribed by the bylaws or by the Secretary, and such persons shall be executive officers of the Association and shall discharge all such executive functions, powers, and duties.

(b) Federal National Mortgage Association

The Federal National Mortgage Association shall have a board of directors, which shall consist of 13 persons, or such other number that the Director determines appropriate, who shall be elected

annually by the common stockholders. Except to the extent that action under section 4636a of this title temporarily results in a lesser number, the board shall at all times have as members at least one person from the homebuilding industry, at least one person from the mortgage lending industry, at least one person from the real estate industry, and at least one person from an organization that has represented consumer or community interests for not less than 2 years or one person who has demonstrated a career commitment to the provision of housing for low-income households. Each member of the board of directors shall be elected for a term ending on the date of the next annual meeting of the stockholders. Any seat on the board which becomes vacant after the annual election of the directors shall be filled by the board, but only for the unexpired portion of the term. Within the limitations of law and regulation, the board shall determine the general policies which shall govern the operations of the corporation, and shall have power to adopt, amend, and repeal bylaws governing the performance of the powers and duties granted to or imposed upon it by law. The board of directors shall select and effect the appointment of qualified persons to fill the offices of president and vice president, and such other offices as may be provided for in the bylaws. Any member of the board who is a full-time officer or employee of the Federal Government shall not, as such member, receive compensation for his services.

(June 27, 1934, ch. 847, title III, §308, as added Aug. 2, 1954, ch. 649, title II, §201, 68 Stat. 620; amended Pub. L. 89-174, §5(b), Sept. 9, 1965, 79 Stat. 669; Pub. L. 89-754, title X, §1020(d), Nov. 3, 1966, 80 Stat. 1296; Pub. L. 90-19, §1(l), (m), May 25, 1967, 81 Stat. 18, 19; Pub. L. 90-448, title VIII, §802(y), Aug. 1, 1968, 82 Stat. 539; Pub. L. 94-375, §17(a), Aug. 3, 1976, 90 Stat. 1076; Pub. L. 98-440, title II, §207, Oct. 3, 1984, 98 Stat. 1696; Pub. L. 102-550, title XIII, §1381(h)(1), (i), Oct. 28, 1992, 106 Stat. 3996; Pub. L. 110-289, div. A, title I, §§1153(b)(2), 1162(a)(1), July 30, 2008, 122 Stat. 2775, 2781.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 308 of act June 27, 1934, ch. 847, title III, 48 Stat. 1255, related to depositories of public moneys, prior to the general amendment of this subchapter by act July 1, 1948, ch. 784, §1, 62 Stat. 1206.

Prior provisions on the subject of this section were contained in section 1716 of this title.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110-289, §1162(a)(1), in first sentence, substituted "13 persons, or such other number that the Director determines appropriate, who" for "eighteen persons, five of whom shall be appointed annually by the President of the United States, and the remainder of whom", in second sentence, struck out "appointed by the President" after "as members", in third sentence, struck out "appointed or" after "directors shall be" and ", except that any such appointed member may be removed from office by the President for good cause" after "the stockholders", in fourth sentence, struck out "elective" after "Any", and struck out fifth sentence which read as follows: "Any appointive seat which becomes vacant shall be filled by appointment of the President, but only for the unexpired portion of the term."

Pub. L. 110-289, §1153(b)(2), in second sentence, substituted "Except to the extent that action under section 4636a of this title temporarily results in a lesser number, the" for "The".

1992—Subsec. (b). Pub. L. 102-550, in second sentence, struck out "and" after "mortgage lending industry," and inserted ", and at least one person from an organization that has represented consumer or community interests for not less than 2 years or one person who has demonstrated a career commitment to the provision of housing for low-income households" and in third sentence, substituted "any such appointed member" for "any such member".

1984—Subsec. (b). Pub. L. 98-440 substituted ", which shall consist of eighteen persons, five of whom" for "which shall consist of fifteen persons, one-third of whom".

1976—Subsec. (a). Pub. L. 94-375 substituted provision establishing, in the Department of Housing and Urban Development, the position of president of the Government National Mortgage Association, to be filled by the President, by and with the consent of the Senate, for provision that the Secretary appoint the president of the Association.

1968—Subsec. (a). Pub. L. 90-448, §802(y)(1)–(6), designated existing provisions as subsec. (a), inserted provisions directing that the powers and duties of the Government National Mortgage Association shall be

vested in the Secretary of Housing and Urban Development and that the Association shall be administered under the direction of the Secretary, and empowering the Secretary to adopt, amend, and repeal bylaws, and struck out provisions which related to the Board of Directors of the Federal National Mortgage Association.

Subsec. (b). Pub. L. 90-448, §802(y)(7), added subsec. (b).

1967—Pub. L. 90-19 substituted "Secretary of Housing and Urban Development" for "Housing and Home Finance Administrator", and "the Secretary" for "said Administrator", wherever appearing.

1966—Pub. L. 89-754 struck out subsec. (a) designation.

1965—Pub. L. 89-174 struck out next to last sentence which provided that the basic rate of compensation of the position of president of the Association shall be the same as the basic rate of compensation established for the heads of the constituent agencies of the Housing and Home Finance Agency.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-550, title XIII, §1381(h)(2), Oct. 28, 1992, 106 Stat. 3996, provided that: "The amendments made by paragraph (1) [amending this section] shall apply to the first annual appointment by the President of members to the board of directors of the Federal National Mortgage Association that occurs after the date of the enactment of this Act [Oct. 28, 1992]."

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by title VIII of Pub. L. 90-448, see section 808 of Pub. L. 90-448, set out as an Effective Date note under section 1716b of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

For effective date of amendment by Pub. L. 89-174, see section 11(a) of Pub. L. 89-174, set out as an Effective Date note under section 3531 of Title 42, The Public Health and Welfare.

TRANSITIONAL PROVISION

Pub. L. 110-289, div. A, title I, §1162(a)(2), July 30, 2008, 122 Stat. 2781, provided that: "The amendments made by paragraph (1) [amending this section] shall not apply to any appointed position of the board of directors of the Federal National Mortgage Association until the expiration of the annual term for such position during which the effective date under section 1163 [set out as an Effective Date of 2008 Amendment note under section 3132 of Title 5, Government Organization and Employees] occurs."

POWERS AND DUTIES OF POSITION OF GNMA PRESIDENT TO REMAIN IN EFFECT UNTIL POSITION FILLED

Pub. L. 94-375, §17(e), Aug. 3, 1976, 90 Stat. 1077, provided that notwithstanding the amendment of subsec. (a) of this section, rights, powers, and duties of position of President, Government National Mortgage Association, as in effect on Aug. 2, 1976, remain in effect until the newly established position has been filled in accordance with the terms of this Act.

§1723a. General powers of Government National Mortgage Association and Federal National Mortgage Association

(a) Seal, and other matters incident to operation

Each of the bodies corporate named in section 1717(a)(2) of this title shall have power to adopt, alter, and use a corporate seal, which shall be judicially noticed; to enter into and perform contracts, leases, cooperative agreements, or other transactions, on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, Territory, or possession, or the Commonwealth of Puerto Rico, or with any political subdivision thereof, or with any person, firm, association, or corporation; to execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers; in its corporate name, to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal, but no attachment, injunction, or other similar process, mesne or final, shall be issued against the property of the Association or against the Association with respect to its property; to conduct its business without

regard to any qualification or similar statute in any State of the United States, including the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States; to lease, purchase, or acquire any property, real, personal, or mixed, or any interest therein, to hold, rent, maintain, modernize, renovate, improve, use, and operate such property, and to sell, for cash or credit, lease, or otherwise dispose of the same, at such time and in such manner as and to the extent that it may deem necessary or appropriate; to prescribe, repeal, and amend or modify, rules, regulations, or requirements governing the manner in which its general business may be conducted; to accept gifts or donations of services, or of property, real, personal, or mixed, tangible, or intangible, in aid of any of its purposes; and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

(b) Determination with respect to obligations and expenditures

Except as may be otherwise provided in this subchapter, in chapter 91 of title 31, or in other laws specifically applicable to Government corporations, the Association shall determine the necessity for and the character and amount of its obligations and expenditures and the manner in which they shall be incurred, allowed, paid, and accounted for.

(c) Exemption from taxation

(1) The Association, including its franchise, capital, reserves, surplus, mortgages or other security holdings, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the Association shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(2) The corporation, including its franchise, capital, reserves, surplus, mortgages or other security holdings, and income, shall be exempt from all taxation now or hereafter imposed by any State, territory, possession, Commonwealth, or dependency of the United States, or by the District of Columbia, or by any county, municipality, or local taxing authority, except that any real property of the corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent as other real property is taxed.

(d) Appointment and compensation of personnel; use of services of other agencies

(1) Subject to the provisions of section 1723(a) of this title, the Secretary of Housing and Urban Development shall have power to select and appoint or employ such officers, attorneys, employees, and agents of the Association, to vest them with such powers and duties, and to fix and to cause the Association to pay such compensation to them for their services, as he may determine, subject to the civil service and classification laws. With the consent of any Government corporation or Federal Reserve bank, or of any board, commission, independent establishment, or executive department of the Government, the Association may avail itself on a reimbursable basis of the use of information, services, facilities, officers, and employees thereof, including any field service thereof, in carrying out the provisions of the subchapter.

(2) The board of directors of the corporation shall have the power to select and appoint or employ such officers, attorneys, employees, and agents, to vest them with such powers and duties, and to fix and to cause the corporation to pay such compensation to them for their services, as the board of directors determines reasonable and comparable with compensation for employment in other similar businesses (including other publicly held financial institutions or major financial services companies) involving similar duties and responsibilities, except that a significant portion of potential compensation of all executive officers (as such term is defined in paragraph (3)(C)) of the corporation shall be based on the performance of the corporation; and any such action shall be without regard to the Federal civil service and classification laws. Appointments, promotions, and separations so made shall be based on merit and efficiency, and no political tests or qualifications shall be permitted or given consideration. Each officer and employee of the corporation who is employed by the corporation prior to January 31, 1972, and who on the day previous to the beginning of such employment will have been subject to the civil service retirement law (subch. III

of ch. 83 of title 5) shall, so long as the employment of such officer or employee by the corporation continues without a break in continuity of service, continue to be subject to such law; and for the purpose of such law the employment of such officer or employee by the corporation without a break in continuity of service shall be deemed to be employment by the Government of the United States. The corporation shall contribute to the Civil Service Retirement and Disability Fund a sum as provided by section 8334(a) of title 5, except that such sum shall be determined by applying to the total basic pay (as defined in section 8331(3) of title 5 and except as hereinafter provided) paid to the employees of the corporation who are covered by the civil service retirement law, the per centum rate determined annually by the Director of the Office of Personnel Management to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in section 8334(a) of title 5. The corporation shall also pay into the Civil Service Retirement and Disability Fund such portion of the cost of administration of the fund as is determined by the Director of the Office of Personnel Management to be attributable to its employees. Notwithstanding the foregoing provisions, there shall not be considered for the purposes of the civil service retirement law that portion of the basic pay in any one year of any officer or employee of the corporation which exceeds the basic pay provided for positions listed in section 5312 of title 5 on the last day of such year: *Provided*, That with respect to any person whose employment is made subject to the civil service retirement law by section 806 of the Housing and Community Development Act of 1974, there shall not be considered for the purposes of such law that portion of the basic pay of such person in any one year which exceeds the basic pay provided for positions listed in section 5316 of such title 5 on the last day of such year. Except as provided in this subsection, the corporation shall not be subject to the provisions of title 5.

(3)(A) Not later than June 30, 1993, and annually thereafter, the corporation shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on (i) the comparability of the compensation policies of the corporation with the compensation policies of other similar businesses, (ii) in the aggregate, the percentage of total cash compensation and payments under employee benefit plans (which shall be defined in a manner consistent with the corporation's proxy statement for the annual meeting of shareholders for the preceding year) earned by executive officers of the corporation during the preceding year that was based on the corporation's performance, and (iii) the comparability of the corporation's financial performance with the performance of other similar businesses. The report shall include a copy of the corporation's proxy statement for the annual meeting of shareholders for the preceding year.

(B) Notwithstanding the first sentence of paragraph (2), after October 28, 1992, the corporation may not enter into any agreement or contract to provide any payment of money or other thing of current or potential value in connection with the termination of employment of any executive officer of the corporation, unless such agreement or contract is approved in advance by the Director of the Federal Housing Finance Agency. The Director may not approve any such agreement or contract unless the Director determines that the benefits provided under the agreement or contract are comparable to benefits under such agreements for officers of other public and private entities involved in financial services and housing interests who have comparable duties and responsibilities. For purposes of this subparagraph, any renegotiation, amendment, or change after October 28, 1992, to any such agreement or contract entered into on or before October 28, 1992, shall be considered entering into an agreement or contract.

(C) For purposes of this paragraph, the term "executive officer" has the meaning given the term in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4502].

(4) Notwithstanding any other provision of this section, the corporation shall not transfer, disburse, or pay compensation to any executive officer, or enter into an agreement with such executive officer, without the approval of the Director, for matters being reviewed under section 1318 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4518).

(e) Prohibition against use of names; injunction; damages

No individual, association, partnership, or corporation, except the bodies corporate named in section 1717(a)(2) of this title, shall hereafter use the words "Federal National Mortgage Association," "Government National Mortgage Association," or any combination of such words, as the name or a part thereof under which the individual, association, partnership, or corporation shall do business. Violations of the foregoing sentence may be enjoined by any court of general jurisdiction at the suit of the proper body corporate. In any such suit, the plaintiff may recover any actual damages flowing from such violation, and, in addition, shall be entitled to punitive damages (regardless of the existence or nonexistence of actual damages) of not exceeding \$100 for each day during which such violation is committed or repeated.

(f) Preparation of forms of obligations and certificates

In order that the Association may be supplied with such forms of obligations or certificates as it may need for issuance under this subchapter, the Secretary of the Treasury is authorized, upon request of the Association, to prepare such forms as shall be suitable and approved by the Association, to be held in the Treasury subject to delivery, upon order of the Association. The engraved plates, dies, and other material executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Association shall reimburse the Secretary of the Treasury for any expenses incurred in the preparation, custody, and delivery of such forms.

(g) Depositaries, custodians, and fiscal agents

The Federal Reserve banks are authorized and directed to act as depositaries, custodians, and fiscal agents for each of the bodies corporate named in section 1717(a)(2) of this title, for its own account or as fiduciary, and such banks shall be reimbursed for such services in such manner as may be agreed upon; and each of such bodies corporate may itself act in such capacities, for its own account or as fiduciary, and for the account of others.

(h), (i) Repealed. Pub. L. 102-550, title XIII, §1381(k), Oct. 28, 1992, 106 Stat. 3997

(j) Audit; access to books, etc.; report of audit

(1) The programs, activities, receipts, expenditures, and financial transactions of the corporation shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General. The representatives of the Government Accountability Office shall have access to such books, accounts, financial records, reports, files, and such other papers, things, or property belonging to or in use by the corporation and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. A report on each such audit shall be made by the Comptroller General to the Congress. The corporation shall reimburse the Government Accountability Office for the full cost of any such audit as billed therefor by the Comptroller General.

(2) To carry out this subsection, the representatives of the Government Accountability Office shall have access, upon request to the corporation or any auditor for an audit of the corporation under subsection (1), to any books, accounts, financial records, reports, files, or other papers, things, or property belonging to or in use by the corporation and used in any such audit and to any papers, records, files, and reports of the auditor used in such an audit.

(k) Financial reports; submission to Director; contents

(1) The corporation shall submit to the Director of the Federal Housing Finance Agency annual and quarterly reports of the financial condition and operations of the corporation which shall be in such form, contain such information, and be submitted on such dates as the Director shall require.

(2) Each such annual report shall include—

- (A) financial statements prepared in accordance with generally accepted accounting principles;
- (B) any supplemental information or alternative presentation that the Director may require; and
- (C) an assessment (as of the end of the corporation's most recent fiscal year), signed by the chief executive officer and chief accounting or financial officer of the corporation, of—
 - (i) the effectiveness of the internal control structure and procedures of the corporation; and

(ii) the compliance of the corporation with designated safety and soundness laws.

(3) The corporation shall also submit to the Director any other reports required by the Director pursuant to section 1314 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4514].

(4) Each report of financial condition shall contain a declaration by the president, vice president, treasurer, or any other officer designated by the board of directors of the corporation to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief.

(l) Independent audits of financial statements

(1) The corporation shall have an annual independent audit made of its financial statements by an independent public accountant in accordance with generally accepted auditing standards.

(2) In conducting an audit under this subsection, the independent public accountant shall determine and report on whether the financial statements of the corporation (A) are presented fairly in accordance with generally accepted accounting principles, and (B) to the extent determined necessary by the Director, comply with any disclosure requirements imposed under subsection (k)(2)(B).

(m) Mortgage data collection and reporting requirements

(1) The corporation shall collect, maintain, and provide to the Director of the Federal Housing Finance Agency, in a form determined by the Director, data relating to its mortgages on housing consisting of 1 to 4 dwelling units. Such data shall include—

- (A) the income, census tract location, race, and gender of mortgagors under such mortgages;
- (B) the loan-to-value ratios of purchased mortgages at the time of origination;
- (C) whether a particular mortgage purchased is newly originated or seasoned;
- (D) the number of units in the housing subject to the mortgage and whether the units are owner-occupied; and
- (E) any other characteristics that the Secretary considers appropriate, to the extent practicable.

(2) The corporation shall collect, maintain, and provide to the Director of the Federal Housing Finance Agency, in a form determined by the Director, data relating to its mortgages on housing consisting of more than 4 dwelling units. Such data shall include—

- (A) census tract location of the housing;
- (B) income levels and characteristics of tenants of the housing (to the extent practicable);
- (C) rent levels for units in the housing;
- (D) mortgage characteristics (such as the number of units financed per mortgage and the amount of loans);
- (E) mortgagor characteristics (such as nonprofit, for-profit, limited equity cooperatives);
- (F) use of funds (such as new construction, rehabilitation, refinancing);
- (G) type of originating institution; and
- (H) any other information that the Secretary considers appropriate, to the extent practicable.

(3)(A) Except as provided in subparagraph (B), this subsection shall apply only to mortgages purchased by the corporation after December 31, 1992.

(B) This subsection shall apply to any mortgage purchased by the corporation after the date determined under subparagraph (A) if the mortgage was originated before such date, but only to the extent that the data referred in paragraph (1) or (2), as applicable, is available to the corporation.

(n) Report on housing activities; contents; public disclosure

(1) The corporation shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Director of the Federal Housing Finance Agency a report on its activities under subpart B of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4561 et seq.].

(2) The report under this subsection shall—

(A) include, in aggregate form and by appropriate category, statements of the dollar volume and number of mortgages on owner-occupied and rental properties purchased which relate to each of the annual housing goals established under such subpart;

(B) include, in aggregate form and by appropriate category, statements of the number of families served by the corporation, the income class, race, and gender of homebuyers served, the income class of tenants of rental housing (to the extent such information is available), the characteristics of the census tracts, and the geographic distribution of the housing financed;

(C) include a statement of the extent to which the mortgages purchased by the corporation have been used in conjunction with public subsidy programs under Federal law;

(D) include statements of the proportion of mortgages on housing consisting of 1 to 4 dwelling units purchased by the corporation that have been made to first-time homebuyers, as soon as providing such data is practicable, and identifying any special programs (or revisions to conventional practices) facilitating homeownership opportunities for first-time homebuyers;

(E) include, in aggregate form and by appropriate category, the data provided to the Director of the Federal Housing Finance Agency under subsection (m)(1)(B);

(F) compare the level of securitization versus portfolio activity;

(G) assess underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures, that affect the purchase of mortgages for low- and moderate-income families, or that may yield disparate results based on the race of the borrower, including revisions thereto to promote affordable housing or fair lending;

(H) describe trends in both the primary and secondary multifamily housing mortgage markets, including a description of the progress made, and any factors impeding progress toward standardization and securitization of mortgage products for multifamily housing;

(I) describe trends in the delinquency and default rates of mortgages secured by housing for low- and moderate-income families that have been purchased by the corporation, including a comparison of such trends with delinquency and default information for mortgage products serving households with incomes above the median level that have been purchased by the corporation, and evaluate the impact of such trends on the standards and levels of risk of mortgage products serving low- and moderate-income families;

(J) describe in the aggregate the seller and servicer network of the corporation, including the volume of mortgages purchased from minority-owned, women-owned, and community-oriented lenders, and any efforts to facilitate relationships with such lenders;

(K) describe the activities undertaken by the corporation with nonprofit and for-profit organizations and with State and local governments and housing finance agencies, including how the corporation's activities support the objectives of comprehensive housing affordability strategies under section 12705 of title 42; and

(L) include any other information that the Director of the Federal Housing Finance Agency considers appropriate.

(3)(A) The corporation shall make each report under this subsection available to the public at the principal and regional offices of the corporation.

(B) Before making a report under this subsection available to the public, the corporation may exclude from the report information that the Director of the Federal Housing Finance Agency has determined is proprietary information under section 1326 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4546].

(o) Affordable Housing Advisory Council

(1) Not later than 4 months after October 28, 1992, the corporation shall appoint an Affordable Housing Advisory Council to advise the corporation regarding possible methods for promoting affordable housing for low- and moderate-income families.

(2) The Affordable Housing Advisory Council shall consist of 15 individuals, who shall include representatives of community-based and other nonprofit and for-profit organizations and State and local government agencies actively engaged in the promotion, development, or financing of housing

for low- and moderate-income families.

(June 27, 1934, ch. 847, title III, §309, as added Aug. 2, 1954, ch. 649, title II, §201, 68 Stat. 620; amended Pub. L. 87–70, title VI, §603(e), June 30, 1961, 75 Stat. 177; Pub. L. 90–448, title VIII, §802(z)–(ee), Aug. 1, 1968, 82 Stat. 540, 541; Pub. L. 92–310, title II, §223(c), June 6, 1972, 86 Stat. 206; Pub. L. 93–383, title VIII, §806(k), Aug. 22, 1974, 88 Stat. 728; Pub. L. 94–375, §17(b), Aug. 3, 1976, 90 Stat. 1076; Pub. L. 95–128, title IV, §408(c), Oct. 12, 1977, 91 Stat. 1138; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 98–440, title II, §§208, 209, 213(a), Oct. 3, 1984, 98 Stat. 1696, 1698; Pub. L. 98–479, title II, §203(a)(3), Oct. 17, 1984, 98 Stat. 2229; Pub. L. 100–242, title IV, §444, Feb. 5, 1988, 101 Stat. 1922; Pub. L. 101–73, title VII, §731(m)(3), Aug. 9, 1989, 103 Stat. 436; Pub. L. 102–550, title XIII, §1381(j)–(q), (s)(3), Oct. 28, 1992, 106 Stat. 3996–4001; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110–289, div. A, title I, §§1113(b)(1), 1161(b), July 30, 2008, 122 Stat. 2678, 2779.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 806 of the Housing and Community Development Act of 1974, referred to in subsec. (d)(2), is section 806 of Pub. L. 93–383, title VIII, Aug. 22, 1974, 88 Stat. 727. Subsection (k) of section 806 amended this subsec. (d)(2) relative to employment subject to the civil service retirement law. For complete classification of section 806 to the Code, see Tables.

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, referred to in subsec. (n)(1), (2)(A), is title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941. Subpart B of part 2 of subtitle A of the Act is classified generally to subpart 2 (§4561 et seq.) of part B of subchapter I of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note under section 4501 of this title and Tables.

CODIFICATION

Pub. L. 110–289, §1161(b)(2)(C), which directed amendment of par. (3)(B) of this section, was executed to par. (3)(B) of subsec. (n) of this section, to reflect the probable intent of Congress. See 2008 Amendment note below.

PRIOR PROVISIONS

Prior provisions on the subject of subsecs. (a) and (c) to (e) of this section were contained in sections 1716, 1719, and 1721 of this title.

AMENDMENTS

2008—Subsec. (d)(3)(B). Pub. L. 110–289, §1161(b)(1), substituted "Director of the Federal Housing Finance Agency" for "Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development".

Subsec. (d)(4). Pub. L. 110–289, §1113(b)(1), added par. (4).

Subsec. (k)(1). Pub. L. 110–289, §1161(b)(1), substituted "Director of the Federal Housing Finance Agency" for "Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development".

Subsec. (m)(1), (2). Pub. L. 110–289, §1161(b)(2)(A), substituted "to the Director of the Federal Housing Finance Agency, in a form determined by the Director" for "to the Secretary, in a form determined by the Secretary" in introductory provisions.

Subsec. (n)(1). Pub. L. 110–289, §1161(b)(2)(B)(i), substituted "and the Director of the Federal Housing Finance Agency" for "and the Secretary".

Subsec. (n)(2)(E), (L). Pub. L. 110–289, §1161(b)(2)(B)(ii), substituted "Director of the Federal Housing Finance Agency" for "Secretary".

Subsec. (n)(3)(B). Pub. L. 110–289, §1161(b)(2)(C), substituted "Director of the Federal Housing Finance Agency" for "Secretary". See Codification note above.

2004—Subsec. (j). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office" wherever appearing.

1992—Subsec. (d)(2). Pub. L. 102–550, §1381(s)(3)(A)(ii), which directed the substitution, in last sentence, of "the basic pay of such persons" for "his basic pay", was executed by making the substitution in penultimate sentence to reflect the probable intent of Congress, because the words "his basic pay" do not appear in last sentence.

Pub. L. 102-550, §1381(j)(1), (s)(3)(A)(i), in first sentence, substituted "as the board of directors determines reasonable and comparable with compensation for employment in other similar businesses (including other publicly held financial institutions or major financial services companies) involving similar duties and responsibilities, except that a significant portion of potential compensation of all executive officers (as such term is defined in paragraph (3)(C)) of the corporation shall be based on the performance of the corporation" for "as it may determine" and in third sentence "the employment of such officer or employee" for "his employment" in two places.

Subsec. (d)(3). Pub. L. 102-550, §1381(j)(2), added par. (3).

Subsec. (e). Pub. L. 102-550, §1381(s)(3)(B), substituted "the individual, association, partnership, or corporation" for "he or it".

Subsecs. (h), (i). Pub. L. 102-550, §1381(k), struck out subsec. (h) which related to regulatory power over Federal National Mortgage Association, approval for issuance of stock and other instruments, relation of mortgage purchases to national goal, audits, and a report to Congress and subsec. (i) which related to requests for approval submitted by Federal National Mortgage Association to Secretary, report to Congress, extension of approval period, and effect of inaction by Secretary.

Subsec. (j). Pub. L. 102-550, §1381(l), designated existing provisions as par. (1), inserted first sentence and struck out former first sentence which read as follows: "The mortgage transactions of the corporation may be subject to audit by the Comptroller General of the United States in accordance with the principles and procedures applicable to commercial corporation transactions under such rules and regulations as may be prescribed by the Comptroller General.", and added par. (2).

Subsecs. (k) to (o). Pub. L. 102-550, §1381(m)-(q), added subsecs. (k) to (o), respectively.

1989—Subsec. (j). Pub. L. 101-73 added subsec. (j).

1988—Subsec. (i). Pub. L. 100-242 inserted at end of second sentence ", but such 45-day period may not be extended for any other reason or for any period in addition to or other than such 15-day period".

1984—Subsec. (b). Pub. L. 98-479 substituted "chapter 91 of title 31" for "the Government Corporation Control Act".

Subsec. (h). Pub. L. 98-440, §§208, 213(a), substituted "issued by the corporation before October 1, 1985," for "issued by the Corporation" and substituted "shall, not later than June 30 of each year, report to the Congress on the activities of the corporation under this subchapter" for "shall conduct a review of the financial operations of the corporation and undertake a study of the extent to which the activities of the corporation meet the purposes of this subchapter. Such review and study shall be completed and transmitted to the Congress on or before July 1, 1978."

Subsec. (i). Pub. L. 98-440, §209, added subsec. (i).

1977—Subsec. (h). Pub. L. 95-128 inserted provision for review of the financial operations of the corporation and a study respecting how the activities of the corporation meet the purposes of this subchapter and transmittal of the review and study to the Congress.

1976—Subsec. (d)(1). Pub. L. 94-375 substituted "Subject to the provisions of section 1723(a) of this title, the Secretary" for "The Secretary".

1974—Subsec. (d)(2). Pub. L. 93-383 inserted "positions listed" before "in section 5312" and proviso relating to persons whose employment is subject to the civil service law by section 806 of the Housing and Community Development Act of 1974, and substituted reference to Jan. 31, 1972, for reference to termination of transitional period referred to in section 810(b) of the Housing and Urban Development Act of 1968.

1972—Subsec. (d)(1). Pub. L. 92-310 struck out provisions which related to bonds of officers, attorneys, employees, and agents of the Association and which permitted the Association to pay the premiums therefor.

1968—Subsec. (a). Pub. L. 90-448, §802(z), among other changes, expanded scope to include both the Government National Mortgage Association and the Federal National Mortgage Association, substituted "conduct its business without regard to any qualification or similar statute" for "conduct its business", and struck out provisions which empowered the Federal National Mortgage Association, by its board of directors, to adopt, amend, and repeal bylaws.

Subsec. (c). Pub. L. 90-448, §802(aa), designated existing provisions as par. (1), and struck out provisions which required the Association, with respect to its secondary market operations under section 1719 of this title, to pay annually to the Secretary of the Treasury an amount equivalent to the amount of Federal income taxes for which it would be subject if it were not exempt from such taxes with respect to such secondary market operations, and added par. (2).

Subsec. (d). Pub. L. 90-448, §802(bb), designated existing provisions as par. (1), substituted "Secretary of Housing and Urban Development" for "Chairman of the Board", and "agents of the Association" for "agents", and added par. (2).

Subsec. (e). Pub. L. 90-448, §802(cc), prohibited the use of the name Government National Mortgage

Association, authorized injunctions, and permitted recovery of actual damages and punitive damages, and eliminated provisions which made violations of this subsection a misdemeanor punishable by a fine of not more than \$100 or imprisonment for not more than 30 days, or both, for each day during which the violation is committed or repeated.

Subsec. (g). Pub. L. 90-448, §802(dd), authorized and directed the Federal Reserve Banks to act for the Government National Mortgage Association, and empowered each of the bodies corporate to act as depository, custodian, and fiscal agent, for its own account or as fiduciary, and for the account of others.

Subsec. (h). Pub. L. 90-448, §802(ee), added subsec. (h).

1961—Subsec. (c). Pub. L. 87-70 inserted "or other security holdings" after "mortgages".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-383, title VIII, §806(k), Aug. 22, 1974, 88 Stat. 728, provided that the amendment made by that section does not apply with respect to any person receiving an annuity on the date of the enactment of Pub. L. 93-383, which was approved Aug. 22, 1974.

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by title VIII of Pub. L. 90-448, see section 808 of Pub. L. 90-448, set out as an Effective Date note under section 1716b of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 1001(2) and 1013 of Title 5, Government Organization and Employees.

PROPOSAL BY FEDERAL NATIONAL MORTGAGE ASSOCIATION RESPECTING MORTGAGE-BACKED SECURITIES PROGRAM; APPROVAL, ETC.

Pub. L. 96-399, title III, §330, Oct. 8, 1980, 94 Stat. 1652, provided that: "If the Federal National Mortgage Association submits to the Secretary of Housing and Urban Development or the Secretary of the Treasury, after the date of enactment of this section [Oct. 8, 1980], a proposal with respect to undertaking a mortgage-backed securities program, the Secretary of Housing and Urban Development or the Secretary of the Treasury, as the case may be, shall, within 90 days after submission of such proposal, approve the proposal or transmit to the Congress a report explaining why the proposal has not been approved."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted for "United States Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§1723b. Investment of funds

Moneys of the Association not invested in mortgages or other security holdings or in operating facilities shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed thereby, or in obligations, participations, or other instruments which are lawful investments for fiduciary, trust, or public funds.

(June 27, 1934, ch. 847, title III, §310, as added Aug. 2, 1954, ch. 649, title II, §201, 68 Stat. 621; amended Pub. L. 86-372, title III, §305(b), Sept. 23, 1959, 73 Stat. 670; Pub. L. 87-70, title VI, §603(e), June 30, 1961, 75 Stat. 177; Pub. L. 88-560, title VII, §701(b)(3), Sept. 2, 1964, 78 Stat. 800.)

EDITORIAL NOTES

PRIOR PROVISIONS

Prior provisions on the subject of this section were formerly contained in section 1718 of this title.

AMENDMENTS

1964—Pub. L. 88-560 authorized investment of funds in participations and other instruments which are lawful investments.

1961—Pub. L. 87-70 inserted "or other security holdings" after "mortgages".

1959—Pub. L. 86-372 substituted "in obligations of the United States or guaranteed thereby, or in obligations which are lawful investments for fiduciary, trust, or public funds" for "in bonds or other obligations of, or in bonds or other obligations guaranteed as to principal and interest by, the United States".

§1723c. Obligations, participations, or other instruments as lawful investments; acceptance as security; exempt securities

All obligations, participations, or other instruments issued by either of the bodies corporate named in section 1717(a)(2) of this title shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority and control of the United States or any officer or officers thereof. All stock, obligations, securities, participations, or other instruments issued pursuant to this subchapter shall, to the same extent as securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission.

(June 27, 1934, ch. 847, title III, §311, as added Aug. 2, 1954, ch. 649, title II, §201, 68 Stat. 622; amended Pub. L. 88-560, title VII, §701(b)(1), Sept. 2, 1964, 78 Stat. 800; Pub. L. 90-448, title VIII, §802(ff), Aug. 1, 1968, 82 Stat. 542; Pub. L. 98-440, title II, §213(b), Oct. 3, 1984, 98 Stat. 1698; Pub. L. 102-550, title XIII, §1381(r), Oct. 28, 1992, 106 Stat. 4001.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102-550 struck out before period at end "; but all such issuances by the Association and all issuances of stock, and debt obligations convertible into stock, by the corporation shall be made only with the approval of the Secretary of Housing and Urban Development".

1984—Pub. L. 98-440 inserted "by the Association and all issuances of stock, and debt obligations convertible into stock, by the corporation".

1968—Pub. L. 90-448 substituted "either of the bodies corporate named in section 1717(a)(2) of this title" for "the Association," and inserted provisions directing that all stock, obligations, securities, participations, or other instruments issued pursuant to this subchapter be deemed to be exempt securities, and requiring approval of the Secretary for all issuances.

1964—Pub. L. 88-560 inserted ", participations, or other instruments" after "obligations".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by title VIII of Pub. L. 90–448, see section 808 of Pub. L. 90–448, set out as an Effective Date note under section 1716b of this title.

§1723d. Transfer of certain functions to Association

The functions of the Housing and Home Finance Administrator (including the function of making payments to the Secretary of the Treasury) under section 2 of Reorganization Plan Numbered 22 of 1950, together with the notes and capital stock of the Federal National Mortgage Association held by said Administrator thereunder, are transferred to the Federal National Mortgage Association.

(Aug. 2, 1954, ch. 649, title II, §207, 68 Stat. 622.)

EDITORIAL NOTES

REFERENCES IN TEXT

Reorganization Plan Numbered 22 of 1950, referred to in text, is set out as a note under section 1717 of this title.

CODIFICATION

Section was enacted as part of the Housing Act of 1954, and not as part of the National Housing Act which comprises this chapter or of the Federal National Mortgage Charter Association Act which comprises this subchapter.

§1723e. Repealed. Pub. L. 98–181, title I [title IV, §483(a)], Nov. 30, 1983, 97 Stat. 1240

Section, act June 27, 1934, ch. 847, title III, §313, as added Oct. 18, 1974, Pub. L. 93–449, §3(a), 88 Stat. 1364; amended July 2, 1975, Pub. L. 94–50, title II §§201–206, 89 Stat. 254, 255; Aug. 3, 1976, Pub. L. 94–375, §13(e)(1), 90 Stat. 1075; Oct. 12, 1977, Pub. L. 95–128, title IV, §407(a)–(d), 91 Stat. 1137, 1138; Oct. 8, 1980, Pub. L. 96–399, title III, §337(b), 94 Stat. 1655, related to the interim mortgage and security purchasing authority of the Association.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SAVINGS PROVISION

For continued application of former sections 1720 and 1723e of this title to any purchase or commitment to purchase any mortgage made pursuant to those sections before Nov. 30, 1983, and the servicing and disposition of any such mortgage, see section 483(b) of Pub. L. 98–181, set out as a note under section 1720 of this title.

EFFECTIVE DATE

Pub. L. 93–449, §3(b), Oct. 18, 1974, 88 Stat. 1366, as amended by Pub. L. 94–50, title II, §207, July 2, 1975, 89 Stat. 256; Pub. L. 94–375, §13(d), Aug. 3, 1976, 90 Stat. 1075; Pub. L. 95–128, title IV, §407(e), Oct. 12, 1977, 91 Stat. 1138; Pub. L. 95–406, §3, Sept. 30, 1978, 92 Stat. 880; Pub. L. 95–557, title III, §303, Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96–71, §3, Sept. 28, 1979, 93 Stat. 502; Pub. L. 96–105, §3, Nov. 8, 1979, 93 Stat. 795; Pub. L. 96–153, title III, §303, Dec. 21, 1979, 93 Stat. 1112; Pub. L. 96–372, §4, Oct. 3, 1980, 94 Stat. 1364; Pub. L. 96–399, title III, §337(a), Oct. 8, 1980, 94 Stat. 1655, which related to the effective date of former section 1723e of this title, was repealed by Pub. L. 98–181, title I [title IV, §483(a)], Nov. 30, 1983, 97 Stat. 1240.

EMERGENCY MORTGAGE PURCHASE ASSISTANCE; TRANSFER OF FUNDS

Pub. L. 98–371, title I, July 18, 1984, 98 Stat. 1218, in part directed Secretary to transfer all assets acquired and liabilities incurred pursuant to this section to management and liquidating functions fund established

pursuant to section 1721 of this title, and that on Oct. 1, 1984, each outstanding obligation issued by Secretary of Housing and Urban Development to Secretary of the Treasury pursuant to subsec. (c) of this section, together with any promise to repay principal and unpaid interest which had accrued on each obligation, and any other term or condition specified by each such obligation, was canceled.

§1723f. Repealed. Pub. L. 96–294, title V, §533, June 30, 1980, 94 Stat. 740

Section, act June 27, 1934, ch. 847, title III, §314, as added Nov. 9, 1978, Pub. L. 95–619, title II, §242, 92 Stat. 3228, related to the purchase of energy conserving home improvement loans and advances of credit by the Association under the direction of the Secretary.

§§1723g, 1723h. Repealed. Pub. L. 102–550, title IX, §912(i)(2), Oct. 28, 1992, 106 Stat. 3876

Section 1723g, act June 27, 1934, ch. 847, title III, §315, as added Nov. 9, 1978, Pub. L. 95–619, title II, §243, 92 Stat. 3230; amended June 30, 1980, Pub. L. 96–294, title V, §531, 94 Stat. 737; Oct. 17, 1984, Pub. L. 98–479, title II, §203(a)(4), 98 Stat. 2229, set out authority of Solar Energy and Energy Conservation Bank to purchase loans and advances of credit for energy conservation improvements or solar energy systems.

Section 1723h, act June 27, 1934, ch. 847, title III, §316, as added Nov. 9, 1978, Pub. L. 95–619, title II, §244, 92 Stat. 3231; amended June 30, 1980, Pub. L. 96–294, title V, §532, 94 Stat. 739; Oct. 17, 1984, Pub. L. 98–479, title II, §203(a)(5), 98 Stat. 2229, set out authority of Solar Energy and Energy Conservation Bank to purchase mortgages secured by newly constructed homes with solar energy systems.

§1723i. Civil money penalties against issuers

(a) In general

(1) Authority

Whenever an issuer or custodian approved under section 1721(g) of this title knowingly and materially violates any provisions of subsection (b), the Secretary of Housing and Urban Development may impose a civil money penalty on the issuer or the custodian in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty and may be imposed whether or not the Secretary imposes other administrative sanctions.

(2) Amount of penalty

The amount of the penalty, as determined by the Secretary, may not exceed \$5,000 for each violation, except that the maximum penalty for all violations by a particular issuer or custodian during any one-year period shall not exceed \$1,000,000. Each violation of a provision of subsection (b)(1) shall constitute a separate violation with respect to each pool of mortgages. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

(b) Violations for which penalty may be imposed

(1) Violations

The violations by an issuer or a custodian for which the Secretary may impose a civil money penalty under subsection (a) are the following:

(A) Failure to make timely payments of principal and interest to holders of securities guaranteed under section 1721(g) of this title.

(B) Failure to segregate cash flow from pooled mortgages or to deposit either principal and interest funds or escrow funds into special accounts with a depository institution whose accounts are insured by the National Credit Union Administration or by the Federal Deposit Insurance Corporation through the Deposit Insurance Fund.

(C) Use of escrow funds for any purpose other than that for which they were received.

(D) Transfer of servicing for a pool of mortgages to an issuer not approved under this subchapter, unless expressly permitted by statute, regulation, or contract approved by the Secretary.

(E) Failure to maintain a minimum net worth in accordance with requirements prescribed by the Association;

(F) Failure to promptly notify the Association in writing of any changes that materially affect the business status of an issuer.

(G) Submission to the Association of false information in connection with any securities guaranteed, or mortgages pooled, under section 1721(g) of this title.

(H) Hiring, or retaining in employment, an officer, director, principal, or employee whose duties involve, directly or indirectly, programs administered by the Association while such person was under suspension or debarment by the Secretary.

(I) Submission to the Association of a false certification either on its own behalf or on behalf of another person or entity.

(J) Failure to comply with an agreement, certification, or condition of approval set forth on, or applicable to, the application for approval as an issuer of securities under section 1721(g) of this title.

(K) Violation of any provisions of this subchapter or any implementing regulation, handbook, or participant letter issued under authority of this subchapter.

(2) Notification to Attorney General

Before taking action to impose a civil money penalty for a violation under paragraph (1)(G) or paragraph (1)(I), the Secretary shall inform the Attorney General of the United States.

(c) Agency procedures

(1) Establishment

The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a). The standards and procedures—

(A) shall provide for the Secretary to make the determination to impose the penalty;

(B) shall provide for the imposition of a penalty only after an issuer or a custodian has been given notice of, and opportunity for, a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Final orders

If no hearing is requested within 15 days of receipt of a notice of opportunity for hearing, the imposition of a penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (a), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before December 15, 1989), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine by regulations.

(4) Reviewability of imposition of penalty

The Secretary's determination or order imposing a penalty under subsection (a) shall not be subject to review, except as provided in subsection (d).

(d) Judicial review of agency determination

(1) In general

After exhausting all administrative remedies established by the Secretary under subsection (c)(1), an issuer or a custodian against which the Secretary has imposed a civil money penalty under subsection (a) may obtain a review of the penalty and such ancillary issues as may be addressed in the notice provided under subsection (c)(1)(A) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

(2) Objections not raised in hearing

A court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (c)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence, which was not presented at such hearing, is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

(3) Scope of review

The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5.

(4) Order to pay penalty

Notwithstanding any other provision of law, the court shall have the power in any such review to order payment of the penalty imposed by the Secretary.

(e) Action to collect penalty

If any issuer or custodian fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (a), after the determination or order is no longer subject to review as provided by subsections (c)(1) and (d), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the issuer or custodian and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(f) Settlement by Secretary

The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(g) "Knowingly" defined

The term "knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(h) Regulations

The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(i) Deposit of penalties

The Secretary shall deposit all civil money penalties collected under this section into moneys of the Association pursuant to section 1722 of this title.

(June 27, 1934, ch. 847, title III, §317, as added Pub. L. 101-235, title I, §110(a), Dec. 15, 1989, 103 Stat. 2011; amended Pub. L. 104-208, div. A, title II, §2704(d)(13)(A), Sept. 30, 1996, 110 Stat. 3009-490; Pub. L. 109-171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109-173, §9(f)(1), Feb. 15, 2006, 119 Stat. 3618.)

AMENDMENTS

2006—Subsec. (b)(1)(B). Pub. L. 109–173 substituted "Deposit Insurance Fund" for "Bank Insurance Fund for banks or through the Savings Association Insurance Fund for savings associations".

Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(13)(A). See 1996 Amendment note below.

1996—Subsec. (b)(1)(B). Pub. L. 104–208, §2704(d)(13)(A), which directed substitution of "Deposit Insurance Fund" for "Bank Insurance Fund for banks or through the Savings Association Insurance Fund for savings associations", was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE

Pub. L. 101–235, title I, §110(b), Dec. 15, 1989, 103 Stat. 2014, provided that: "The amendment made by subsection (a) [enacting this section] shall apply only with respect to—

"(1) violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989]; and

"(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation referred to in the amendment that occurs on or after such date."

SUBCHAPTER IV—INSURANCE OF SAVINGS AND LOAN ACCOUNTS

§§1724 to 1730d. Repealed. Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363

Section 1724, acts June 27, 1934, ch. 847, title IV, §401, 48 Stat. 1255; July 16, 1952, ch. 883, 66 Stat. 727; July 28, 1959, Pub. L. 86–112, 73 Stat. 262; Oct. 16, 1966, Pub. L. 89–695, title III, §302(a), 80 Stat. 1055; Dec. 23, 1969, Pub. L. 91–151, title I, §8(a)(1), 83 Stat. 375; Oct. 28, 1974, Pub. L. 93–495, title I, §§101(b)(1), 103(a)(1), 88 Stat. 1501, 1503; Mar. 31, 1980, Pub. L. 96–221, title III, §308(b)(1)(A), 94 Stat. 147, defined terms used in this subchapter.

Section 1725, acts June 27, 1934, ch. 847, title IV, §402, 48 Stat. 1256; May 28, 1935, ch. 150, §22, 49 Stat. 298; 1947 Reorg. Plan No. 3, eff. July 29, 1947, 12 F.R. 4981, 61 Stat. 954; July 3, 1948, ch. 825, §2, 62 Stat. 1240; June 27, 1950, ch. 369, §§5, 6, 64 Stat. 258; Aug. 2, 1954, ch. 649, title V, §501(1), title VIII, §802(b), 68 Stat. 633, 642; June 11, 1960, Pub. L. 86–507, §1(12), 74 Stat. 200; Aug. 16, 1973, Pub. L. 93–100, §4, 87 Stat. 343; Oct. 28, 1974, Pub. L. 93–495, title I, §105(d), 88 Stat. 1504; Oct. 28, 1977, Pub. L. 95–147, §2(b), 91 Stat. 1227; Oct. 15, 1982, Pub. L. 97–320, title I, §125(a), (b), title III, §314, 96 Stat. 1485, 1499; Aug. 10, 1987, Pub. L. 100–86, title III, §§304, 306(b), (i), 101 Stat. 597, 601, 603, related to creation of Federal Savings and Loan Insurance Corporation.

Section 1726, acts June 27, 1934, ch. 847, title IV, §403, 48 Stat. 1257; May 28, 1935, ch. 150, §§23, 24, 49 Stat. 298; July 14, 1952, ch. 723, §10(a)(5), 66 Stat. 604; Aug. 11, 1955, ch. 783, title I, §111, 69 Stat. 641; Sept. 2, 1964, Pub. L. 88–560, title IX, §901(b), 78 Stat. 804; July 24, 1970, Pub. L. 91–351, title VII, §707, 84 Stat. 463; Oct. 28, 1974, Pub. L. 93–495, title I, §105(a), 88 Stat. 1503; Nov. 10, 1978, Pub. L. 95–630, title XII, §1203, 92 Stat. 3711; Mar. 31, 1980, Pub. L. 96–221 title IV, §407(b), 409, 94 Stat. 160; Oct. 15,

1982, Pub. L. 97-320, title I, §115(a), title II, §202(c), (d), 96 Stat. 1475, 1492; Aug. 10, 1987, Pub. L. 100-86, title V, §504(a), 101 Stat. 632, related to insurance of accounts and eligibility provisions.

Section 1727, acts June 27, 1934, ch. 847, title IV, §404, 48 Stat. 1258; May 28, 1935, ch. 150, §25, 49 Stat. 298; June 27, 1950, ch. 369, §§7, 8, 64 Stat. 259; Sept. 8, 1961, Pub. L. 87-210, §§3-6, 75 Stat. 483; Aug. 10, 1965, Pub. L. 89-117, title XI, §1110(d), 79 Stat. 508; Sept. 21, 1968, Pub. L. 90-505, §6(a), 82 Stat. 858; Dec. 23, 1969, Pub. L. 91-151, title I, §6(a), 83 Stat. 375; Dec. 24, 1969, Pub. L. 91-152, title IV, §416(c)(1), 83 Stat. 401; Dec. 22, 1971, Pub. L. 92-213, §5, 85 Stat. 776; Aug. 16, 1973, Pub. L. 93-100, §6, 87 Stat. 344; Oct. 28, 1974, Pub. L. 93-495, title I, §115, 88 Stat. 1507; Oct. 15, 1982, Pub. L. 97-320, title I, §126, 96 Stat. 1485; Aug. 10, 1987, Pub. L. 100-86, title III, §§305, 306(c), (f), (g), 307, title V, §505(c), 101 Stat. 600-603, 633, related to primary and secondary services.

Section 1728, acts June 27, 1934, ch. 847, title IV, §405, 48 Stat. 1259; June 27, 1950, ch. 369, §9, 64 Stat. 259; Sept. 21, 1950, ch. 967, §5, 64 Stat. 894; Aug. 2, 1954, ch. 649, title V, §501(2), 68 Stat. 633; Oct. 16, 1966, Pub. L. 89-695, title III, §§302(b), 303(b), 80 Stat. 1055, 1056; Dec. 23, 1969, Pub. L. 91-151, title I, §8(a)(2), 83 Stat. 375; Oct. 28, 1974, Pub. L. 93-495, title I, §§101(b)(2), (3), 103(a)(2), 88 Stat. 1501, 1503; Dec. 26, 1974, Pub. L. 93-541, §1, 88 Stat. 1739; Nov. 10, 1978, Pub. L. 95-630, title XIV, §1401(b), 92 Stat. 3712; Dec. 21, 1979, Pub. L. 96-153, title III, §323(b), 93 Stat. 1120; Mar. 31, 1980, Pub. L. 96-221, title III, §308(b)(1)(B), 94 Stat. 147; Oct. 15, 1982, Pub. L. 97-320, title I, §128, 96 Stat. 1486; Oct. 22, 1986, Pub. L. 99-514, §2, 100 Stat. 2095, related to payment of insurance, statute of limitations with respect to claims, and insurance of public funds.

Section 1729, acts June 27, 1934, ch. 847, title IV, §406, 48 Stat. 1259; May 28, 1935, ch. 150, §§26, 27, 49 Stat. 299; 1947 Reorg. Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Aug. 2, 1954, ch. 649, title VIII, §802(c)(2), 68 Stat. 643; Aug. 11, 1955, ch. 783, title I, §109(a)(3), (b), 69 Stat. 640, 641; July 7, 1968, Pub. L. 90-389, §6, 82 Stat. 295; Nov. 10, 1978, Pub. L. 95-630, title I, §105(b)(2), 92 Stat. 3647; Oct. 15, 1982, Pub. L. 97-320, title I, §§122, 141(a)(6), title II, §§202(a), 206, 96 Stat. 1480, 1489, 1496; Jan. 12, 1983, Pub. L. 97-457, §§5, 9(a), (b)(1), 96 Stat. 2507, 2508; Aug. 10, 1987, Pub. L. 100-86, title IV, §405, title V, §509(a), 101 Stat. 613, 635, related to liquidation of insured institutions.

Section 1730, acts June 27, 1934, ch. 847, title IV, §407, 48 Stat. 1260; June 27, 1950, ch. 369, §11, 64 Stat. 259; Aug. 2, 1954, ch. 649, title V, §501(3), 68 Stat. 633; Aug. 11, 1955, ch. 783, title I, §109(a)(3), 69 Stat. 640; Oct. 16, 1966, Pub. L. 89-695, title I, §102(a), 80 Stat. 1036; Oct. 28, 1974, Pub. L. 93-495, title I, §105(c), 88 Stat. 1504; Nov. 10, 1978, Pub. L. 95-630, title I, §§107(a)(2), (c)(2), (d)(2), (e)(2), 111(b), title II, §208(c), title VII, §§702, 703, 92 Stat. 3650, 3654, 3658, 3661, 3667, 3675, 3687; Oct. 15, 1982, Pub. L. 97-320, title I, §115(c)-(e), title IV, §§424(b), (d)(7), (e), 425(a), 427(b), 96 Stat. 1476, 1522, 1523, 1525; Oct. 27, 1986, Pub. L. 99-570, title I, §§1359(c), 1361, 100 Stat. 3207-28, 3207-31; Aug. 10, 1987, Pub. L. 100-86, title I, §111(b), title III, §306(e), title IV, §§406(b), 413(b), 101 Stat. 581, 602, 615, 621, related to termination of insurance and enforcement provisions.

Section 1730a, act June 27, 1934, ch. 847, title IV, §408, as added Sept. 23, 1959, Pub. L. 86-374, 73 Stat. 691; amended Sept. 13, 1960, Pub. L. 86-746, 74 Stat. 883; Oct. 16, 1966, Pub. L. 89-695, title I, §103, 80 Stat. 1046; Feb. 14, 1968, Pub. L. 90-255, §2, 82 Stat. 5; Oct. 21, 1968, Pub. L. 90-608, ch. IV, §403, 82 Stat. 1194; July 24, 1970, Pub. L. 91-351, title VII, §705, 84 Stat. 462; Dec. 31, 1970, Pub. L. 91-609, title IX, §920, 84 Stat. 1816; Nov. 10, 1978, Pub. L. 95-630, title I, §§105(b)(1), 106(c), 92 Stat. 3646, 3649; Oct. 15, 1982, Pub. L. 97-320, title I, §§115(b), 123, 141(a)(7), title III, §335, title IV, §424(b), (d)(5), 96 Stat. 1475, 1483, 1489, 1505, 1522, 1523; Jan. 12, 1983, Pub. L. 97-457, §§6, 7, 96 Stat. 2507; Oct. 22, 1986, Pub. L. 99-514, §2, 100 Stat. 2095; Aug. 10, 1987, Pub. L. 100-86, title I, §§104(a)-(c)(1), (d)-(h), 106(a), 107(a), 110, 111(a), title IV, §§410(b), 414, title V, §509(a), 101 Stat. 567-571, 573-577, 579, 580, 620, 621, 635, related to regulation of holding companies.

Section 1730b, act June 27, 1934, ch. 847, title IV, §409, as added Sept. 2, 1964, Pub. L. 88-560, title IX, §909, 78 Stat. 805, related to investment of certain funds in accounts of insured institutions.

Section 1730c, act June 27, 1934, ch. 847, title IV, §410, as added Dec. 15, 1967, Pub. L. 90-203, §4, 81 Stat. 611, related to participation by insured institutions in lotteries and related activities.

Section 1730d, act June 27, 1934, ch. 847, title IV, §411, as added Oct. 26, 1970, Pub. L. 91-508, title I, §102, 84 Stat. 1116; amended Nov. 18, 1988, Pub. L. 100-690, title VI, §6185(d)(2), 102 Stat. 4356, related to retention of records by insured institutions.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For provisions relating to abolition of Federal Savings and Loan Insurance Corporation and transfer of functions, personnel and property, see sections 401 to 406 of Pub. L. 101-73, set out as a note under section

1437 of this title.

§1730e. Repealed. Pub. L. 96–221, title V, §529, Mar. 31, 1980, 94 Stat. 168

Section, act June 27, 1934, ch. 847, title IV, §412, as added Dec. 28, 1979, Pub. L. 96–161, title II, §203, 93 Stat. 1236, provided that if the applicable rate prescribed in this section exceeded the rate an insured institution would be permitted to charge in the absence of this section, then such institution could, for a business or agricultural loan of \$25,000 or more, notwithstanding State law, take or charge on any evidence of debt, interest of not more than 5 per centum in excess of the discount rate in effect at the Federal Reserve bank in the district in which the institution was located, that the taking or charging of interest at a greater rate than that prescribed by this section, if knowingly done, would be deemed a forfeit of the entire interest on that particular evidence of debt, and that if such greater rate of interest had already been paid, the payor could recover twice the amount of such payment in a civil action commenced within two years of such payment. See section 1730g of this title.

A prior section 1730e, act June 27, 1934, ch. 847, §412, as added Nov. 5, 1979, Pub. L. 96–104, title I, §103, 93 Stat. 790, identical to this section as added by Pub. L. 96–161, was repealed by section 212 of Pub. L. 96–161, effective at the close of Dec. 27, 1979, except that its provisions would continue to apply to any loan made in any State on or after Nov. 5, 1979, but prior to such repeal.

A prior section 1730e, act June 27, 1934, ch. 847, §412, as added Oct. 29, 1974, Pub. L. 93–501, title II, §203, 88 Stat. 1559, identical to this section as added by Pub. L. 96–104, was repealed by section 1 of Pub. L. 96–104 except that its provisions shall continue to apply to any loan made in any State during the period specified in section 206 of Pub. L. 93–501.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Pub. L. 96–221, title V, §529, Mar. 31, 1980, 94 Stat. 168, provided that the repeal of this section is effective at close of Mar. 31, 1980.

SAVINGS PROVISION

Pub. L. 96–221, title V, §529, Mar. 31, 1980, 94 Stat. 168, provided that, notwithstanding the repeal of Pub. L. 96–104 and title II of Pub. L. 96–161, this section [which had been enacted by those laws] shall continue to apply to any loan made, any deposit made, or any obligation issued in any State during any period when this section was in effect in such State.

§§1730f to 1730i. Repealed. Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363

Section 1730f, act June 27, 1934, ch. 847, title IV, §413, as added Dec. 22, 1974, Pub. L. 93–533, §11(b), 88 Stat. 1729, related to disclosures with respect to certain federally related mortgage loans, identity of beneficiary interest as condition for loan, and report to Board.

Section 1730g, act June 27, 1934, ch. 847, title IV, §414, as added Mar. 31, 1980, Pub. L. 96–221, title V, §522, 94 Stat. 165; amended Jan. 12, 1983, Pub. L. 97–457, §33, 96 Stat. 2511, related to insured savings and loan associations.

Section 1730h, act June 27, 1934, ch. 847, title IV, §415, as added Aug. 10, 1987, Pub. L. 100–86, title IV, §402(b), 101 Stat. 606, related to accounting principles and other standards and requirements.

Section 1730i, act June 27, 1934, ch. 847, title IV, §416, as added Aug. 10, 1987, Pub. L. 100–86, title IV, §404(b), 101 Stat. 611, related to thrift industry recovery regulations.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SAVINGS PROVISION

Any plan approved by the Federal Savings and Loan Insurance Corporation under former section 1730i of this title for any State savings association to continue in effect as long as such association adheres to the plan and continues to submit to the Federal Deposit Insurance Corporation regular and complete reports on the

progress in meeting the association's goals under the plan, notwithstanding the repeal of that section, see section 302 of Pub. L. 101–73, set out as a Savings Provision note under section 1467a of this title.

TRANSFER OF FUNCTIONS

For provisions relating to abolition of Federal Savings and Loan Insurance Corporation and Federal Home Loan Bank Board and transfer of functions, personnel, and property of such agencies, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

SUBCHAPTER V—MISCELLANEOUS

§1731. Repealed. June 25, 1948, ch. 645, §21, 62 Stat. 862, eff. Sept. 1, 1948

Section, acts June 27, 1934, ch. 847, title V, §512, 48 Stat. 1265; Feb. 3, 1938, ch. 13, §§9, 10, 52 Stat. 24, 25; June 28, 1941, ch. 261, §10, 55 Stat. 365, related to penalties. See sections 493, 657, 709, 1006, and 1008 to 1010 of Title 18, Crimes and Criminal Procedure.

§1731a. Penalties

Notwithstanding any other provision of law, the Secretary is authorized to refuse the benefits of participation (either directly as an insured lender or as a borrower, or indirectly as a builder, contractor, or dealer, or salesman or sales agent for a builder, contractor or dealer) under subchapter I, II, VI, VII, VIII, IX–B, or X of this chapter to any person or firm (including but not limited to any individual, partnership, association, trust, or corporation) if the Secretary has determined that such person or firm (1) has knowingly or willfully violated any provision of this chapter or of title III of the Servicemen's Readjustment Act of 1944, as amended, or of chapter 37 of title 38, or of any regulation issued by the Secretary under this chapter or by the Secretary of Veterans Affairs under said title III, or chapter 37, or (2) has, in connection with any construction, alteration, repair or improvement work financed with assistance under this chapter or under said title III, or chapter 37, or in connection with contracts or financing relating to such work, violated any Federal or State penal statute, or (3) has failed materially to properly carry out contractual obligations with respect to the completion of construction, alteration, repair, or improvement work financed with assistance under this chapter or under title III of the Servicemen's Readjustment Act of 1944, as amended, or of chapter 37 of title 38. Before any such determination is made any person or firm with respect to whom such a determination is proposed shall be notified in writing by the Secretary and shall be entitled, upon making a written request to the Secretary, to a written notice specifying charges in reasonable detail and an opportunity to be heard and to be represented by counsel. Determinations made by the Secretary under this section shall be based on the preponderance of the evidence. For the purposes of compliance with this section the Secretary's notice of a proposed determination under this section shall be considered to have been received by the interested person or firm if the notice is properly mailed to the last known address of such person or firm.

(June 27, 1934, ch. 847, title V, §512, as added Aug. 2, 1954, ch. 649, title I, §132, 68 Stat. 610; amended Pub. L. 85–857, §13(h), Sept. 2, 1958, 72 Stat. 1265; Pub. L. 86–372, title I, §119, Sept. 23, 1959, 73 Stat. 665; Pub. L. 89–754, title X, §1020(e), Nov. 3, 1966, 80 Stat. 1296; Pub. L. 90–19, §1(a)(3), (4), May 25, 1967, 81 Stat. 17; Pub. L. 98–479, title II, §204(a)(17), Oct. 17, 1984, 98 Stat. 2232; Pub. L. 101–235, title I, §133(d)(3), Dec. 15, 1989, 103 Stat. 2027; Pub. L. 102–54, §13(d)(2)(B), June 13, 1991, 105 Stat. 274.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Servicemen's Readjustment Act of 1944, as amended, referred to in text, is act June 22, 1944, ch. 268,

58 Stat. 284. Title III of the Servicemen's Readjustment Act of 1944 was classified generally to subchapter II (§694 et seq.) of chapter 11C of former Title 38, Pensions, Bonuses, and Veterans' Relief, and was repealed by section 14(87) of Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1273, the first section of which reenacted title III of such Act as chapter 37 (§1801 [now 3701] et seq.) of Title 38, Veterans' Benefits.

PRIOR PROVISIONS

A prior section 512 of act of June 27, 1934, related to offenses and penalties, and was classified to section 1731 of this title, prior to repeal by act June 25, 1948, ch. 645, §21, 62 Stat. 862, eff. Sept. 1, 1948. See note under section 1731.

AMENDMENTS

1991—Pub. L. 102-54 substituted "Secretary of Veterans Affairs" for "Administrator of Veterans' Affairs".

1989—Pub. L. 101-235 struck out reference to subchapter IX-A after reference to subchapter VIII.

1984—Pub. L. 98-479 substituted "Penalties" for "Denial of benefits in cases of abuses; determination by Secretary; notice and hearing" in section catchline.

1967—Pub. L. 90-16 substituted "Secretary" for "Commissioner" wherever appearing, and "Secretary's" for "Commissioner's".

1966—Pub. L. 89-754 inserted references to subchapters IX-A and IX-B of this chapter.

1959—Pub. L. 86-372 provided that for purposes of compliance with this section the Commissioner's notice of a proposed determination under this section shall be considered to have been received by the interested person or firm if the notice is properly mailed to the last known address of such person or firm.

1958—Pub. L. 85-857 inserted references to chapter 37 of title 38.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-857 effective Jan. 1, 1959, see section 2 of Pub. L. 85-857, set out as an Effective Date note preceding part I of Title 38, Veterans' Benefits.

§1731b. Prohibition against transient housing

(a) Intent of Congress

The Congress declares that it has been its intent since the enactment of this chapter that housing built with the aid of mortgages insured under this chapter is to be used principally for residential use; and that this intent excludes the use of such housing for transient or hotel purposes while such insurance on the mortgage remains outstanding.

(b) Exceptions to prohibition

Notwithstanding any other provisions of this chapter, no new, existing, or rehabilitated multifamily housing with respect to which a mortgage is insured under this chapter shall be operated for transient or hotel purposes unless (1) on or before May 28, 1954, the Secretary has agreed in writing to the rental of all or a portion of the accommodations in the project for transient or hotel purposes (in which case no accommodations in excess of the number so agreed to by the Secretary shall be rented on such basis), or (2) the project covered by the insured mortgage is located in an area which the Secretary determines to be a resort area, and the Secretary finds that prior to May 28, 1954, a portion of the accommodations in the project had been made available for rent for transient or hotel purposes (in which case no accommodations in excess of the number which had been made available for such use shall be rented on such basis).

(c) Certification as to use as requisite for insurance; exceptions to prohibition against insuring

Notwithstanding any other provisions of this chapter, no mortgage with respect to multifamily housing shall be insured under this chapter (except pursuant to a commitment to insure issued prior to August 2, 1954), and (except as to housing coming within the provisions of clause (1) or clause (2) of subsection (b)) no mortgage with respect to multifamily housing shall be insured for an additional term, unless (1) the mortgagor certifies under oath that while such insurance remains

outstanding he will not rent, or permit the rental of, such housing or any part thereof for transient or hotel purposes, and (2) the Secretary has entered into such contract with, or purchased such stock of, the mortgagor as the Secretary deems necessary to enable him to prevent or terminate any use of such property or project for transient or hotel purposes while the mortgage insurance remains outstanding.

(d) Enforcement by Secretary

The Secretary is authorized and directed to enforce the provisions of this section by all appropriate means at his disposal, as to all existing multifamily housing with respect to which a mortgage was insured under this chapter prior to August 2, 1954, as well as to all multifamily housing with respect to which a mortgage is hereafter insured under this chapter: *Provided*, That no criminal penalty shall, by reason of enactment of this section, be applicable to the rental or operation of any such existing multifamily housing in violation of any provision of subsection (b) of this section at any time prior to August 2, 1954.

(e) Definitions

As used in this section, (1) the term "rental for transient or hotel purposes" shall have such meaning as prescribed by the Secretary but rental for any period less than thirty days shall in any event constitute rental for such purposes, and (2) the term "multifamily housing" shall mean (i) a property held by a mortgagor upon which there are located five or more single family dwellings, or upon which there is located a two-, three-, or four-family dwelling, or (ii) a property or project covered by mortgage insured or to be insured under section 1713 of this title, under section 1715e of this title with respect to any property or project of a corporation or trust of the character described in paragraph (1) of subsection (a) thereof, under section 1715k of this title if the mortgage is within the provisions of paragraph (3) (B) of subsection (d) thereof, under section 1715l of this title if the mortgage is within the provisions of paragraph (3) of subsection (d) thereof, under section 1743, 1748b, or 1750g of this title, or (iii) a project with respect to which an insurance contract pursuant to subchapter VII is outstanding.

(f) Investigation after notice of violation; cease order

Promptly after receipt of written notice that any portion of any building is being rented or operated in violation of any provision of this section or of any rule or regulation lawfully issued thereunder, the Secretary shall investigate the existence of the facts alleged in the written notice and shall order such violation, if found to exist, to cease forthwith.

(g) Prosecution by Attorney General for continued violation

If such violation does not cease in accordance with such order, the Secretary shall forward the complaint to the Attorney General of the United States for prosecution of such civil or criminal action, if any, which the Attorney General may find to be involved in such violation.

(h) Judicial procedure for injunction or other order

Whenever he finds a violation of any provision of this section has occurred or is about to occur, the Attorney General shall petition the district court of the United States or the district court of any Territory or other place subject to United States jurisdiction within whose jurisdictional limits the person doing or committing the acts or practices constituting the alleged violation of this section shall be found, for an order enjoining such acts or practices, and upon a showing by the Attorney General that such acts or practices constituting such violation have been engaged in or are about to be engaged in, a permanent or temporary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted without bond.

(i) Injunctive relief for hotel owners

Any person owning or operating a hotel within a radius of fifty miles of a place where a violation of any provision of this section has occurred or is about to occur, or any group or association of hotel owners or operators within said fifty-mile radius, at his or their sole charge or cost, may petition any district court of the United States or the district court or any Territory or other place subject to United States jurisdiction within whose jurisdictional limits the person doing or committing the acts

or practices constituting the alleged violation of this section shall be found, for an order enjoining such acts or practices, and, upon a showing that such acts or practices constituting such violation have been engaged in or are about to be engaged in, a permanent or temporary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted.

(j) Jurisdiction of district courts

The several district courts of the United States and the several district courts of the Territories of the United States or other place subject to United States jurisdiction, within whose jurisdictional limits the person doing or committing the acts or practices constituting the alleged violation shall be found, shall, wheresoever such acts or practices may have been done or committed, have full power and jurisdiction to hear, try, and determine such matter under subsections (h) and (i) of this section.

(June 27, 1934, ch. 847, title V, §513, as added Aug. 2, 1954, ch. 649, title I, §132, 68 Stat. 610; amended Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 98-479, title II, §204(a)(18), Oct. 17, 1984, 98 Stat. 2232.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 513 of act June 27, 1934, was renumbered section 513A of act June 27, 1934, and is classified to section 1732 of this title.

AMENDMENTS

1984—Pub. L. 98-479 substituted "Prohibition against transient housing" for "Prohibition against use of insured multifamily housing for transient or hotel purposes" in section catchline.

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing in subsecs. (b) to (d), (e)(1), (f), and (g).

§1732. Separability

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(June 27, 1934, ch. 847, title V, §513A, formerly §513, 48 Stat. 1265; renumbered Pub. L. 98-479, title II, §204(a)(19), Oct. 17, 1984, 98 Stat. 2232.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

REFERENCES IN OTHER LAWS

Pub. L. 98-479, title II, §204(a)(19), Oct. 17, 1984, 98 Stat. 2232, provided in part that: "Any reference in any law, regulation, order, document, record, or other paper of the United States to the section redesignated in this paragraph [this section] hereby is deemed to refer to section 513A of the National Housing Act [this section]."

§1733. Application of other laws

The provisions of section 1430(a)(1) ¹ and 1430b of this title; the seventh paragraph of section 24 of this title; section 371 of this title; subsection (n) of section 77B of the Bankruptcy Act, as amended (49 Stat. 664); section 606i of title 15, continuing and extending the functions of the Reconstruction Finance Corporation; and all other provisions of law establishing rights under mortgages insured in accordance with the provisions of this chapter, shall be held to apply to such chapter, as amended.

(June 27, 1934, ch. 847, title V, §514, as added Feb. 3, 1938, ch. 13, §11, 52 Stat. 26.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1430(a) of this title, referred to in text, was amended by Pub. L. 106–102, title VI, §604(a), Nov. 12, 1999, 113 Stat. 1451, and, as so amended, the provisions formerly appearing in section 1430(a)(1) now appear in section 1430(a)(3)(A).

Section 77B of the Bankruptcy Act, referred to in text, was classified to section 207 of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended), which was classified generally to former Title 11, was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted Revised Title 11. See table preceding section 101 of Revised Title 11.

Section 606i of title 15, referred to in text, was omitted from the Code. See note under section 606i of Title 15, Commerce and Trade.

EXECUTIVE DOCUMENTS

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

See section 6(a) of Reorg. Plan No. 1 of 1957, effective June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees.

¹ [*See References in Text note below.*](#)

§1734. Amendment, extension, or increase of commitment amounts

At any time prior to final endorsement for insurance, the Secretary, in his discretion, may amend, extend, or increase the amount of any commitment, provided the mortgage, as finally endorsed for insurance is eligible for insurance under the provisions of this chapter and the rules and regulations thereunder, in effect at the time the original commitment to insure was issued.

(June 27, 1934, ch. 847, title V, §515 as added Oct. 25, 1949, ch. 729, §3, 63 Stat. 906; amended Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 98–479, title II, §204(a)(20), Oct. 17, 1984, 98 Stat. 2232.)

EDITORIAL NOTES

AMENDMENTS

1984—Pub. L. 98–479 struck out "; mortgage conditions" after "amounts" in section catchline.

1967—Pub. L. 90–19 substituted "Secretary" for "Commissioner".

§1735. Payment of certain funds to Treasury

The following funds shall be deemed an indebtedness to the United States of the particular insurance fund involved, and the Secretary is authorized and directed to pay the amount of such indebtedness to the Secretary of the Treasury, with simple interest thereon from the date the funds were advanced to the date of final payment at a rate determined by the Secretary of the Treasury, taking into consideration the average rate on outstanding marketable obligations of the United States from the date the funds were advanced until the date of final payment—

(1) funds made available to the Secretary pursuant to the provisions of sections 1705 and 1708 of this title, exclusive of amounts heretofore refunded, (a) for carrying out this subchapter and section 484d of title 48 with respect to mortgages insured under section 1709 of this title where such funds were credited to the general reinsurance account in the Mutual Mortgage Insurance Fund, and (b) for the payment of salaries and expenses with respect to mortgage insurance under

sections 1713 and 1715a of this title where such funds were credited to the Housing Insurance Fund;

(2) funds made available to the Secretary pursuant to sections 1737 and 1748a ¹ of this title; and

(3) funds made available to the Secretary by the Secretary of the Treasury pursuant to section 1747i ¹ of this title.

Payments to the Secretary of the Treasury under this section shall be made in such amounts and at such times as the Secretary determines, after consultations with the Secretary of the Treasury, that funds are available for that purpose, taking into consideration the continued solvency of the funds involved. All payments made pursuant to this section shall be covered into the Treasury as miscellaneous receipts.

(June 27, 1934, ch. 847, title V, §516, as added June 30, 1953, ch. 170, §9, 67 Stat. 123; amended Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 98–479, title II, §204(a)(21), Oct. 17, 1984, 98 Stat. 2232.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1715a of this title, referred to in par. (1), in the original was a reference to section 210 of the National Housing Act (June 27, 1934, ch. 847, §210, as added Feb. 3, 1938, ch. 13, §3, 52 Stat. 22), which was repealed by act June 3, 1939, ch. 175, §13, 53 Stat. 807. See note set out under section 1715a.

Section 484d of title 48, referred to in text, which authorized the Federal Housing Commissioner to prescribe a higher maximum for the principal obligation of mortgages, was omitted from the Code.

Sections 1737, 1747i, and 1748a of this title, referred to in text, were repealed by Pub. L. 89–117, title II, §1108(aa), Aug. 10, 1965, 79 Stat. 507.

AMENDMENTS

1984—Pub. L. 98–479 inserted "Payment of certain funds to Treasury" as section catchline.

1967—Pub. L. 90–19 substituted "Secretary" for "Commissioner" wherever appearing.

¹ [*See References in Text note below.*](#)

§1735a. Prepayment of mortgages by nonprofit educational institutions; refunds

(a) Notwithstanding any other provision of this chapter, no adjusted premium charge shall be collected in connection with the payment in full, prior to maturity, of any mortgage insured under this chapter, if the mortgagor certifies to the Secretary that the loan was paid in full by or on behalf of a nonprofit educational institution which intends to use the property for educational purposes.

(b) The Secretary shall refund any adjusted premium charge collected subsequent to July 1, 1962, and prior to September 2, 1964, in connection with the payment in full, prior to maturity, of any mortgage insured under this chapter, if the mortgagor under such mortgage makes the certification prescribed by subsection (a).

(June 27, 1934, ch. 847, title V, §517, as added Pub. L. 88–560, title I, §120, Sept. 2, 1964, 78 Stat. 782; amended Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Subsecs. (a), (b). Pub. L. 90–19 substituted "Secretary" for "Commissioner" wherever appearing.

§1735b. Expenditures to correct or reimburse for structural or other major

defects in mortgaged homes

(a) Prior to beginning of construction

(1) The Secretary is authorized to make expenditures under this subsection with respect to any property that—

(A) is a condominium unit (including common areas) or is improved by a one-to-four family dwelling;

(B) was approved, before the beginning of construction, for mortgage insurance under this chapter or for guaranty, insurance, or direct loan under chapter 37 of title 38 or was less than a year old at the time of insurance of the mortgage and was covered by a consumer protection or warranty plan acceptable to the Secretary; and

(C) the Secretary finds to have structural defects.

(2) Expenditures under this subsection may be made for (A) correcting such defects, (B) paying the claims of the owner of the property arising from such defects, or (C) acquiring title to the property: *Provided*, That such authority of the Secretary shall exist only (A) if the owner has requested assistance from the Secretary not later than four years (or such shorter time as the Secretary may prescribe) after insurance of the mortgage, and (B) if the property is encumbered by a mortgage which is insured under this chapter after September 2, 1964.

(b) Mortgages insured on or after August 1, 1968, but prior to January 1, 1973; requirements; reimbursement from seller; insurance fund chargeable

The Secretary is authorized to make expenditures to correct, or to reimburse the owner for the correction of, structural or other major defects which so seriously affect use and livability as to create a serious danger to the life or safety of inhabitants of any one, two, three, or four family dwelling which is covered by a mortgage insured under section 1715z of this title or which is located in an older, declining urban area and is covered by a mortgage insured under section 1709 or 1715l of this title on or after August 1, 1968, but prior to January 1, 1973, and which is more than one year old on the date of the issuance of the insurance commitment, if (1) the owner requests assistance from the Secretary not later than one year after the insurance of the mortgage, or, in the case of a dwelling covered by a mortgage insured under section 1709 or 1715l of this title the insurance commitment for which was issued on or after August 1, 1968, but prior to January 1, 1973, not more than four months after August 3, 1976, and (2) the defect is one that existed on the date of the issuance of the insurance commitment and is one that a proper inspection could reasonably be expected to disclose. The Secretary may require from the seller of any such dwelling an agreement to reimburse him for any payments made pursuant to this subsection with respect to such dwelling. Expenditures pursuant to this subsection shall be made from the insurance fund chargeable for insurance benefits on the mortgage covering the structure to which the expenditures relate. There are hereby authorized to be appropriated such sums as may be necessary to cover the costs of such expenditures not otherwise provided for.

(c) Regulations; finality of decision

The Secretary shall by regulations prescribe the terms and conditions under which expenditures and payments may be made under the provisions of this section, and his decisions regarding such expenditures or payments, and the terms and conditions under which the same are approved or disapproved, shall be final and conclusive and shall not be subject to judicial review.

(d) Mortgages insured on or after January 1, 1973, but prior to August 1, 1976; requirements; reimbursement from seller; insurance fund chargeable

The Secretary is authorized to make expenditures to correct or to reimburse the owner for the correction of structural or other major defects which so seriously affect use and liveability as to create a serious danger to the life or safety of inhabitants of any one-, two-, three-, or four-family dwelling which is more than one year old on the date of issuance of the insurance commitment, is located in an older, declining urban area, and is covered by a mortgage insured under section 1709 or 1715l of this title on or after January 1, 1973, but prior to August 3, 1976, if (1) the owner requests

assistance from the Secretary not more than one year after August 3, 1976, and (2) the defect is one that existed on the date of the issuance of the insurance commitment and is one that a proper inspection could reasonably have been expected to have disclosed. The Secretary may require from the seller of any such dwelling an agreement to reimburse him for any payments made pursuant to this subsection with respect to such dwelling. Expenditures pursuant to this subsection shall be made from the insurance fund chargeable for insurance benefits on the mortgage covering the structure to which the expenditures relate. There are hereby authorized to be appropriated such sums as may be necessary to cover the costs of such expenditures not otherwise provided for.

(e) Report to Congress on effective program for protecting home buyers

The Secretary of Housing and Urban Development is authorized and directed to conduct a full and complete investigation and study and report to Congress, with recommendations, not later than March 1, 1977, with respect to an effective program for protecting home buyers from hidden or undisclosed defects seriously affecting the use and livability of the home, which would be applicable to existing homes financed with mortgages insured under this chapter. In the study and report the Secretary shall particularly investigate the need for, cost and feasible structure of, a national home inspection and warranty program, with respect to such homes, to be operated by the Federal Government out of fees assessed on the home buyer and amortized over a period of two years. The Secretary's report shall also present an analysis of alternative Federal programs to meet these needs, and the cost and means of financing such programs. In the report the Secretary shall also outline administrative steps which can be taken to provide disclosure to purchasers of existing homes financed with mortgages insured under this chapter of the actual condition of the home and the types of repairs or replacements likely to be needed within a period of two years, such as repairs or replacement of furnace, roof or major appliances, based on age and useful life expectancy of such appurtenances.

(June 27, 1934, ch. 847, title V, §518, as added Pub. L. 88-560, title I, §121, Sept. 2, 1964, 78 Stat. 783; amended Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 91-609, title I, §104, Dec. 31, 1970, 84 Stat. 1771; Pub. L. 93-383, title III, §306, Aug. 22, 1974, 88 Stat. 678; Pub. L. 94-50, title III, §302, July 2, 1975, 89 Stat. 256; Pub. L. 94-375, §9, Aug. 3, 1976, 90 Stat. 1072; Pub. L. 98-181, title I [title IV, §427], Nov. 30, 1983, 97 Stat. 1218; Pub. L. 102-550, title V, §515, Oct. 28, 1992, 106 Stat. 3789.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550 substituted par. (1) and "(2) Expenditures under this subsection may be made for" for "The Secretary is authorized, with respect to any property improved by a one- to four-family dwelling that, before the beginning of construction, was approved for mortgage insurance under this chapter or for guaranty, insurance, or a direct loan under chapter 37 of title 38 and that the Secretary finds to have structural defects, to make expenditures for" and redesignated former cls. (1) to (3) appearing before proviso as cls. (A) to (C), respectively, of par. (2).

1983—Subsec. (a). Pub. L. 98-181 substituted "that, before the beginning of construction, was approved for mortgage insurance under this chapter or for guaranty, insurance, or a direct loan under chapter 37 of title 38 and that the Secretary finds" for "approved for mortgage insurance prior to the beginning of construction which he finds".

1976—Subsec. (b). Pub. L. 94-375, §9(a), substituted "not more than four months after August 3, 1976" for "not more than 19 months after August 22, 1974", and provision requiring expenditures be made from the insurance fund chargeable for insurance benefits on the mortgage covering the structure and appropriating sums for expenditures not otherwise covered for provision requiring expenditures be made from the Special Risk Insurance Fund.

Subsecs. (d), (e). Pub. L. 94-375, §9(b), added subsecs. (d) and (e).

1975—Subsec. (b). Pub. L. 94-50 substituted "one, two, three, or four" for "one or two", and "not more than 19 months" for "not more than one year".

1974—Subsec. (b). Pub. L. 93-383 substituted provisions relating to authorization of the Secretary to make expenditures to correct, or to reimburse the owner for the correction of structural or other major defects of

covered one or two family dwellings, for provisions relating to the authorization of the Secretary to make expenditures to correct, or to compensate the owner for, structural or other defects of covered single-family dwellings.

1970—Subsecs. (b), (c). Pub. L. 91-609 added subsec. (b) and redesignated former subsec. (b) as (c).

1967—Subsecs. (a), (b). Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing.

§1735c. General Insurance Fund

(a) Establishment; purpose; mortgages or loans insurable; transfers to

There is hereby created a General Insurance Fund which shall be used by the Secretary, on and after August 10, 1965, as a revolving fund for carrying out all the insurance provisions of this chapter with the exception of those specified in subsection (e). All mortgages or loans insured under this chapter pursuant to commitments issued on or after August 10, 1965, except those specified in subsection (e), and all loans reported for insurance under section 1703 of this title on or after August 10, 1965, shall be insured under the General Insurance Fund. The Secretary shall transfer to the General Insurance Fund—

(1) the assets and liabilities of all insurance accounts and funds, except the Mutual Mortgage Insurance Fund, existing under this chapter immediately prior to August 10, 1965;

(2) all outstanding commitments for insurance issued prior to August 10, 1965, except those specified in subsection (e);

(3) the insurance on all mortgages and loans insured prior to August 10, 1965, except insurance specified in subsection (e); and

(4) the insurance of all loans made by approved financial institutions pursuant to section 1703 of this title prior to August 10, 1965.

(b) Expenses chargeable to Fund

The general expenses of the operations of the Department of Housing and Urban Development relating to mortgages and loans which are the obligation of the General Insurance Fund may be charged to the General Insurance Fund.

(c) Deposit or investment of moneys; purchase of debentures

Moneys in the General Insurance Fund not needed for the current operations of the Department of Housing and Urban Development with respect to mortgages and loans which are the obligation of the General Insurance Fund shall be deposited with the Treasurer of the United States to the credit of such Fund, or invested in bonds or other obligations of, or in bonds or other obligations guaranteed as to principal and interest by, the United States or any agency of the United States: *Provided*, That such moneys shall to the maximum extent feasible be invested in such bonds or other obligations the proceeds of which will be used to directly support the residential mortgage market. The Secretary may, with the approval of the Secretary of the Treasury, purchase in the open market debentures issued as obligations of the General Insurance Fund or issued prior to August 10, 1965, under other provisions of this chapter, except debentures issued under the Mutual Mortgage Insurance Fund. Such purchases shall be made at a price which will provide an investment yield of not less than the yield obtainable from other investments authorized by this section. Debentures so purchased shall be canceled and not reissued.

(d) Credits and charges to Fund

Premium charges, adjusted premium charges, and appraisal and other fees received on account of the insurance of any mortgage or loan which is the obligation of the General Insurance Fund, the receipts derived from the property covered by such mortgages and loans and from the claims, debts, contracts, property, and security assigned to the Secretary in connection therewith, and all earnings on the assets of the Fund shall be credited to the General Insurance Fund. The principal of, and interest paid and to be paid on, debentures which are the obligation of such Fund, cash insurance

payments and adjustments, and expenses incurred in the handling, management, renovation, and disposal of properties acquired, in connection with mortgages and loans which are the obligation of such Fund, shall be charged to such Fund.

(e) Restrictions on use of Fund

The General Insurance Fund shall not be used for carrying out the provisions of section 1709 of this title, except as determined by the Secretary, or the provisions of section 1715e of this title to the extent that they involve mortgages the insurance for which is the obligation of the Cooperative Management Housing Insurance Fund created by section 1715e(k) of this title, or the provisions of sections 1715n(e), 1715x(a)(2), 1715z, 1715z-1 and 1715z-2 ¹ of this title; and nothing in this section shall apply to or affect any mortgages, loans, commitments, or insurance under such provisions.

(f) Risk assessment

The Secretary shall undertake an annual assessment of the risks associated with each of the insurance programs comprising the General Insurance Fund, and shall present findings from such review to the Congress in the FHA Annual Management Report.

(June 27, 1934, ch. 847, title V, §519, as added Pub. L. 89-117, title II, §214, Aug. 10, 1965, 79 Stat. 471; amended Pub. L. 90-19, §1(a)(1), (3), May 25, 1967, 81 Stat. 17; Pub. L. 90-448, title I, §104(c), Aug. 1, 1968, 82 Stat. 488; Pub. L. 91-609, title I, §117(e), Dec. 31, 1970, 84 Stat. 1775; Pub. L. 94-375, §10, Aug. 3, 1976, 90 Stat. 1073; Pub. L. 95-24, title I, §102, Apr. 30, 1977, 91 Stat. 55; Pub. L. 95-557, title III, §310, Oct. 31, 1978, 92 Stat. 2098; Pub. L. 96-153, title III, §305, Dec. 21, 1979, 93 Stat. 1112; Pub. L. 96-399, title III, §305, Oct. 8, 1980, 94 Stat. 1639; Pub. L. 97-35, title III, §334, Aug. 13, 1981, 95 Stat. 414; Pub. L. 98-181, title I [title IV, §403], Nov. 30, 1983, 97 Stat. 1208; Pub. L. 102-550, title I, §185(c)(2), Oct. 28, 1992, 106 Stat. 3748; Pub. L. 103-233, title I, §§103(g)(2), 105(b), Apr. 11, 1994, 108 Stat. 362, 363; Pub. L. 110-289, div. B, title I, §2118(c)(2), July 30, 2008, 122 Stat. 2835.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1715z-2 of this title, referred to in subsec. (e), was repealed by Pub. L. 110-289, div. B, title I, §2120(a)(6), July 30, 2008, 122 Stat. 2835.

AMENDMENTS

2008—Subsec. (e). Pub. L. 110-289 substituted "1709 of this title, except as determined by the Secretary" for "1709(b) (except as provided in section 1709(v)), (h), and (i) of this title".

1994—Subsec. (f). Pub. L. 103-233, §105(b), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: "There are authorized to be appropriated such sums as may be necessary to cover losses sustained by the General Insurance Fund."

Subsec. (g). Pub. L. 103-233, §105(b)(2), redesignated subsec. (g) as (f).

Pub. L. 103-233, §103(g)(2), added subsec. (g).

1992—Subsec. (e). Pub. L. 102-550 inserted "(except as provided in section 1709(v))" after "1709(b)".

1983—Subsec. (f). Pub. L. 98-181 inserted "such sums as may be necessary" after "appropriated", and struck out "not to exceed \$1,738,000,000, which amount shall be increased by \$126,673,000 on October 1, 1981" after "Insurance Fund".

1981—Subsec. (f). Pub. L. 97-35 inserted provision increasing authorization on Oct. 1, 1981.

1980—Subsec. (f). Pub. L. 96-399 substituted "\$1,738,000,000" for "\$1,341,000,000, which amount shall be increased by \$165,000,000 on October 1, 1978, which shall be increased by not to exceed \$93,000,000 on October 1, 1979".

1979—Subsec. (f). Pub. L. 96-153 provided for an increase of \$93,000,000 on October 1, 1979.

1978—Subsec. (f). Pub. L. 95-557 inserted "which amount shall be increased by \$165,000,000 on October 1, 1978".

1977—Subsec. (f). Pub. L. 95-24 substituted "\$1,341,000,000" for "\$500,000,000".

1976—Subsec. (f). Pub. L. 94-375 added subsec. (f).

1970—Subsec. (c). Pub. L. 91–609 provided for guarantee as to principal and interest by any agency of the United States and for investment of moneys in bonds or other obligations the proceeds of which will be used to directly support the residential mortgage market.

1968—Subsec. (e). Pub. L. 90–448 prohibited use of Fund for carrying out provisions of sections 1715n(e), 1715x(a)(2), 1715z, 1715z–1 and 1715z–2 of this title.

1967—Pub. L. 90–19 substituted "Department of Housing and Urban Development" for "Federal Housing Administration" wherever appearing in subsecs. (b) and (c) of this section and "Secretary" for "Commissioner" in subsecs. (a), (c), and (d) of this section, respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

¹ [*See References in Text note below.*](#)

§1735d. Payment of insurance benefits in cash or debentures; borrowing money from Treasury to make payments

(a) Notwithstanding any other provisions of this chapter with respect to the payment of insurance benefits, the Secretary is authorized, in his discretion, to pay in cash or in debentures any insurance claim or part thereof which is paid on or after August 10, 1965, on a mortgage or a loan which was insured under any section of this chapter either before or after such date. If payment is made in cash, it shall be in an amount equivalent to the face amount of the debentures that would otherwise be issued plus an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Secretary.

(b) The Secretary is authorized to borrow from the Treasury from time to time such amounts as the Secretary shall determine are necessary (1) to make payments in cash (in lieu of issuing debentures guaranteed by the United States, as provided in this chapter) pursuant to the provisions of this section, and (2) to make payments for reinsured and directly insured losses under subchapter IX–C ¹ of this chapter: *Provided, however*, That borrowings to make payments for reinsured and directly insured losses under subchapter IX–C ¹ shall be limited to \$250,000,000 or such further sum as the Congress, by joint resolution, may from time to time determine. Notes or other obligations issued by the Secretary in borrowing under this subsection shall be subject to such terms and conditions as the secretary of the Treasury may prescribe. Each sum borrowed pursuant to this subsection shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations.

(June 27, 1934, ch. 847, title V, §520, as added Pub. L. 89–117, title II, §215, Aug. 10, 1965, 79 Stat. 472; amended Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 90–448, title XI, §1104, Aug. 1, 1968, 82 Stat. 566; Pub. L. 91–609, title VI, §604, Dec. 31, 1970, 84 Stat. 1791.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subchapter IX–C of this chapter, referred to in subsec. (b), was classified to section 1749bbb et seq. of this title and was omitted from the Code.

AMENDMENTS

1970—Subsec. (b)(2). Pub. L. 91–609 provided for making payments for directly insured losses and made limitation provision applicable to such payments.

1968—Subsec. (b). Pub. L. 90–448 empowered the Secretary to borrow to make payments for reinsured

losses under subchapter IX–C of this chapter, and limited such borrowing to \$250,000,000 or such further sum as Congress may determine.

1967—Subsecs. (a), (b). Pub. L. 90–19 substituted "Secretary" for "Commissioner" wherever appearing.

¹ [See References in Text note below.](#)

§1735e. Acceptance of materials or products used in structures

The Secretary shall adopt a uniform procedure for the acceptance of materials and products to be used in structures approved for mortgages or loans insured under this chapter. Under such procedure any material or product which the Secretary finds is technically suitable for the use proposed shall be accepted. Acceptance of a material or product as technically suitable shall not be deemed to restrict the discretion of the Secretary to determine that a structure, with respect to which a mortgage is executed, is economically sound or an acceptable risk.

(June 27, 1934, ch. 847, title V, §521, as added Pub. L. 89–117, title II, §216, Aug. 10, 1965, 79 Stat. 473; amended Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Pub. L. 90–19 substituted "Secretary" for "Commissioner" wherever appearing.

§1735e–1. Use of American materials and products

In the administration of housing assistance programs, the Secretary of Housing and Urban Development shall encourage the use of materials and products mined and produced in the United States.

(Pub. L. 100–242, title V, §571, Feb. 5, 1988, 101 Stat. 1950.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1987, and not as part of the National Housing Act which comprises this chapter.

§1735f. Water and sewerage facilities

Notwithstanding any other provision of this chapter, no mortgage which covers new construction shall be approved for insurance under this chapter (except pursuant to a commitment made prior to August 10, 1965) if the mortgaged property includes housing which is not served by a public or adequate community water and sewerage system: *Provided*, That this limitation shall be applicable only to property which is not served by a system approved by the Secretary pursuant to subchapter IX–A of this chapter, as such subchapter existed immediately before December 15, 1989, and which is situated in an area certified by appropriate local officials to be an area where the establishment of public or adequate community water and sewerage systems is economically feasible: *Provided further*, That for purposes of this section the economic feasibility of establishing such public or adequate community water and sewerage systems shall be determined without regard to whether such establishment is authorized by law or is subject to approval by one or more local governments or public bodies.

(June 27, 1934, ch. 847, title V, §522, as added Pub. L. 89–117, title II, §217(a), Aug. 10, 1965, 79 Stat. 473; amended Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 101–235, title I,

§133(d)(4), Dec. 15, 1989, 103 Stat. 2027.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subchapter IX—A of this chapter, referred to in text, was repealed by Pub. L. 101–235, title I, §133(a), Dec. 15, 1989, 103 Stat. 2027.

AMENDMENTS

1989—Pub. L. 101–235 inserted ", as such subchapter existed immediately before December 15, 1989," after "subchapter IX—A of this chapter".

1967—Pub. L. 90–19 substituted "Secretary" for "Commissioner".

§1735f–1. Waiver of deduction on assignment of property to Secretary in lieu of foreclosure

Notwithstanding any other provision of this chapter, from and after November 3, 1966, the Secretary, under such terms and conditions as he may approve, may waive all or a part of the 1 per centum deduction otherwise made from insurance benefits with respect to multifamily housing or land development mortgages assigned to him, where the assignment is made at his request in lieu of foreclosure of the mortgage.

(June 27, 1934, ch. 847, title V, §523, as added Pub. L. 89–754, title III, §312, Nov. 3, 1966, 80 Stat. 1271.)

§1735f–2. Uniform rehabilitation standards for housing within and without urban renewal areas

In determining whether properties should be approved by the Secretary prior to rehabilitation and covered by mortgages insured under subchapter II of this chapter, the Secretary shall apply uniform property standards as between properties located outside urban renewal areas and those located within urban renewal areas.

(June 27, 1934, ch. 847, title V, §524, as added Pub. L. 91–609, title I, §116, Dec. 31, 1970, 84 Stat. 1774.)

§1735f–3. Insurance of mortgage proceeds advanced during construction or rehabilitation or prior to final endorsement of project mortgage

The Secretary is authorized to insure mortgage proceeds advanced during construction or rehabilitation or otherwise prior to final endorsement of a project mortgage for the purpose of (1) financing improvements to the property and the purchase of materials and building components delivered to the property, and (2) providing funds to cover the cost of building components where such components have been assembled and specifically identified for incorporation into the property but are located at a site other than the mortgaged property, with such security as the Secretary may require.

(June 27, 1934, ch. 847, title V, §525, as added Pub. L. 93–383, title III, §301, Aug. 22, 1974, 88 Stat. 676.)

§1735f–4. Minimum property standards

(a) To the maximum extent feasible, the Secretary of Housing and Urban Development shall

promote the use of energy saving techniques through minimum property standards established by him for newly constructed residential housing, other than manufactured homes, subject to mortgages insured under this chapter. Such standards shall establish energy performance requirements that will achieve a significant increase in the energy efficiency of new construction. Such requirements shall be implemented as soon as practicable after November 9, 1978. Following November 30, 1983, the energy performance requirements developed and established by the Secretary under this subsection for newly constructed residential housing, other than manufactured homes, shall be at least as effective in performance as the energy performance requirements incorporated in the minimum property standards that were in effect under this subsection on September 30, 1982.

(b) The Secretary may require that each property, other than a manufactured home, subject to a mortgage insured under this chapter shall, with respect to health and safety, comply with one of the nationally recognized model building codes, or with a State or local building code based on one of the nationally recognized model building codes or their equivalent. The Secretary shall be responsible for determining the comparability of the State and local codes to such model codes and for selecting for compliance purposes an appropriate nationally recognized model building code where no such model code has been duly adopted or where the Secretary determines the adopted code is not comparable.

(c) The Secretary may establish an exception to any minimum property standard established under this section in order to address alternative water systems, including cisterns, which meet requirements of State and local building codes that ensure health and safety standards.

(June 27, 1934, ch. 847, title V, §526, as added Pub. L. 93-383, title III, §305, Aug. 22, 1974, 88 Stat. 678; amended Pub. L. 95-619, title II, §252(a), Nov. 9, 1978, 92 Stat. 3236; Pub. L. 96-399, title III, §326(e), Oct. 8, 1980, 94 Stat. 1650; Pub. L. 98-181, title I [title IV, §405], Nov. 30, 1983, 97 Stat. 1210; Pub. L. 98-479, title I, §104(a)(6), Oct. 17, 1984, 98 Stat. 2225; Pub. L. 114-113, div. L, title II, §238, Dec. 18, 2015, 129 Stat. 2897.)

EDITORIAL NOTES

AMENDMENTS

2015—Subsec. (c). Pub. L. 114-113 added subsec. (c).

1984—Pub. L. 98-479 substituted "Minimum property standards" for "Promotion of energy saving techniques by Secretary of Housing and Urban Development of insured housing" in section catchline.

1983—Subsec. (a). Pub. L. 98-181 designated existing provision as subsec. (a), inserted ", other than manufactured homes," after "housing", inserted provision that the energy performance requirements developed for newly constructed residential housing, other than manufactured homes, be at least as effective in performance as the energy performance requirements incorporated in the minimum property standards in effect Sept. 30, 1982, and added subsec. (b).

1980—Pub. L. 96-399 struck out ", until such time as the energy conservation performance standards required under the Energy Conservation Standards for New Buildings Act of 1976 become effective" in second sentence.

1978—Pub. L. 95-619 inserted provision requiring that the minimum property standards established by the Secretary under this section were to contain energy performance requirements to achieve a significant increase in the energy efficiency of new construction.

§1735f-5. Prohibition against discrimination on account of sex in extension of mortgage assistance; consideration of combined income of husband and wife for purpose of extending mortgage credit; definitions

(a) No federally related mortgage loan, or Federal insurance, guaranty, or other assistance in connection therewith (under this chapter or any other Act), shall be denied to any person on account of sex; and every person engaged in making mortgage loans secured by residential real property shall

consider without prejudice the combined income of both husband and wife for the purpose of extending mortgage credit in the form of a federally related mortgage loan to a married couple or either member thereof.

(b) For purposes of subsection (a), the term "federally related mortgage loan" means any loan which—

(1) is secured by residential real property designed principally for the occupancy of from one to four families; and

(2)(A) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is itself regulated by any agency of the Federal Government; or

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary of Housing and Urban Development or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency; or

(C) is eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or from any financial institution from which it could be purchased by the Federal Home Loan Mortgage Corporation; or

(D) is made in whole or in part by any "creditor", as defined in section 1602(f) ¹ of title 15, who makes or invests in residential real estate loans aggregating more than \$1,000,000 per year.

(June 27, 1934, ch. 847, title V, §527, as added Pub. L. 93–383, title VIII, §808(a), Aug. 22, 1974, 88 Stat. 728; amended Pub. L. 98–479, title II, §204(a)(22), Oct. 17, 1984, 98 Stat. 2233.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1602(f) of title 15, referred to in subsec. (b)(2)(D), was redesignated section 1602(g) of title 15 by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–479 designated first par. as subsec. (a).

¹ [*See References in Text note below.*](#)

§1735f–6. Secondary mortgages held by State or local governmental agency on insured properties

In carrying out the provisions of subchapter II of this chapter with respect to insuring mortgages secured by a one- to four-family dwelling unit, the Secretary may not deny such insurance for any such mortgage solely because the dwelling unit which secures such mortgage will be subject to a secondary mortgage or loan made or insured, or other secondary lien held, by any State or local governmental agency or instrumentality under terms and conditions approved by the Secretary.

(June 27, 1934, ch. 847, title V, §528, as added Pub. L. 95–557, title III, §323, Oct. 31, 1978, 92 Stat. 2102.)

§1735f–7. Exemption from State usury laws; applicability

(a) The provisions of the constitution of any State expressly limiting the rate or amount of interest, discount points, or other charges which may be charged, taken, received, or reserved by lenders and the provisions of any State law expressly limiting the rate or amount of interest, discount points, or

other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, or advance which is insured under subchapter I or II of this chapter.

(b) The provisions of subsection (a) shall apply to loans, mortgages, or advances made or executed in any State until the effective date (after December 21, 1979) of a provision of law of that State limiting the rate or amount of interest, discount points, or other charges on any such loan, mortgage, or advance.

(June 27, 1934, ch. 847, title V, §529, as added Pub. L. 96-153, title III, §308, Dec. 21, 1979, 93 Stat. 1113.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHOICE OF HIGHEST APPLICABLE INTEREST RATE

In any case in which one or more provisions of, or amendments made by, title V of Pub. L. 96-221 [enacting sections 86a, 1730g, 1735f-7a, 1785(g), and 1831d of this title and section 687(i) of Title 15, Commerce and Trade, and enacting provisions set out as notes under sections 86a, 1730g, and 1735f-7 of this title], this section, or any other provisions of law, including section 85 of this title, apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate, see section 528 of Pub. L. 96-221, set out as a note under section 1735f-7a of this title.

STATE CONSTITUTIONS OR LAWS LIMITING INTEREST, DISCOUNT POINTS, OR OTHER CHARGES; EXEMPTION UNTIL CLOSE OF MARCH 31, 1980

Pub. L. 96-161, title I, §105, Dec. 28, 1979, 93 Stat. 1234, as amended by Pub. L. 96-221, title V, §529, Mar. 31, 1980, 94 Stat. 168, provided that (a)(1) the provisions of the constitution or law of any State expressly limiting the rate or amount of interest, discount points, or other charges which could be charged, taken, received, or reserved were not to apply to any loan, mortgage, or advance which was secured by a first lien on residential real property or by a first lien on stock in a residential cooperative housing corporation where the loan, mortgage, or advance was used to finance the acquisition of such stock; made after Dec. 28, 1979; and described in section 1735f-5(b) of this title, except that the limitation described in section 1735f-5(b)(1) of this title that the property must be designed principally for the occupancy of from one to four families was not to apply, the requirement contained in section 1735f(5)(b)(1) of this title that the loan be secured by residential real property was not to apply to a loan secured by stock in a residential cooperative housing corporation, and for the purpose of this section, the term "lender" in section 1735f-5(b)(2)(A) of this title was also to be deemed to include any lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under this chapter; (2) [Repealed by Pub. L. 96-221, title V, §529, Mar. 31, 1980, 94 Stat. 168, eff. at the close of Mar. 31, 1980.]; that (b) the provisions of subsection (a)(1) were to apply to loans, mortgages, and advances made in any State unless and until the State adopted a provision of law (prior to the close of March 31, 1980) limiting the rate or amount of interest, discount points, or other charges on any such loan, mortgage, or advance, except that at any time after Dec. 28, 1979, any State could adopt a provision of law placing limitations on discount points or such other charges on any such loan, mortgage, or advance; that (c) the Federal Home Loan Bank Board was authorized to issue rules and regulations and to publish interpretations governing the implementation of this section; that (d) the provisions of subsection (a)(1) expired at the close of March 31, 1980, except that such provisions were to continue to apply to any loan, mortgage, or advance described in subsection (a)(1) for the duration of such loan, mortgage, or advance if made prior to such expiration or if made during the two-year period beginning on Dec. 28, 1979, pursuant to a commitment issued prior to such expiration, and that (e) for the purpose of this Act [Pub. L. 96-161] and any amendment made by this Act [see Tables for classification of Pub. L. 96-161], the term "State" included the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, and the Virgin Islands.

§1735f-7a. State constitution or laws limiting mortgage interest, discount points, and finance or other charges; exemption for obligations made after March 31, 1980

(a) **Applicability to loan, mortgage, credit sale, or advance; applicability to deposit, account, or**

obligation

(1) The provisions of the constitution or the laws of any State expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, credit sale, or advance which is—

(A) secured by a first lien on residential real property, by a first lien on all stock allocated to a dwelling unit in a residential cooperative housing corporation, or by a first lien on a residential manufactured home;

(B) made after March 31, 1980; and

(C) described in section 527(b) of the National Housing Act (12 U.S.C. 1735f-5(b)), except that for the purpose of this section—

(i) the limitation described in section 527(b)(1) of such Act that the property must be designed principally for the occupancy of from one to four families shall not apply;

(ii) the requirement contained in section 527(b)(1) of such Act that the loan be secured by residential real property shall not apply to a loan secured by stock in a residential cooperative housing corporation or to a loan or credit sale secured by a first lien on a residential manufactured home;

(iii) the term "federally related mortgage loan" in section 527(b) of such Act shall include a credit sale which is secured by a first lien on a residential manufactured home and which otherwise meets the definitional requirements of section 527(b) of such Act, as those requirements are modified by this section;

(iv) the term "residential loans" in section 527(b)(2)(D) of such Act shall also include loans or credit sales secured by a first lien on a residential manufactured home;

(v) the requirement contained in section 527(b)(2)(D) of such Act that a creditor make or invest in loans aggregating more than \$1,000,000 per year shall not apply to a creditor selling residential manufactured homes financed by loans or credit sales secured by first liens on residential manufactured homes if the creditor has an arrangement to sell such loans or credit sales in whole or in part, or if such loans or credit sales are sold in whole or in part to a lender, institution, or creditor described in section 527(b) of such Act or in this section or a creditor, as defined in section 103(f) ¹ of the Truth in Lending Act, as such section was in effect on the day preceding March 31, 1980, if such creditor makes or invests in residential real estate loans or loans or credit sales secured by first liens on residential manufactured homes aggregating more than \$1,000,000 per year; and

(vi) the term "lender" in section 527(b)(2)(A) of such Act shall also be deemed to include any lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act [12 U.S.C. 1701 et seq.], and any individual who finances the sale or exchange of residential real property or a residential manufactured home which such individual owns and which such individual occupies or has occupied as his principal residence.

(2) The provisions of the constitution or law of any State expressly limiting the rate or amount of interest which may be charged, taken, received, or reserved shall not apply to any deposit or account held by, or other obligation of a depository institution. For purposes of this paragraph, the term "depository institution" means—

(i) any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(ii) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(iii) any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(iv) any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(v) any member as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422); and

(vi) any insured institution as defined in section 408 ¹ of the National Housing Act (12 U.S.C. 1730a).

(b) Applicability to loan, mortgage, credit sale, or advance made in any State after April 1, 1980

(1) Except as provided in paragraphs (2) and (3), the provisions of subsection (a)(1) shall apply to any loan, mortgage, credit sale, or advance made in any State on or after April 1, 1980.

(2) Except as provided in paragraph (3), the provisions of subsection (a)(1) shall not apply to any loan, mortgage, credit sale, or advance made in any State after the date (on or after April 1, 1980, and before April 1, 1983) on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of subsection (a)(1) to apply with respect to loans, mortgages, credit sales, and advances made in such State.

(3) In any case in which a State takes an action described in paragraph (2), the provisions of subsection (a)(1) shall continue to apply to—

(A) any loan, mortgage, credit sale, or advance which is made after the date such action was taken pursuant to a commitment therefor which was entered during the period beginning on April 1, 1980, and ending on the date on which such State takes such action; and

(B) any loan, mortgage, or advance which is a rollover of a loan, mortgage, or advance, as described in regulations of the Federal Home Loan Bank Board, which was made or committed to be made during the period beginning on April 1, 1980, and ending on the date on which such State takes any action described in paragraph (2).

(4) At any time after March 31, 1980, any State may adopt a provision of law placing limitations on discount points or such other charges on any loan, mortgage, credit sale, or advance described in subsection (a)(1).

(c) Applicability to loan, mortgage, credit sale, or advance secured by first lien on residential manufactured home

The provisions of subsection (a)(1) shall not apply to a loan, mortgage, credit sale, or advance which is secured by a first lien on a residential manufactured home unless the terms and conditions relating to such loan, mortgage, credit sale, or advance comply with consumer protection provisions specified in regulations prescribed by the Federal Home Loan Bank Board. Such regulations shall—

(1) include consumer protection provisions with respect to balloon payments, prepayment penalties, late charges, and deferral fees;

(2) require a 30-day notice prior to instituting any action leading to repossession or foreclosure (except in the case of abandonment or other extreme circumstances);

(3) require that upon prepayment in full, the debtor shall be entitled to a refund of the unearned portion of the precomputed finance charge in an amount not less than the amount which would be calculated by the actuarial method, except that the debtor shall not be entitled to a refund which is less than \$1; and

(4) include such other provisions as the Federal Home Loan Bank Board may prescribe after a finding that additional protections are required.

(d) Implementation of provisions applicable to residential manufactured home

The provisions of subsection (c) shall not apply to a loan, mortgage, credit sale, or advance secured by a first lien on a residential manufactured home until regulations required to be issued pursuant to paragraphs (1), (2), and (3) of subsection (c) take effect, except that the provisions of subsection (c) shall apply in the case of such a loan, mortgage, credit sale, or advance made prior to the date on which such regulations take effect if the loan, mortgage, credit sale, or advance includes a precomputed finance charge and does not provide that, upon prepayment in full, the refund of the unearned portion of the precomputed finance charge is in an amount not less the amount which would be calculated by the actuarial method, except that the debtor shall not be entitled to a refund which is less than \$1. The Federal Home Loan Bank Board shall issue regulations pursuant to the

provisions of paragraphs (1), (2), and (3) of subsection (c) that shall take effect prospectively not less than 30 days after publication in the Federal Register and not later than 120 days from March 31, 1980.

(e) Definitions

For the purpose of this section—

(1) a "prepayment" occurs upon—

(A) the refinancing or consolidation of the indebtedness;

(B) the actual prepayment of the indebtedness by the consumer whether voluntarily or following acceleration of the payment obligation by the creditor; or

(C) the entry of a judgment for the indebtedness in favor of the creditor;

(2) the term "actuarial method" means the method of allocating payments made on a debt between the outstanding balance of the obligation and the precomputed finance charge pursuant to which a payment is applied first to the accrued precomputed finance charge and any remainder is subtracted from, or any deficiency is added to, the outstanding balance of the obligation;

(3) the term "precomputed finance charge" means interest or a time price differential within the meaning of sections 106(a)(1) and (2) of the Truth in Lending Act (15 U.S.C. 1605(a)(1) and (2)) as computed by an add-on or discount method; and

(4) the term "residential manufactured home" means a manufactured home as defined in section 603(6) of the National Mobile Home Construction and Safety Standards Act of 1974 [42 U.S.C. 5402(6)] which is used as a residence.

(f) Rules, regulations, and interpretations

The Federal Home Loan Bank Board is authorized to issue rules and regulations and to publish interpretations governing the implementation of this section.

(g) Effective date

This section takes effect on April 1, 1980.

(Pub. L. 96-221, title II, §207(b)(11), title V, §501, Mar. 31, 1980, 94 Stat. 144, 161; Pub. L. 96-399, title III, §§308(c)(6), 324(a), (e), Oct. 8, 1980, 94 Stat. 1641, 1647, 1648; Pub. L. 97-35, title III, §384, Aug. 13, 1981, 95 Stat. 432.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). Section 408 of the National Housing Act, which was classified to section 1730a of this title, was repealed by Pub. L. 101-73, title IV, §407, Aug. 9, 1989, 103 Stat. 363. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Section 103(f) of the Truth in Lending Act, referred to in subsec. (a)(1)(C)(v), was redesignated section 103(g) of the Truth in Lending Act by Pub. L. 111-203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107, and is classified to section 1602(g) of Title 15, Commerce and Trade.

CODIFICATION

Section was enacted as part of the Depository Institutions Deregulation and Monetary Control Act of 1980, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1981—Subsec. (a)(1)(C)(vi). Pub. L. 97-35 inserted reference to a residential manufactured home.

1980—Subsec. (a)(1)(A). Pub. L. 96-399, §324(a), substituted "all stock allocated to a dwelling unit" for first reference to "stock" and struck out "where the loan, mortgage, or advance is used to finance the acquisition of such stock" after "housing corporation".

Subsec. (a)(1)(C)(vi). Pub. L. 96-399, §324(e), inserted reference to any person who finances the sale or exchange of residential real property which such individual owns and which such individual occupies or has occupied as his principal residence.

Subsec. (a)(2). Pub. L. 96-221, §207(b)(11), struck out "(A)" after "(2)" and struck out subpar. (B) which provided that this paragraph shall not apply to any such deposit, account, or obligation which is payable only at an office of an insured bank, as defined in section 3 of the Federal Deposit Insurance Act, located in the Commonwealth of Puerto Rico.

Subsec. (e)(4). Pub. L. 96-399, §308(c)(6), substituted "manufactured" for "mobile".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-221, title II, §207(b), Mar. 31, 1980, 94 Stat. 144, provided in part that the amendment made by that section is effective 6 years after Mar. 31, 1980.

SEVERABILITY

Pub. L. 96-221, title V, §526, Mar. 31, 1980, 94 Stat. 167, provided that: "If any provision of this Act [for classification of Act to the Code, see Short Title of 1980 Amendment note set out under section 226 of this title and Tables] or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Act and the application of such provision to any person or circumstance other than that as to which it is held invalid shall not be affected thereby."

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101-73, set out as a note under section 1437 of this title.

CHOICE OF HIGHEST APPLICABLE INTEREST RATE

Pub. L. 96-221, title V, §528, Mar. 31, 1980, 94 Stat. 168, provided that: "In any case in which one or more provisions of, or amendments made by, this title [enacting sections 86a, 1730g, 1735f-7a, and 1831d of this title, amending section 1785 of this title and section 687 of Title 15, Commerce and Trade, and enacting provisions set out as notes under sections 86a, 1730g, and 1735f-7 of this title], section 529 of the National Housing Act [section 1735f-7 of this title], or any other provision of law, including section 5197 of the Revised Statutes (12 U.S.C. 85), apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate."

DEFINITION OF "STATE"

Pub. L. 96-221, title V, §527, Mar. 31, 1980, 94 Stat. 168, as amended by Pub. L. 96-221, title II, §207(b)(12), Mar. 31, 1980, 94 Stat. 144, provided that: "For purposes of this title [enacting sections 86a, 1730g, 1735f-7a, and 1831d of this title, amending section 1785 of this title and section 687 of Title 15, Commerce and Trade, and enacting provisions set out as notes under sections 86a, 1730g, 1735f-7, and 1735f-7a of this title] the term 'State' includes the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands."

[Pub. L. 96-221, title II, §207(b), Mar. 31, 1980, 94 Stat. 144, provided that the amendment of above note made by that section is effective 6 years after Mar. 31, 1980.]

[For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.]

¹ [See References in Text note below.](#)

§1735f-8. Time of payment of premium charges

In carrying out the provisions of subchapters I, II, IV,¹ VII, VIII, IX-B, and X pertaining to the payment of loan or mortgage insurance premium charges by a financial institution, other mortgagees, or agent thereof to the Federal Government in connection with a loan or mortgage insurance program established pursuant to any of these subchapters, the Secretary shall require that payment of such premiums be made (1) in the case of loans or mortgages respecting one- to four-family residences, promptly upon their receipt from the borrower, and (2) in any other case, promptly when due to the Secretary; except that the Secretary may approve payment of such premiums within twenty-four

months of such receipt or due date, as appropriate, if the financial institution, mortgagee, or agent thereof pays interest, at a rate specified by the Secretary, to the insurance fund for the period beginning twenty days after receipt from the borrower or after the due date, as appropriate, and ending upon payment of the premiums to the Federal Government.

(June 27, 1934, ch. 847, title V, §530, as added Pub. L. 96–399, title III, §320, Oct. 8, 1980, 94 Stat. 1646; amended Pub. L. 98–181, title I [title IV, §406], Nov. 30, 1983, 97 Stat. 1210; Pub. L. 101–235, title I, §133(d)(5), Dec. 15, 1989, 103 Stat. 2027.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subchapter IV of this chapter, referred to in text, was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

AMENDMENTS

1989—Pub. L. 101–235 struck out reference to subchapter IX–A after reference to subchapter VIII.

1983—Pub. L. 98–181 substituted "(1) in the case of loans or mortgages respecting one- to four-family residences, promptly upon their receipt from the borrower, and (2) in any other case, promptly when due to the Secretary" for "promptly upon their receipt from the borrower", inserted "or due date, as appropriate," after "such receipt", and inserted "or after the due date, as appropriate," before "and ending".

¹ [*See References in Text note below.*](#)

§1735f–9. Limitation on commitments to insure loans and mortgages

(a) The authority of the Secretary to enter into commitments to insure loans and mortgages under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are or have been provided in appropriation Acts for such fiscal year.

(b) Notwithstanding any other provision of law and subject only to the absence of qualified requests for insurance, to the authority provided in this chapter, and to the limitation in subsection (a), the Secretary shall enter into commitments to insure mortgages under this chapter with an aggregate principal amount of \$110,165,000,000 during fiscal year 1993 and \$68,673,868,600 during fiscal year 1994.

(June 27, 1934, ch. 847, title V, §531, as added Pub. L. 97–35, title III, §335, Aug. 13, 1981, 95 Stat. 414; amended Pub. L. 98–181, title I [title IV, §402], Nov. 30, 1983, 97 Stat. 1208; Pub. L. 98–479, title I, §104(a)(7), Oct. 17, 1984, 98 Stat. 2225; Pub. L. 99–267, §1(h), Mar. 27, 1986, 100 Stat. 73; Pub. L. 100–122, §2(c), Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–242, title IV, §402, Feb. 5, 1988, 101 Stat. 1899; Pub. L. 101–625, title III, §321, Nov. 28, 1990, 104 Stat. 4134; Pub. L. 102–550, title V, §501, Oct. 28, 1992, 106 Stat. 3778; Pub. L. 103–120, §9, Oct. 27, 1993, 107 Stat. 1151.)

EDITORIAL NOTES

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–120 substituted "\$110,165,000,000" for "\$65,905,824,960".

1992—Subsec. (b). Pub. L. 102–550 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Notwithstanding any other provision of law and subject only to the absence of qualified requests for insurance, to the authority provided in this chapter, and to the limitation in subsection (a) of this section, the Secretary shall enter into commitments to insure mortgages under this chapter with an aggregate principal amount of \$76,791,000,000 during fiscal year 1991 and \$79,818,000,000 during fiscal year 1992."

1990—Subsec. (b). Pub. L. 101–625 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Notwithstanding any other provision of law and subject only to the absence of qualified requests

for insurance, to the authority provided in this chapter, and to the limitation in subsection (a) of this section, the Secretary shall enter into commitments to insure mortgages under this chapter with an aggregate principal amount of \$100,000,000,000 during fiscal year 1988, and \$104,000,000,000 during fiscal year 1989."

1988—Pub. L. 100–242 designated existing provisions as subsec. (a) and added subsec. (b).

1987—Pub. L. 100–122 substituted "for any fiscal year" for "for fiscal year 1986".

1986—Pub. L. 99–267 amended section generally. Prior to amendment, section read as follows:

"Notwithstanding any other provision of law and subject only to the absence of qualified requests for insurance, to the authority provided in this chapter, and to any funding limitation approved in appropriation Acts, the Secretary shall enter into commitments during each of the fiscal years 1984 and 1985 to insure mortgages under this chapter with an aggregate principal amount of \$50,900,000,000."

1984—Pub. L. 98–479 substituted "this chapter" for "subchapter II of this chapter" in two places.

1983—Pub. L. 98–181 substituted provision authorizing the Secretary, subject to certain qualifications, to enter into commitments during fiscal years 1984 and 1985 to insure mortgages under subchapter II of this chapter with an aggregate principal amount of \$50,900,000,000 for provision which directed the Secretary, during fiscal year 1982, not to enter into commitments under this chapter to insure loans and mortgages with an aggregate principal amount in excess of \$41,000,000,000.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as a note under section 3701 of this title.

AUTHORIZATION TO ENTER INTO ADDITIONAL COMMITMENTS TO INSURE LOANS AND MORTGAGES DURING FISCAL YEAR 1986

For increase in the applicable limitation on additional commitments to insure mortgages and loans to carry out this chapter during fiscal year 1986, see Pub. L. 99–349, title I, July 2, 1986, 100 Stat. 728; Pub. L. 99–345, §2, June 24, 1986, 100 Stat. 673; and Pub. L. 99–289, May 2, 1986, 100 Stat. 412, set out as notes under section 1721 of this title.

§1735f–10. Change of mortgagee status

(a) Notification

Upon the occurrence of any action described in subsection (b), an approved mortgagee shall immediately submit to the Secretary, in writing, notification of such occurrence.

(b) Actions

The actions described in this subsection are as follows:

(1) The debarment, suspension or a Limited Denial of Participation (LDP), or application of other sanctions, other exclusions, fines, or penalties applied to the mortgagee or to any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the mortgagee pursuant to applicable provisions of State or Federal law.

(2) The revocation of a State-issued mortgage loan originator license issued pursuant to the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) or any other similar declaration of ineligibility pursuant to State law.

(June 27, 1934, ch. 847, title V, §532, as added Pub. L. 111–22, div. A, title II, §203(e), May 20, 2009, 123 Stat. 1647.)

EDITORIAL NOTES

REFERENCES IN TEXT

The S.A.F.E. Mortgage Licensing Act of 2008, referred to in subsec. (b)(2), is title V of div. A of Pub. L. 110–289, July 30, 2008, 122 Stat. 2810, also known as the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, which is classified generally to chapter 51 (§5101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of this title and Tables.

PRIOR PROVISIONS

A prior section 1735f-10, act June 27, 1934, ch. 847, title V, §532, as added Pub. L. 97-35, title III, §339G, Aug. 13, 1981, 95 Stat. 418, which related to purchaser-broker arrangement payments for insurance purposes, was repealed by section 203(e) of Pub. L. 111-22.

§1735f-11. Review of mortgagee performance and authority to terminate

(a) Periodic review of mortgagee performance

To reduce losses in connection with single family mortgage insurance programs under this chapter, at least once a year the Secretary shall review the rate of early defaults and claims for insured single family mortgages originated or underwritten by each mortgagee.

(b) Comparison with other mortgagees

For each mortgagee, the Secretary shall compare the rate of early defaults and claims for insured single family mortgage loans originated or underwritten by the mortgagee in an area with the rate of early defaults and claims for other mortgagees originating or underwriting insured single family mortgage loans in the area. For purposes of this section, the term "area" means each geographic area in which the mortgagee is authorized by the Secretary to originate insured single family mortgages.

(c) Termination of mortgagee origination approval

(1) Notwithstanding section 1708(c) of this title, the Secretary may terminate the approval of a mortgagee to originate or underwrite single family mortgages if the Secretary determines that the mortgage loans originated or underwritten by the mortgagee present an unacceptable risk to the insurance funds. The determination shall be based on the comparison required under subsection (b) and shall be made in accordance with regulations of the Secretary. The Secretary may rely on existing regulations published before this section takes effect.

(2) The Secretary shall give a mortgagee at least 60 days prior written notice of any termination under this subsection. The termination shall take effect at the end of the notice period, unless the Secretary withdraws the termination notice or extends the notice period. If requested in writing by the mortgagee within 30 days of the date of the notice, the mortgagee shall be entitled to an informal conference with the official authorized to issue termination notices on behalf of the Secretary (or a designee of that official). At the informal conference, the mortgagee may present for consideration specific factors that it believes were beyond its control and that caused the excessive default and claim rate.

(June 27, 1934, ch. 847, title V, §533, as added Pub. L. 100-242, title IV, §407(b), Feb. 5, 1988, 101 Stat. 1902; amended Pub. L. 107-73, title II, §209, Nov. 26, 2001, 115 Stat. 675.)

EDITORIAL NOTES

AMENDMENTS

2001—Pub. L. 107-73 amended section catchline and text generally. Prior to amendment, text read as follows:

"(a) To reduce losses in connection with mortgage insurance programs under this chapter, the Secretary shall review, at least once a year, the rate of early serious defaults and claims involving mortgagees approved under this chapter. On the basis of this review, the Secretary shall notify each mortgagee which, as determined by the Secretary, had a rate of early serious defaults and claims during the preceding year which was higher than the normal rate for the geographic area or areas in which that mortgagee does business. In the notification, the Secretary shall require each mortgagee to submit a report, within a time determined by the Secretary, containing the mortgagee's (1) explanation for the above normal rate of early serious defaults and claims; (2) plan for corrective action, if applicable, both with regard to (A) mortgages in default; and (B) its mortgage-processing system in general; and (3) a timeframe within which this corrective action will be begun and completed. If the Secretary does not agree with this timeframe or plan, a mutually agreeable timeframe and plan will be determined.

"(b) Failure of the mortgagee to submit a report required under subsection (a) of this section within the time determined by the Secretary or to commence or complete the plan for corrective action within the timeframe agreed upon by the Secretary may be cause for suspension of the mortgagee from participation in programs under this chapter."

§1735f–12. Assurance of adequate processing of applications for loan and mortgage insurance

(a) State offices

In order to ensure the adequate processing of applications for insurance of loans and mortgages under this chapter, the Secretary shall maintain not less than one office in each State to carry out the provisions of this chapter.

(b) Expedited procedure for RTC properties

To assist the Resolution Trust Corporation in disposing of the property to which it acquires title and to ensure the timely processing of applications for insurance of loans and mortgages under this chapter that will be used to purchase multifamily residential property from the Resolution Trust Corporation, the Secretary shall establish an expedited procedure for considering such applications.

(June 27, 1934, ch. 847, title V, §534, as added Pub. L. 100–242, title IV, §418, Feb. 5, 1988, 101 Stat. 1912; amended Pub. L. 102–550, title V, §512(a), Oct. 28, 1992, 106 Stat. 3786.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–550 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

REGULATIONS

Pub. L. 102–550, title V, §512(b), Oct. 28, 1992, 106 Stat. 3786, provided that: "The procedure referred to in the amendment made by subsection (a) [amending this section] shall be established through interim and final regulations issued by the Secretary. The Secretary shall issue interim regulations implementing the procedure 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 be effective upon issuance. The Secretary shall issue final regulations after notice and opportunity for public comment 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)."

§1735f–13. Prohibition of requirement of minimum principal loan amount

A mortgagee or lender may not require, as a condition of providing a loan insured under this chapter or secured by a mortgage insured under this chapter, that the principal amount of the loan exceed a minimum amount established by the mortgagee or lender.

(June 27, 1934, ch. 847, title V, §535, as added Pub. L. 100–242, title IV, §419(a), Feb. 5, 1988, 101 Stat. 1913.)

§1735f–14. Civil money penalties against mortgagees, lenders, and other participants in FHA programs

(a) In general

(1) Authority

If a mortgagee approved under the ¹ chapter, a lender holding a contract of insurance under subchapter I, or a principal, officer, or employee of such mortgagee or lender, or other person or entity participating in either an insured mortgage or subchapter I loan transaction under this chapter or providing assistance to the borrower in connection with any such loan, including sellers of the real estate involved, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents and dealers, knowingly and materially violates any applicable provision of subsection (b), the Secretary may impose a civil money penalty on the mortgagee or lender, or such other person or entity, in accordance with this section. The penalty under this paragraph shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.

(2) Amount of penalty

The amount of the penalty, as determined by the Secretary, may not exceed \$5,000 for each violation, except that the maximum penalty for all violations by any particular mortgagee or lender or such other person or entity during any 1-year period shall not exceed \$1,000,000. Each violation of a ² the provisions of subsection (b)(1) shall constitute a separate violation with respect to each mortgage or loan application. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

In the case of the mortgagee's failure to engage in loss mitigation activities, as provided in subsection (b)(1)(I), the penalty shall be in the amount of three times the amount of any insurance benefits claimed by the mortgagee with respect to any mortgage for which the mortgagee failed to engage in such loss mitigation actions.

(b) Violations for which a penalty may be imposed

(1) Violations

The Secretary may impose a civil money penalty under subsection (a) for any knowing and material violation by a mortgagee or lender or any of its owners, officers, or directors, as follows:

(A) Except where expressly permitted by statute, regulation, or contract approved by the Secretary, transfer of a mortgage insured under this chapter to a mortgagee not approved by the Secretary, or transfer of a loan to a transferee that is not holding a contract of insurance under subchapter I of this chapter.

(B) Failure of a nonsupervised mortgagee, as defined by the Secretary—

(i) to segregate all escrow funds received from a mortgagor for ground rents, taxes, assessments, and insurance premiums; or

(ii) to deposit these funds in a special account with a depository institution whose accounts are insured by the Federal Deposit Insurance Corporation through the Deposit Insurance Fund, or by the National Credit Union Administration.

(C) Use of escrow funds for any purpose other than that for which they were received.

(D) Submission to the Secretary of information that was false, in connection with any mortgage insured under this chapter, or any loan that is covered by a contract of insurance under subchapter I of this chapter.

(E) With respect to an officer, director, principal, or employee—

(i) hiring such an individual whose duties will involve, directly or indirectly, programs administered by the Secretary, while that person was under suspension or withdrawal by the Secretary; or

(ii) retaining in employment such an individual who continues to be involved, directly or indirectly, in programs administered by the Secretary, while that person was under suspension or withdrawal by the Secretary.

(F) Falsely certifying to the Secretary or submitting to the Secretary a false certification by another person or entity.

(G) Failure to comply with an agreement, certification, or condition of approval set forth on, or applicable to—

(i) the application of a mortgagee or lender for approval by the Secretary; or

(ii) the notification by a mortgagee or lender to the Secretary concerning establishment of a branch office.

(H) Violation of any provisions of subchapter I or II of this chapter, or any implementing regulation, handbook, or mortgagee letter that is issued under this chapter.

(I) Failure to engage in loss mitigation actions as provided in section 1715u(a) of this title.

(J) Failure to perform a required physical inspection of the mortgaged property.

(K) Violation of section 1708(d) of this title.

(L) Use of "Federal Housing Administration", "Department of Housing and Urban Development", "Government National Mortgage Association", "Ginnie Mae", the acronyms "HUD", "FHA", or "GNMA", or any official seal or logo of the Department of Housing and Urban Development, except as authorized by the Secretary.

(2) Additional violations

The Secretary may impose a civil money penalty under subsection (a) for any knowing and material violation by a principal, officer, or employee of a mortgagee or lender, or other participants in either an insured mortgage or subchapter I loan transaction under this chapter or provision of assistance to the borrower in connection with any such loan, including sellers of the real estate involved, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, and dealers for—

(A) submission to the Secretary of information that was false, in connection with any mortgage insured under this chapter, or any loan that is covered by a contract of insurance under subchapter I of this chapter;

(B) falsely certifying to the Secretary or submitting to the Secretary a false certification by another person or entity;

(C) failure by a loan correspondent or dealer to submit to the Secretary information which is required by regulations or directives in connection with any loan that is covered by a contract of insurance under subchapter I; or

(D) causing or participating in any of the violations set forth in paragraph (1) of this subsection.

(3) Prohibition against misleading use of Federal entity designation

The Secretary may impose a civil money penalty, as adjusted from time to time, under subsection (a) for any use of "Federal Housing Administration", "Department of Housing and Urban Development", "Government National Mortgage Association", "Ginnie Mae", the acronyms "HUD", "FHA", or "GNMA", or any official seal or logo of the Department of Housing and Urban Development, by any person, party, company, firm, partnership, or business, including sellers of real estate, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, and dealers, except as authorized by the Secretary.

(c) Agency procedures

(1) Establishment

The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a). These standards and procedures—

(A) shall provide for the Secretary to make the determination to impose the penalty or to use an administrative entity (such as the Mortgagee Review Board, established pursuant to section 1708(c) of this title) to make the determination;

(B) shall provide for the imposition of a penalty only after the mortgagee or lender or such other person or entity has been given an opportunity for a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Final orders

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (a), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including those before December 15, 1989), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

(4) Reviewability of imposition of penalty

The Secretary's determination or order imposing a penalty under subsection (a) shall not be subject to review, except as provided in subsection (d).

(d) Judicial review of agency determination

(1) In general

After exhausting all administrative remedies established by the Secretary under subsection (c)(1), a mortgagee or lender or such other person or entity against whom the Secretary has imposed a civil money penalty under subsection (a) may obtain a review of the penalty and such ancillary issues (such as any administrative sanctions under 24 C.F.R. parts 24 and 25) as may be addressed in the notice of determination to impose a penalty under subsection (c)(1)(A) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's determination or order be modified or be set aside in whole or in part.

(2) Objections not raised in hearing

The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (c)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of the additional evidence.

(3) Scope of review

The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5.

(4) Order to pay penalty

Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

(e) Action to collect penalty

If any mortgagee or lender or such other person or entity fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (a), after the determination or order is no longer subject to review as provided by subsections (c)(1) and (d), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the mortgagee or lender or such other person or entity and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys fees and other expenses incurred by the United States in connection

with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(f) Settlement by Secretary

The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(g) "Knowingly" defined

For purposes of this section, a person acts knowingly when a person has actual knowledge of acts or should have known of the acts.

(h) Regulations

The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(i) Deposit of penalties in insurance funds

Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the appropriate insurance fund or funds established under this chapter, as determined by the Secretary.

(June 27, 1934, ch. 847, title V, §536, as added Pub. L. 101-235, title I, §107(a), Dec. 15, 1989, 103 Stat. 2000; amended Pub. L. 104-208, div. A, title II, §2704(d)(13)(B), Sept. 30, 1996, 110 Stat. 3009-490; Pub. L. 105-65, title V, §553, Oct. 27, 1997, 111 Stat. 1413; Pub. L. 105-276, title VI, §601(g), (h), Oct. 21, 1998, 112 Stat. 2674; Pub. L. 108-447, div. I, title II, §219(a), Dec. 8, 2004, 118 Stat. 3319; Pub. L. 109-171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109-173, §9(f)(2), Feb. 15, 2006, 119 Stat. 3618; Pub. L. 111-22, div. A, title II, §203(f), May 20, 2009, 123 Stat. 1647.)

EDITORIAL NOTES

AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111-22, §203(f)(1)(A)(i), inserted "or any of its owners, officers, or directors" after "mortgagee or lender" in introductory provisions.

Subsec. (b)(1)(H). Pub. L. 111-22, §203(f)(1)(A)(ii), substituted "subchapter I or II of this chapter, or any implementing regulation, handbook, or mortgagee letter that is issued under this chapter." for "subchapter I, II, or IX-A (as such subchapter existed immediately before December 15, 1989) of this chapter or any implementing regulation or handbook that is issued under this chapter."

Subsec. (b)(1)(K), (L). Pub. L. 111-22, §203(f)(1)(A)(iii), added subpars. (K) and (L).

Subsec. (b)(2)(D). Pub. L. 111-22, §203(f)(1)(B), added subpar. (D).

Subsec. (b)(3). Pub. L. 111-22, §203(f)(1)(C), amended par. (3) generally. Prior to amendment, text read as follows: "Before taking action to impose a civil money penalty for a violation under paragraph (1)(D) or (F), or paragraph (2)(A), (B), or (C), the Secretary shall inform the Attorney General of the United States."

Subsec. (g). Pub. L. 111-22, §203(f)(2), substituted "For purposes of this section, a person acts knowingly when a person has actual knowledge of acts or should have known of the acts." for "The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section."

2006—Subsec. (b)(1)(B)(ii). Pub. L. 109-173 substituted "Deposit Insurance Fund" for "Bank Insurance Fund for banks and through the Savings Association Insurance Fund for savings associations".

Pub. L. 109-171 repealed Pub. L. 104-208, §2704(d)(13)(B). See 1996 Amendment note below.

2004—Subsec. (b)(1)(J). Pub. L. 108-447 added subpar. (J).

1998—Subsec. (a)(2). Pub. L. 105-276, §601(g), inserted second paragraph.

Subsec. (b)(1)(I). Pub. L. 105-276, §601(h), which directed the addition of subpar. (I) after subpar. "(h)", was executed by adding subpar. (I) after subpar. (H), to reflect the probable intent of Congress.

1997—Pub. L. 105-65, §553(a), amended section catchline generally, substituting "mortgagees, lenders, and other participants in FHA programs" for "mortgagees and lenders".

Subsec. (a)(1). Pub. L. 105-65, §553(b)(1), substituted "If a mortgagee approved under the chapter, a lender holding a contract of insurance under subchapter I, or a principal, officer, or employee of such mortgagee or lender, or other person or entity participating in either an insured mortgage or subchapter I loan transaction

under this chapter or providing assistance to the borrower in connection with any such loan, including sellers of the real estate involved, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents and dealers, knowingly and materially violates any applicable provision of subsection (b), the Secretary may impose a civil money penalty on the mortgagee or lender, or such other person or entity, in accordance with this section. The penalty under this paragraph shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions." for "Whenever a mortgagee approved under this chapter, or a lender holding a contract of insurance under subchapter I of this chapter, knowingly and materially violates any of the provisions of subsection (b), the Secretary may impose a civil money penalty on the mortgagee or lender in accordance with the provisions of this section."

Subsec. (a)(2). Pub. L. 105-65, §553(b)(2), inserted "or such other person or entity" after "lender" in first sentence and substituted "the provisions of subsection (b)(1)" for "provision of subsection (b)(1)" in second sentence.

Subsec. (b)(2). Pub. L. 105-65, §553(c)(1), (2), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b)(3). Pub. L. 105-65, §553(c)(1), (3), redesignated par. (2) as (3) and substituted "or (F), or paragraph (2)(A), (B), or (C)" for "or paragraph (1)(F)".

Subsec. (c)(1)(B). Pub. L. 105-65, §553(d)(1), inserted "or such other person or entity" after "lender".

Subsec. (d)(1). Pub. L. 105-65, §553(d)(2), inserted "or such other person or entity" after "lender" and substituted "parts 24 and 25" for "part 25".

Subsec. (e). Pub. L. 105-65, §553(d)(3), inserted "or such other person or entity" after "lender" in two places.

1996—Subsec. (b)(1)(B)(ii). Pub. L. 104-208, §2704(d)(13)(B), which directed the amendment of section 526(b)(1)(B)(ii) of the National Housing Act by substituting "Deposit Insurance Fund" for "Bank Insurance Fund for banks and through the Savings Association Insurance Fund for savings associations" and which substitution was probably intended by Congress to be made in subsec. (b)(1)(B)(ii) of this section, section 536 of the National Housing Act, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109-173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109-171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109-171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104-208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE

Pub. L. 101-235, title I, §107(b), Dec. 15, 1989, 103 Stat. 2003, provided that: "The amendment made by subsection (a) [enacting this section] shall apply only with respect to—

"(1) violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989]; and

"(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation referred to in the amendment that occurs on or after such date."

REGULATIONS

Pub. L. 105-65, title V, §541, Oct. 27, 1997, 111 Stat. 1412, provided that:

"(a) **ISSUANCE OF NECESSARY REGULATIONS.**—Notwithstanding section 7(o) of the Department of Housing and Urban Development Act [42 U.S.C. 3535(o)] or part 10 of title 24, Code of Federal Regulations (as in existence on the date of enactment of this Act [Oct. 27, 1997]), the Secretary shall issue such regulations as the Secretary determines to be necessary to implement this subtitle [subtitle C (§§541-564) of title V of Pub. L. 105-65, enacting section 1437z-1 of Title 42, The Public Health and Welfare, amending this section, sections 1708, 1715z-4a, 1715z-19, and 1735f-15 of this title, section 1516 of Title 18, Crimes and Criminal

Procedure, section 6103 of Title 26, Internal Revenue Code, and sections 503 and 1437z of Title 42, and enacting provisions set out as notes under section 1735f–15 of this title and sections 503 and 1437z–1 of Title 42] and the amendments made by this subtitle in accordance with section 552 or 553 of title 5, United States Code, as determined by the Secretary.

"(b) USE OF EXISTING REGULATIONS.—In implementing any provision of this subtitle, the Secretary may, in the discretion of the Secretary, provide for the use of existing regulations to the extent appropriate, without rulemaking."

¹ *So in original. Probably should be "this".*

² *So in original. The word "a" probably should not appear.*

§1735f–15. Civil money penalties against multifamily mortgagors

(a) In general

The penalties set forth in this section shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions. The Secretary may not impose penalties under this section for violations a material cause of which are the failure of the Department, an agent of the Department, or a public housing agency to comply with existing agreements.

(b) Penalty for violation of agreement as condition of transfer of physical assets, flexible subsidy loan, capital improvement loan, modification of mortgage terms, or workout agreement

(1) Authority

Whenever a mortgagor of property that includes 5 or more living units and that has a mortgage insured, co-insured, or held pursuant to this chapter, who has agreed in writing, as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a workout agreement, to use nonproject income to make cash contributions for payments due under the note and mortgage, for payments to the reserve for replacements, to restore the project to good physical condition, or to pay other project liabilities, knowingly and materially fails to comply with any of these commitments, the Secretary may impose a civil money penalty on that mortgagor, on a general partner of a partnership mortgagor, or on any officer or director of a corporate mortgagor in accordance with the provisions of this section.

(2) Amount of penalty

The amount of the penalty, as determined by the Secretary, for a violation of this subsection may not exceed the amount of the loss the Secretary would experience at a foreclosure sale, or a sale after foreclosure, of the property involved.

(c) Other violations

(1)(A) Liable parties

The Secretary may also impose a civil money penalty under this section on—

- (i) any mortgagor of a property that includes 5 or more living units and that has a mortgage insured, coinsured, or held pursuant to this chapter;
- (ii) any general partner of a partnership mortgagor of such property;
- (iii) any officer or director of a corporate mortgagor;
- (iv) any agent employed to manage the property that has an identity of interest with the mortgagor, with the general partner of a partnership mortgagor, or with any officer or director of a corporate mortgagor of such property; or
- (v) any member of a limited liability company that is the mortgagor of such property or is the general partner of a limited partnership mortgagor or is a partner of a general partnership mortgagor.

(B) Violations

A penalty may be imposed under this section upon any liable party under subparagraph (A) that knowingly and materially takes any of the following actions:

(i) Conveyance, transfer, or encumbrance of any of the mortgaged property, or permitting the conveyance, transfer, or encumbrance of such property, without the prior written approval of the Secretary.

(ii) Assignment, transfer, disposition, or encumbrance of any personal property of the project, including rents, other revenues, or contract rights, or paying out any funds, except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary.

(iii) Conveyance, assignment, or transfer of any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property, without the prior written approval of the Secretary.

(iv) Remodeling, adding to, reconstructing, or demolishing any part of the mortgaged property or subtracting from any real or personal property of the project, without the prior written approval of the Secretary.

(v) Requiring, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent, plus a security deposit in an amount not in excess of 1 month's rent, to guarantee the performance of the covenants of the lease.

(vi) Not holding any funds collected as security deposits separate and apart from all other funds of the project in a trust account, the amount of which at all times equals or exceeds the aggregate of all outstanding obligations under the account.

(vii) Payment for services, supplies, or materials which exceeds \$500 and substantially exceeds the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

(viii) Failure to maintain at any time the mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other related papers (including failure to keep copies of all written contracts or other instruments which affect the mortgaged property) in reasonable condition for proper audit and for examination and inspection at any reasonable time by the Secretary or any duly authorized agents of the Secretary.

(ix) Failure to maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the Secretary.

(x) Failure to furnish the Secretary, by the expiration of the 90-day period beginning on the first day after the completion of each fiscal year (unless the Secretary has approved an extension of the 90-day period in writing), with a complete annual financial report, in accordance with requirements prescribed by the Secretary, including requirements that the report be—

(I) based upon an examination of the books and records of the mortgagor;

(II) prepared and certified to by an independent public accountant or a certified public accountant (unless the Secretary has waived this requirement in writing); and

(III) certified to by the mortgagor or an authorized representative of the mortgagor.

The Secretary shall approve an extension where the mortgagor demonstrates that failure to comply with this clause is due to events beyond the control of the mortgagor.

(xi) At the request of the Secretary, the agents of the Secretary, the employees of the Secretary, or the attorneys of the Secretary, failure to furnish monthly occupancy reports or failure to provide specific answers to questions upon which information is sought relative to income, assets, liabilities, contracts, the operation and condition of the property, or the status of the mortgage.

(xii) Failure to make promptly all payments due under the note and mortgage, including mortgage insurance premiums, tax and insurance escrow payments, and payments to the reserve

for replacements when there is adequate project income available to make such payments.

(xiii) Failure to maintain the premises, accommodations, any living unit in the project, and the grounds and equipment appurtenant thereto in good repair and condition in accordance with regulations and requirements of the Secretary, except that nothing in this clause shall have the effect of altering the provisions of an existing regulatory agreement or federally insured mortgage on the property.

(xiv) Failure, by a mortgagor, a general partner of a partnership mortgagor, or an officer or director of a corporate mortgagor, to provide management for the project that is acceptable to the Secretary pursuant to regulations and requirements of the Secretary.

(xv) Failure to provide access to the books, records, and accounts related to the operations of the mortgaged property and of the project.

The pay out of surplus cash, as defined by and provided for in the regulatory agreement, shall not constitute a violation of this subsection.

(2) Amount of penalty

A penalty imposed for a violation under this subsection, as determined by the Secretary, may not exceed \$25,000.

(d) Agency procedures

(1) Establishment

The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsections (b) and (c). These standards and procedures—

(A) shall provide for the Secretary or other department official (such as the Assistant Secretary for Housing) to make the determination to impose a penalty;

(B) shall provide for the imposition of a penalty only after the mortgagor, general partner of a partnership mortgagor, officer or director of a corporate mortgagor, or identity of interest agent employed to manage the property has been given an opportunity for a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Final orders

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (b) or (c), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before December 15, 1989), ability to pay the penalty, injury to the tenants, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

(4) Reviewability of imposition of penalty

The Secretary's determination or order imposing a penalty under subsection (b) or (c) shall not be subject to review, except as provided in subsection (e).

(5) Payment of penalty

No payment of a civil money penalty levied under this section shall be payable out of project income.

(e) Judicial review of agency determination

(1) In general

After exhausting all administrative remedies established by the Secretary under subsection (d)(1), an entity or person against whom the Secretary has imposed a civil money penalty under subsection (b) or (c) may obtain a review of the penalty and such ancillary issues as may be addressed in the notice of determination to impose a penalty under subsection (d)(1)(A) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

(2) Objections not raised in hearing

The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (d)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

(3) Scope of review

The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5.

(4) Order to pay penalty

Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

(f) Civil money penalties against multifamily mortgagors, general partners of partnership mortgagors, officers and directors of corporate mortgagors, and certain managing agents

If a mortgagor, general partner of a partnership mortgagor, officer or director of a corporate mortgagor, or identity of interest agent employed to manage the property fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (b) or (c), after the determination or order is no longer subject to review as provided by subsections (d)(1) and (e), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the mortgagor, general partner of a partnership mortgagor, officer or director of a corporate mortgagor, or identity of interest agent employed to manage the property and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(g) Settlement by Secretary

The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(h) "Knowingly" defined

The term "knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(i) Regulations

The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(j) Deposit of penalties in insurance funds

Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the fund established under section 1715z-1a(j) of this title.

(k) Identity of interest managing agent

In this section, the terms "agent employed to manage the property that has an identity of interest" and "identity of interest agent" mean an entity—

- (1) that has management responsibility for a project;
- (2) in which the ownership entity, including its general partner or partners (if applicable) and its officers or directors (if applicable), has an ownership interest; and
- (3) over which the ownership entity exerts effective control.

(June 27, 1934, ch. 847, title V, §537, as added Pub. L. 101–235, title I, §108(a), Dec. 15, 1989, 103 Stat. 2003; amended Pub. L. 105–65, title V, §561(a), Oct. 27, 1997, 111 Stat. 1414; Pub. L. 108–447, div. I, title II, §219(b), (c), Dec. 8, 2004, 118 Stat. 3319.)

EDITORIAL NOTES

AMENDMENTS

2004—Subsec. (c)(1)(B)(ii). Pub. L. 108–447, §219(b), inserted "other revenues, or contract rights," after "rents,".

Subsec. (c)(1)(B)(x). Pub. L. 108–447, §219(c), amended cl. (x) generally. Prior to amendment, cl. (x) read as follows: "Failure to furnish the Secretary, by the expiration of the 60-day period beginning on the 1st day after the completion of each fiscal year, with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared and certified to by an independent public accountant or a certified public accountant and certified to by an officer of the mortgagor, unless the Secretary has approved an extension of the 60-day period in writing. The Secretary shall approve an extension where the mortgagor demonstrates that failure to comply with this subparagraph is due to events beyond the control of the mortgagor."

1997—Subsec. (b)(1). Pub. L. 105–65, §561(a)(1), substituted "on that mortgagor, on a general partner of a partnership mortgagor, or on any officer or director of a corporate mortgagor" for "on that mortgagor".

Subsec. (c). Pub. L. 105–65, §561(a)(2)(A), substituted "Other violations" for "Violations of regulatory agreement for which penalty may be imposed" in heading.

Subsec. (c)(1). Pub. L. 105–65, §561(a)(2)(B)(i), (iv), substituted "violation of this subsection" for "violation of such agreement" before period at end of closing provisions and struck out heading and introductory provisions. Introductory provisions read as follows: "The Secretary may also impose a civil money penalty under this section on any mortgagor of property that includes 5 or more living units and that has a mortgage insured, co-insured, or held pursuant to this chapter for any knowing and material violation of the regulatory agreement executed by the mortgagor, as follows:".

Subsec. (c)(1)(A). Pub. L. 105–65, §561(a)(2)(B)(i), (ii), added subpar. (A) and redesignated former subpar. (A) as cl. (i) of subpar. (B).

Subsec. (c)(1)(B) to (L). Pub. L. 105–65, §561(a)(2)(B)(i)–(iii), inserted heading and introductory provisions of subpar. (B), redesignated former subpars. (A) to (L) as cls. (i) to (xii) of subpar. (B), respectively, and added cls. (xiii) to (xv).

Subsec. (d)(1)(B). Pub. L. 105–65, §561(a)(3)(A), inserted ", general partner of a partnership mortgagor, officer or director of a corporate mortgagor, or identity of interest agent employed to manage the property" after "mortgagor".

Subsec. (d)(5). Pub. L. 105–65, §561(a)(3)(B), added par. (5).

Subsec. (e)(1). Pub. L. 105–65, §561(a)(4), substituted "an entity or person" for "a mortgagor".

Subsec. (f). Pub. L. 105–65, §561(a)(5), (6), substituted "Civil money penalties against multifamily mortgagors, general partners of partnership mortgagors, officers and directors of corporate mortgagors, and certain managing agents" for "Action to collect penalty" in heading and inserted ", general partner of a partnership mortgagor, officer or director of a corporate mortgagor, or identity of interest agent employed to manage the property" after "mortgagor" in two places in text.

Subsec. (k). Pub. L. 105–65, §561(a)(7), added subsec. (k).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–65, title V, §561(c), Oct. 27, 1997, 111 Stat. 1416, provided that: "The amendments made by subsection (a) [amending this section] shall apply only with respect to—

"(1) violations that occur on or after the effective date of the final regulations implementing the

amendments made by this section; and

"(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation that occurs on or after that date."

EFFECTIVE DATE

Pub. L. 101–235, title I, §108(b), Dec. 15, 1989, 103 Stat. 2007, provided that: "The amendment made by subsection (a) [enacting this section] shall apply only with respect to violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989]."

IMPLEMENTATION

Pub. L. 105–65, title V, §561(b), Oct. 27, 1997, 111 Stat. 1416, provided that:

"(1) PUBLIC COMMENT.—The Secretary shall implement the amendments made by this section [amending this section and enacting provisions set out as a note under this section] by regulation issued after notice and opportunity for public comment. The notice shall seek comments primarily as to the definitions of the terms 'ownership interest in' and 'effective control', as those terms are used in the definition of the terms 'agent employed to manage the property that has an identity of interest' and 'identity of interest agent'.

"(2) TIMING.—A proposed rule implementing the amendments made by this section shall be published not later than 1 year after the date of enactment of this Act [Oct. 27, 1997]."

§1735f–16. Annual audited financial statements

With respect to fiscal year 1989 and for every fiscal year thereafter, the Secretary shall make available to the public a financial statement of the insurance funds established under this chapter that will present their financial condition on a cash and accrual basis, consistent with generally accepted accounting principles. Each financial statement shall be audited by an independent accounting firm selected by the Secretary and the results of such audit shall be made available to the public.

(June 27, 1934, ch. 847, title V, §538, as added Pub. L. 101–235, title I, §131, Dec. 15, 1989, 103 Stat. 2026.)

§1735f–17. Examinations and sanctions for certain violations

(a) Examinations and sanctions

(1) In connection with any examination of a mortgagee approved by the Secretary pursuant to this chapter, the Secretary shall assess the performance of the mortgagee in meeting the requirements of sections 1709(t), ¹1715n(a)(7)(B), ¹and 1735f–13 of this title. Where the Secretary determines that a mortgagee is not in compliance with these requirements, the Secretary shall refer the matter to the Mortgagee Review Board for investigation and appropriate action.

(2) Not later than 180 days after November 28, 1990, the Secretary shall by notice establish a procedure under which (A) any person may file a request that the Secretary determine whether a mortgagee is in compliance with sections 1709(t), ¹1715n(a)(7)(B), ¹and 1735f–13 of this title, (B) the Secretary shall inform the person of the disposition of the request, and (C) the Secretary shall publish in the Federal Register the disposition of any case referred by the Secretary to the Mortgagee Review Board. Such procedures shall be established by regulation under section 553 of title 5. The Secretary shall issue regulations based on the initial notice before the expiration of the 8-month period beginning on the date of the notice.

(3) Omitted.

(b) Monitoring and review

The Secretary shall continually monitor and undertake a thorough review of the implementation of this section to assess the impact of the section on the lending practices of mortgagees and the availability of mortgages insured under this chapter. The Secretary shall monitor the availability of credit, the number and type of lenders participating in the program, whether there is any change in the composition or practices of such lenders and any other factors the Secretary considers

appropriate. The Secretary shall submit to the Congress findings detailing the results of such monitoring and review not later than 18 months after November 28, 1990.

(June 27, 1934, ch. 847, title V, §539, as added Pub. L. 101–625, title III, §330(b), Nov. 28, 1990, 104 Stat. 4139.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1709(t) of this title, referred to in subsec. (a)(1), (2), was redesignated section 1709(u) of this title by Pub. L. 106–377, §1(a)(1) [title II, §209(a)(1)], Oct. 27, 2000, 114 Stat. 1441, 1441A–25.

Section 1715n(a)(7)(B) of this title, referred to in subsec. (a)(1), (2), was redesignated section 1715n(a)(7)(A)(ii) of this title by Pub. L. 107–116, title VI, §615(3), Jan. 10, 2002, 115 Stat. 2225.

CODIFICATION

Paragraph (3) of subsection (a), which required the Secretary to submit to Congress, not less than annually, a report on actions taken to carry out this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 103 of House Document No. 103–7.

¹ [*See References in Text note below.*](#)

§1735f–18. Information regarding early defaults and foreclosures on insured mortgages

(a) In general

The Secretary of Housing and Urban Development shall collect and maintain information regarding early defaults on mortgages as provided under this section. The Secretary shall make such information available for public inspection upon request. Information shall be collected quarterly with respect to each applicable collection period (as such term is defined in subsection (c)) and shall be available for inspection not more than 30 days after the conclusion of the calendar quarter relating to each such period. Information shall first be made available under this section for the applicable collection period relating to the first calendar quarter ending more than 180 days after November 28, 1990.

(b) Contents

(1) Mortgage lender analysis

Information collected under this section shall include, for each lender originating mortgages during the applicable collection period that are insured pursuant to section 1709 of this title and secured by property in a designated census tract, the following information with respect to such mortgages:

(A) The name of the lender and the number of each designated census tract in which the lender originated 1 or more such mortgages during the applicable collection period.

(B) The total number of such mortgages originated by such lender during the applicable collection period in each designated census tract and the number of mortgages originated each year in each designated census tract.

(C) The total number of defaults and foreclosures on such mortgages during the applicable collection period in each designated census tract and the number of defaults and foreclosures in each designated census tract in each year of the period.

(D) For each designated census tract, the percentage of such lender's total insured mortgages originated during each year of the applicable collection period (with respect to properties within such census tract) on which defaults or foreclosures have occurred during the applicable collection period.

(E) The total of all such originations, defaults, and foreclosures on insured mortgages originated by such lender during the applicable collection period for all designated census tracts and the percentage of the total number of such lender's insured mortgage originations on which defaults or foreclosures have occurred during the applicable collection period.

(2) Other information

Information collected under this section shall also include the following:

(A) For each lender referred to under paragraph (1), the total number of insured mortgages originated by the lender secured by properties not located in a designated census tract, the total number of defaults and foreclosures on such mortgages, and the percentage of such mortgages originated on which defaults or foreclosures occurred during the applicable collection period.

(B) For each designated census tract, the total number of mortgages originated during the applicable collection period that are insured pursuant to section 1709 of this title, the number of defaults and foreclosures occurring on such mortgages during such period, and the percentage of the total insured mortgage originations during the period on which defaults or foreclosures occurred.

(c) Annual reports

The Secretary shall submit to the Congress annually a report containing the information collected and maintained under subsection (b) for the relevant year.

(d) Definitions

For purposes of this section:

(1) Applicable collection period

The term "applicable collection period" means the 5-year period ending on the last day of the calendar quarter for which information under this section is collected.

(2) Designated census tract

The term "designated census tract" means a census tract located within a metropolitan statistical area, as defined pursuant to regulations issued by the Secretary of Commerce.

(June 27, 1934, ch. 847, title V, §540, as added Pub. L. 101-625, title III, §335(a), Nov. 28, 1990, 104 Stat. 4142.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

**AVAILABILITY OF INFORMATION REGARDING DEFAULT/CLAIM RATES DURING
TRANSITION**

Pub. L. 101-625, title III, §335(b), Nov. 28, 1990, 104 Stat. 4144, provided that: "During the period beginning on the date of the enactment of this Act [Nov. 28, 1990] and ending on the date of the initial availability of information under section 540 of the National Housing Act [12 U.S.C. 1735f-18] (as added by subsection (a)), the Secretary of Housing and Urban Development shall make publicly available all reports regarding Default/Claim Rates per Regional Office for Fiscal Year 1990 Endorsements that are produced by the Department of Housing and Urban Development during such period."

**§1735f-19. Partial payment of claims on defaulted mortgages and in connection
with mortgage restructuring**

(a) Defaulted mortgages

Notwithstanding any other provision of law, if the Secretary is requested to accept assignment of a mortgage insured by the Secretary that covers a multifamily housing project (as such term is defined in section 1701z-11(b) of this title) or a health care facility (including a nursing home, intermediate care facility, or board and care home (as those terms are defined in section 1715w of this title), a hospital (as that term is defined in section 1715z-7 of this title), or a group practice facility (as that

term is defined in section 1749aaa-5 of this title)) and the Secretary determines that partial payment would be less costly to the Federal Government than other reasonable alternatives for maintaining the low-income character of the project, or for keeping the health care facility operational to serve community needs, the Secretary may request the mortgagee, in lieu of assignment, to—

- (1) accept partial payment of the claim under the mortgage insurance contract; and
- (2) recast the mortgage, under such terms and conditions as the Secretary may determine.

(b) Existing mortgages

Notwithstanding any other provision of law, the Secretary, in connection with a mortgage restructuring under section 514 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, may make a one time, nondefault partial or full payment of claim under one or more mortgage insurance contracts, which shall include a determination by the Secretary or the participating administrative entity, in accordance with the Multifamily Assisted Housing Reform and Affordability Act of 1997, of the market value of the project and a restructuring of the mortgage, under such terms and conditions as are permitted by section 517(a) of such Act.

(c) Repayment

As a condition to a partial claim payment under this section, the mortgagor shall agree to repay to the Secretary the amount of such payment and such obligation shall be secured by a second mortgage on the property on such terms and conditions as the Secretary may determine.

(June 27, 1934, ch. 847, title V, §541, as added Pub. L. 103-233, title I, §101(e), Apr. 11, 1994, 108 Stat. 357; amended Pub. L. 105-65, title II, §210, title V, §523(b), Oct. 27, 1997, 111 Stat. 1366, 1406; Pub. L. 106-74, title II, §213(a), Oct. 20, 1999, 113 Stat. 1073.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Multifamily Assisted Housing Reform and Affordability Act of 1997, referred to in subsec. (b), is title V of Pub. L. 105-65, Oct. 27, 1997, 111 Stat. 1384. Sections 514 and 517(a) of the Act are set out as a note under section 1437f of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1997 Amendment note set out under section 1701 of this title and Tables.

AMENDMENTS

1999—Pub. L. 106-74, §213(a)(1), substituted "defaulted mortgages and in connection with mortgage restructuring" for "multifamily housing projects and health care facilities" in section catchline.

Subsec. (b). Pub. L. 106-74, §213(a)(2), substituted "partial or full payment of claim under one or more mortgage insurance contracts" for "partial payment of the claim under the mortgage insurance contract".

1997—Pub. L. 105-65, §210(1), inserted "and health care facilities" after "housing projects" in section catchline.

Subsec. (a). Pub. L. 105-65, §523(b)(1), substituted "Defaulted mortgages" for "Authority" in heading.

Pub. L. 105-65, §210(2)(B), inserted "or for keeping the health care facility operational to serve community needs," after "character of the project," in introductory provisions.

Pub. L. 105-65, §210(2)(A), which directed the insertion, in introductory provisions, of "or a health care facility (including a nursing home, intermediate care facility, or board and care home (as those terms are defined in section 1715w of this title), a hospital (as that term is defined in section 1715z-7 of this title), or a group practice facility (as that term is defined in section 1749aaa-5 of this title))" after "section 1701z-11(b) of this title", was executed by inserting the language after "section 1701z-11(b) of this title)" to reflect the probable intent of Congress.

Subsecs. (b), (c). Pub. L. 105-65, §523(b)(2), (3), added subsec. (b) and redesignated former subsec. (b) as (c).

§1735f-20. Authorization of appropriations for General and Special Risk Insurance Funds

There are authorized to be appropriated such sums as may be necessary for each of fiscal years

1994 and 1995, to be allocated in any manner that the Secretary determines appropriate, for the following costs incurred in conjunction with programs authorized under the General Insurance Fund, as provided by section 1735c of this title, and the Special Risk Insurance Fund, as provided by section 1715z-3 of this title:

- (1) The cost to the Government, as defined in section 661a ¹ of title 2, of new insurance commitments.
- (2) The cost to the Government, as defined in section 661a ¹ of title 2, of modifications to existing loans, loan guarantees, or insurance commitments.
- (3) The cost to the Government, as defined in section 661a ¹ of title 2, of loans provided under section 1701z-11(f) of this title.
- (4) The costs of the rehabilitation of multifamily housing projects (as defined in section 1701z-11(b) of this title) upon disposition by the Secretary.

(June 27, 1934, ch. 847, title V, §542, as added Pub. L. 103-233, title I, §105(c), Apr. 11, 1994, 108 Stat. 363.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 661a of title 2, referred to in pars. (1) to (3), was in the original "section 502 of the Congressional Budget Act", which was translated as meaning "section 502 of the Congressional Budget Act of 1974" to reflect the probable intent of Congress.

¹ [*See References in Text note below.*](#)

§1735g. Mortgage relief for homeowners who are unemployed as result of closing of Federal installation

(a) Definitions

For the purposes of this section—

- (1) The term "mortgage" means a mortgage which (A) is insured under the National Housing Act [12 U.S.C. 1701 et seq.], or (B) secures a home loan guaranteed or insured under the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38.
- (2) The term "Federal mortgage agency" means—
 - (A) The Secretary of Housing and Urban Development when used in connection with mortgages insured under the National Housing Act, and
 - (B) the Secretary of Veterans Affairs when used in connection with mortgages securing home loans guaranteed or insured under the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38.
- (3) The term "distressed mortgagor" means an individual who—
 - (A) was employed by the Federal Government at, or was assigned as a serviceman to, a military base or other Federal installation and whose employment or service at such base or installation was terminated subsequent to November 1, 1964, as the result of the closing (in whole or in part) of such base or installation; and
 - (B) is the owner-occupant of a dwelling situated at or near such base or installation and upon which there is a mortgage securing a loan which is in default because of the inability of such individual to make payments due under such mortgage.

(b) Application for, issuance and expiration of certificate of moratorium

- (1) Any distressed mortgagor, for the purpose of avoiding foreclosure of his mortgage, may apply to the appropriate Federal mortgage agency for a determination that suspension of his obligation to

make payments due under such mortgage during a temporary period is necessary in order to avoid such foreclosure.

(2) Upon receipt of an application made under this subsection by a distressed mortgagor, the Federal mortgage agency shall issue to such mortgagor a certificate of moratorium if it determines, after consultation with the interested mortgagee, that such action is necessary to avoid foreclosure.

(3) Prior to the issuance to any distressed mortgagor of a certificate of moratorium under paragraph (2), the Federal mortgage agency, the mortgagor, and the mortgagee shall enter into a binding agreement under which—

(A) the mortgagor will be required to make payments to such agency, after the expiration of such certificate, in an aggregate amount equal to the amount paid by such agency on behalf of such mortgagor as provided in subsection (c), together with interest thereon at a rate not to exceed the rate provided in the mortgage; the manner and time in which such payments shall be made to be determined by the Federal mortgage agency having due regard for the purposes sought to be achieved by this section; and

(B) the Federal mortgage agency will be subrogated to the rights of the mortgagee to the extent of payments made pursuant to such certificate, which rights, however, shall be subject to the prior right of the mortgagee to receive the full amount payable under the mortgage.

(4) Any certificate of moratorium issued under this subsection shall expire on whichever of the following dates is the earliest—

(A) two years from the date on which such certificate was issued;

(B) thirty days after the date on which the mortgagor gives notice in writing to the Federal mortgage agency that he is able to resume his obligation to make payments due under his mortgage; or

(C) thirty days after the date on which the Federal mortgage agency determines that the mortgagor to whom such certificate was issued has ceased to be a distressed mortgagor as defined in subsection (a)(3).

(c) Notice to mortgagee of assumption of mortgagor's obligation by agency; amount of payments; suspension of payments by mortgagor; prohibition against further action to enforce or collect payments; liability of mortgagor upon expiration of certificate; notice of expiration of certificate

(1) Whenever a Federal mortgage agency issues a certificate of moratorium to any distressed mortgagor with respect to any mortgage, it shall transmit to the mortgagee a copy of such certificate, together with a notice stating that, while such certificate is in effect, such agency will assume the obligation of such mortgagor to make payments due under the mortgage.

(2) Payments made by any Federal mortgage agency pursuant to a certificate of moratorium issued under this section with respect to the mortgage of any distressed mortgagor may include, in addition to the payments referred to in paragraph (1), an amount equal to the unpaid payments under such mortgage prior to the issuance of such certificate, plus a reasonable allowance for foreclosure costs actually paid by the mortgagee if a foreclosure action was dismissed as a result of the issuance of a moratorium certificate. Payments by the Federal mortgage agency may also include payments of taxes and insurance premiums on the mortgaged property as deemed necessary when these items are not provided for through payments to a tax and insurance account held by the interested mortgagee.

(3) While any certificate of moratorium issued under this section is in effect with respect to the mortgage of any distressed mortgagor, no further payments due under the mortgage shall be required of such mortgagor, and no action (legal or otherwise) shall be taken or maintained by the mortgagee to enforce or collect such payments. Upon the expiration of such certificate, the mortgagor shall again be liable for the payment of all amounts due under the mortgage in accordance with its terms.

(4) Each Federal mortgage agency shall give prompt notice in writing to the interested mortgagor and mortgagee of the expiration of any certificate of moratorium issued by it under this section.

(d) Regulations

The Federal mortgage agencies are authorized to issue such individual and joint regulations as

may be necessary to carry out this section and to insure the uniform administration thereof.

(e) Fund for extending financial assistance to distressed mortgagors

There shall be in the Treasury (1) a fund which shall be available to the Secretary of Housing and Urban Development for the purpose of extending financial assistance in behalf of distressed mortgagors as provided in subsection (c) and for paying administrative expenses incurred in connection with such assistance, and (2) a fund which shall be available to the Secretary of Veterans Affairs for the same purpose, except administrative expenses. The capital of each such fund shall consist of such sums as may, from time to time, be appropriated thereto, and any sums so appropriated shall remain available until expended. Receipts arising from the programs of assistance under subsection (c) shall be credited to the funds from which such assistance was extended. Moneys in either of such funds not needed for current operations, as determined by the Secretary of Housing and Urban Development, or the Secretary of Veterans Affairs, as the case may be, shall be invested in bonds or other obligations of the United States, or paid into the Treasury as miscellaneous receipts.

(Pub. L. 89-117, title I, §107(a)-(e), Aug. 10, 1965, 79 Stat. 458, 459; Pub. L. 89-754, title X, §1012, Nov. 3, 1966, 80 Stat. 1288; Pub. L. 102-54, §13(d)(3), June 13, 1991, 105 Stat. 275.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Servicemen's Readjustment Act of 1944, referred to in subsec. (a), is act June 22, 1944, ch. 268, 58 Stat. 284, which was classified generally to chapter 11C (§693 to 697g) of former Title 38, Pensions, Bonuses, and Veterans' Relief, and was repealed by section 14(87) of Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1273, the first section of which enacted Title 38, Veterans' Benefits. For distribution of sections 693 to 697g of former Title 38 to Title 38, Veterans' Benefits, see Table preceding section 101 of Title 38, Veterans' Benefits.

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1965, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1991—Subsecs. (a)(2)(B), (e). Pub. L. 102-54 substituted "Secretary of Veterans Affairs" for "Administrator of Veterans' Affairs" wherever appearing.

1966—Subsec. (a)(2)(A). Pub. L. 89-754 substituted "Secretary of Housing and Urban Development" for "Federal Housing Commissioner".

Subsec. (a)(3). Pub. L. 89-754 redefined as distressed mortgagor, describing in subpar. (A) such a person as an individual whose employment or military service at a military base or other Federal installation was terminated subsequent to Nov. 1, 1964, as the result of closing of such base or installation, formerly defined as an individual who was unemployed, although willing to work, as the result of the closing of a Federal installation, and providing in subpar. (B) for dwelling situated at or near the base or installation and substituting "payments due under such mortgage" for "payments of principal and/or interest under such mortgage".

Subsec. (b)(1). Pub. L. 89-754 substituted "payments due under such mortgage" for "payments of principal and/or interest under such mortgage".

Subsec. (b)(2). Pub. L. 89-754 struck out subpar. (A) providing for determination that mortgagor is not in default with respect to any condition or covenant of the mortgage other than requiring the payment of installments of principal and/or interest under the mortgage and incorporated without subpar. designation provision for determination that such action is necessary to avoid foreclosure, formerly providing in subpar. (B) that such action was the only available means of avoiding foreclosure of such mortgage.

Subsec. (b)(3). Pub. L. 89-754 substituted in introductory text "the Federal mortgage agency, the mortgagor, and the mortgagee shall enter into a binding agreement" for "the Federal mortgage agency shall

require such mortgagor to enter into a binding agreement", designated existing provisions as subpar. (A), provided for payment of interest at rate not to exceed the rate provided in the mortgage, and added subpar. (B).

Subsec. (b)(4). Pub. L. 89-754 increased the period from one to two years in subpar. (A), substituted subpar. (B) provision for expiration date as thirty days after date on which mortgagor gives notice in writing to Federal mortgage agency of ability to resume obligation to make payments due under his mortgage for former provision as the date thirty days after date on which mortgagor to whom certificate was issued ceased to be a distressed mortgagor, now incorporated in subpar. (C), redesignated former subpar. (B) as (C), providing for a determination by the Federal mortgage agency, and struck out former subpar. (C) provision for date on which mortgagor becomes in default with respect to any condition or covenant in his mortgage other than that requiring the payment by him of installments of principal and/or interest under the mortgage.

Subsec. (c)(1). Pub. L. 89-754 substituted "payments due under the mortgage" for "payments of principal, and, if so specified in the certificate, of interest, under the mortgage".

Subsec. (c)(2). Pub. L. 89-754 substituted "may include" for "shall include" and "unpaid payments under such mortgage" for "unpaid principal and interest charges which had accrued and subsequent to the date on which such mortgagor became a distressed mortgagor as defined in subsection (a) of this section", and authorized payments of reasonable allowance for foreclosure costs actually paid by the mortgagee if a foreclosure action was dismissed as result of issuance of moratorium certificate and taxes and insurance premiums on mortgaged property as deemed necessary when not provided for through payments to a tax and insurance account held by the interested mortgagee.

Subsec. (c)(3). Pub. L. 89-754 substituted "payments due under the mortgage" for "payments of principal, and, if so specified in the certificate, of interest, under the mortgage".

Subsec. (d). Pub. L. 89-754 reenacted subsec. (d) without change.

Subsec. (e). Pub. L. 89-754 substituted "Secretary of Housing and Urban Development" for "Federal Housing Commissioner" in two places and made fund available for payment of administrative expenses incurred in connection with assistance to distressed mortgagors and unavailable for payment of administrative expenses of the Administrator of Veterans' Affairs.

§1735h. Repealed. Pub. L. 89-754, title X, §1013(j), Nov. 3, 1966, 80 Stat. 1292

Section, Pub. L. 89-117, title I, §108(a)-(d), (f), Aug. 10, 1965, 79 Stat. 460, 461, provided for acquisition of property at or near military bases which have been ordered to be closed. See section 3374 of Title 42, The Public Health and Welfare.

SUBCHAPTER VI—WAR HOUSING INSURANCE

EDITORIAL NOTES

AMENDMENTS

1942—Act May 26, 1942, ch. 319, §14(a), 56 Stat. 305, amended subchapter heading, substituting "WAR" for "DEFENSE".

§1736. Definitions

As used in this subchapter—

(a) The term "mortgage" means a first mortgage on real estate, in fee simple, or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable; or (2) under a lease having a period of not less than fifty years to run from the date the mortgage was executed; and the term "first mortgage" means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

(b) The term "mortgagee" includes the original lender under a mortgage, and his successors and assigns approved by the Secretary; and the term "mortgagor" includes the original borrower under a

mortgage and his successors and assigns.

(c) The term "maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

(d) The term "State" includes the several States, and Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.

(June 27, 1934, ch. 847, title VI, §601, as added Mar. 28, 1941, ch. 31, §1, 55 Stat. 55; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; July 14, 1952, ch. 723, §10(a)(2), 66 Stat. 603; Pub. L. 86-70, §10(a), June 25, 1959, 73 Stat. 142; Pub. L. 86-624, §6, July 12, 1960, 74 Stat. 411; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Subsec. (b). Pub. L. 90-19 substituted "Secretary" for "Commissioner".

1960—Subsec. (d). Pub. L. 88-624 struck out "Hawaii," before "Puerto Rico".

1959—Subsec. (d). Pub. L. 86-70 struck out "Alaska," before "Hawaii".

1952—Subsec. (d). Act July 14, 1952, inserted "Guam," after "District of Columbia,".

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SEPARABILITY

Act Mar. 28, 1941, ch. 31, §9, 55 Stat. 62, provided that: "If any provision of this Act [enacting sections 1736 to 1742 of this title, and section 609k of Title 15, Commerce and Trade, and amending sections 371, 1430, 1702, 1706, 1707, 1713, and 1715, 1716, 1717 of this title] or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby."

§1737. Repealed. Pub. L. 89-117, title XI, §1108(aa), Aug. 10, 1965, 79 Stat. 507

Section, act June 27, 1934, ch. 847, title VI, §602, as added Mar. 28, 1941, ch. 31, §1, 55 Stat. 55; amended May 26, 1942, ch. 319, §14(b) 56 Stat. 305; June 30, 1947, ch. 166, title II, §206(l), 61 Stat. 208; 1947 Reorg. Plan No. 3, §3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59, created the War Housing Insurance Fund.

For establishment of the General Insurance Fund, see section 1735c of this title.

§1738. Insurance of mortgages

(a) Relief of housing shortage; eligibility; limitations on time and amount

In order to assist in relieving the acute shortage of housing which now exists and to increase the supply of housing accommodations available to veterans of World War II at prices within their reasonable ability to pay, the Secretary is authorized, upon application by the mortgagee, to insure as hereinafter provided any mortgage which is eligible for insurance as hereinafter provided, and, upon such terms as the Secretary may prescribe, to make commitments for the insuring of such mortgages prior to the date of their execution or disbursement thereon: *Provided*, That the aggregate amount of principal obligations of all mortgages insured under this subchapter shall not exceed \$6,150,000,000 except that with the approval of the President such aggregate amount may be increased to not to exceed \$6,650,000,000: *Provided further*, That no mortgage shall be insured under this section after April 30, 1948, except (A) pursuant to a commitment to insure issued on or before April 30, 1948, or (B) a mortgage given to refinance an existing mortgage insured under this section and which does not exceed the original principal amount and unexpired term of such existing mortgage, and no mortgage shall be insured under section 1743 of this title after March 1, 1950, except (i) pursuant to

a commitment to insure issued on or before March 1, 1950, or (ii) a mortgage given to refinance an existing mortgage insured under section 1743 of this title and which does not exceed the original principal amount and unexpired term of such existing mortgage: *Provided further*, That no mortgage shall be insured under section 1743 of this title unless the mortgagor certifies under oath that in selecting tenants for the property covered by the mortgage he will not discriminate against any family by reason of the fact that there are children in the family, and that he will not sell the property while the insurance is in effect unless the purchaser so certifies, such certifications to be filed with the Secretary; and violation of any such certification shall be a misdemeanor punishable by a fine of not to exceed \$500: *And provided further*, That the Secretary shall, in his discretion, have power to require the availability for rental purposes of properties covered by mortgages insured under this subchapter, in such instances and for such periods of time as he may prescribe.

Notwithstanding the first proviso of this subsection, mortgages may be insured under sections 1744 and 1746 of this title if the aggregate amounts of principal obligations of mortgages insured under said sections plus the aggregate amount of principal obligations of mortgages insured under section 1745 of this title do not exceed the limitation contained in said section 1745 upon the aggregate amount of principal obligations of mortgages insured pursuant to said section.

Notwithstanding the second proviso of this subsection, mortgages otherwise eligible for insurance under section 1743 of this title may be hereafter insured thereunder if the application for such insurance was received by the Department of Housing and Urban Development on or before March 1, 1950, and for such purpose the aggregate amount of principal obligations authorized to be insured under section 1743 of this title is increased by not to exceed \$500,000,000.

(b) Eligibility requirements

To be eligible for insurance under this section a mortgage shall—

(1) have been made to, and be held by, a mortgagee approved by the Secretary as responsible and able to service the mortgage properly;

(2) involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed 90 per centum of the Secretary's estimate of the value (as of the date the mortgage is accepted for insurance), except that as to applications received by the Secretary on or before March 31, 1948, the mortgage may involve a principal obligation in an amount not to exceed 90 per centum of the Secretary's estimate of the necessary current cost (including the land and such initial service charges and such appraisal, inspection, and other fees as the Secretary shall approve); of a property, urban, suburban, or rural, upon which there is located a dwelling designed principally for residential use for not more than four families in the aggregate, which is approved for mortgage insurance prior to the beginning of construction. The principal obligation of such mortgage shall in no event, however, exceed—

- (A) \$5,400 if such dwelling is designed for a single-family residence, or
- (B) \$7,500 if such dwelling is designed for a two-family residence, or
- (C) \$9,500 if such dwelling is designed for a three-family residence, or
- (D) \$12,000 if such dwelling is designed for a four-family residence:

Provided, That the Secretary may, if he finds that at any time or in any particular geographical area it is not feasible, within such limitations of maximum mortgage amounts, to construct dwellings without sacrifice of sound standards of construction, design, or livability, prescribe by regulation or otherwise higher maximum mortgage amounts not to exceed—

- (A) \$8,100 if such dwelling is designed for a single-family residence, or
- (B) \$12,500 if such dwelling is designed for a two-family residence, or
- (C) \$15,750 if such dwelling is designed for a three-family residence, or
- (D) \$18,000 if such dwelling is designed for a four-family residence.

(3) have a maturity satisfactory to the Secretary but not to exceed twenty-five years from the date of the insurance of the mortgage;

(4) contain complete amortization provisions satisfactory to the Secretary;

(5) bear interest (exclusive of premium charges for insurance) at not to exceed 4 per centum per annum on the amount of the principal obligation outstanding at any time;

(6) provide, in a manner satisfactory to the Secretary, for the application of the mortgagor's periodic payments (exclusive of the amount allocated to interest and to the premium charge which is required for mortgage insurance as herein provided) to amortization of the principal of the mortgage; and

(7) contain such terms and provisions with respect to insurance, repairs, alterations, payment of taxes, default reserves, delinquency charges, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters as the Secretary may in his discretion prescribe.

(c) Premium charges; payments; acceptance for insurance; preferences; adjustments and refunds

The Secretary is authorized to fix a premium charge for the insurance of mortgages under this subchapter but in the case of any mortgage such charge shall not be less than an amount equivalent to one-half of 1 per centum per annum nor more than an amount equivalent to 1½ per centum per annum of the amount of the principal obligation of the mortgage outstanding at any time, without taking into account delinquent payments or prepayments. Such premium charges shall be payable by the mortgagee, either in cash, or in debentures issued by the Secretary under this subchapter at par plus accrued interest, in such manner as may be prescribed by the Secretary: *Provided*, That the Secretary may require the payment of one or more such premium charges at the time the mortgage is insured, at such discount rate as he may prescribe not in excess of the interest rate specified in the mortgage. If the Secretary finds, upon the presentation of a mortgage for insurance and the tender of the initial premium charge and such other charges as the Secretary may require, that the mortgage complies with the provisions of this subchapter, such mortgage may be accepted for insurance by endorsement or otherwise as the Secretary may prescribe; but no mortgage shall be accepted for insurance under this subchapter unless the Secretary finds that the project with respect to which the mortgage is executed is an acceptable risk in view of the shortage of housing referred to in this section. In the event that the principal obligation of any mortgage accepted for insurance under this subchapter is paid in full prior to the maturity date, the Secretary is further authorized in his discretion to require the payment by the mortgagee of an adjusted premium charge in such amount as the Secretary determines to be equitable, but not in excess of the aggregate amount of the premium charges that the mortgagee would otherwise have been required to pay if the mortgage had continued to be insured under this subchapter until such maturity date; and in the event that the principal obligation is paid in full as herein set forth, the Secretary is authorized to refund to the mortgagee for the account of the mortgagor all, or such portion as he shall determine to be equitable, of the current unearned premium charges theretofore paid. The Secretary shall prescribe such procedures as in his judgment are necessary to secure to veterans of World War II, and their immediate families, and to hardship cases as defined by the Secretary, preference or priority of opportunity to purchase or rent properties covered by mortgages insured under this subchapter.

(d) Conclusiveness of insurance contract as to eligibility

Any contract of insurance heretofore or hereafter executed by the Secretary under this subchapter shall be conclusive evidence of the eligibility of the mortgage for insurance, and the validity of any contract of insurance so executed shall be incontestable in the hands of an approved mortgagee from the date of the execution of such contract, except for fraud or misrepresentation on the part of such approved mortgagee.

(June 27, 1934, ch. 847, title VI, §603, as added Mar. 28, 1941, ch. 31, §1, 55 Stat. 56; amended Sept. 2, 1941, ch. 410, 55, Stat. 686; May 26, 1942, ch. 319, §§1-4, 14(b), 56 Stat. 301, 305; Mar. 23, 1943, ch. 21, §1, 57 Stat. 42; Oct. 15, 1943, ch. 259, §1, 57 Stat. 571; June 30, 1944, ch. 334, 58 Stat. 648; Mar. 31, 1945, ch. 48, §1, 59 Stat. 47; May 22, 1946, ch. 268, §10(a)-(d), 60 Stat. 212, 213; June 30, 1947, ch. 163, title I, §2, 61 Stat. 193; Aug. 5, 1947, ch. 495, §1, 61 Stat. 777; Dec. 27, 1947, ch. 525, §1, 61 Stat. 945; Mar. 31, 1948, ch. 165, §1(a)-(c), 62 Stat. 101; Aug. 10, 1948, ch. 832, title I, §101(a), (k)(2), 62 Stat. 1268, 1273; Mar. 30, 1949, ch. 42, title III, §304, 63 Stat. 29; July 15, 1949, ch. 338, title II, §201(3), 63 Stat. 421; Aug. 30, 1949, ch. 524, 63 Stat. 681; Oct. 25,

1949, ch. 729, §1(4), 63 Stat. 905; Apr. 20, 1950, ch. 94, title I, §§119, 122, 64 Stat. 57, 59; Pub. L. 90-19, §1(a)(1), (3), (4), (n), May 25, 1967, 81 Stat. 17, 19.)

EDITORIAL NOTES

AMENDMENTS

1967—Pub. L. 90-19, §1(a)(3), substituted "Secretary" for "Commissioner" wherever appearing in subsecs. (a), (b)(1), (2), (b)(2)(D), (b)(3), (4), (6), (7), (c), and (d).

Subsec. (a). Pub. L. 90-19, §1(a)(1), (n), substituted "Department of Housing and Urban Development" for "Federal Housing Administration" and "by" for "in any field office of" after "received", in third par., respectively.

Subsec. (b)(2). Pub. L. 90-19, §1(a)(4), substituted "Secretary's" for "Commissioner's" wherever appearing.

1950—Act Apr. 20, 1950, §122, substituted "Commissioner" for "Administrator" wherever appearing.

Subsec. (a). Act Apr. 20, 1950, §119, added last two pars.

1949—Subsec. (a). Joint Res. Oct. 25, 1949, substituted "\$6,150,000,000" for "\$5,750,000,000" and "\$6,650,000,000" for "\$6,150,000,000" in first proviso, and extended section to "March 1, 1950" by substituting the same for "October 31, 1949" in second proviso.

Act Aug. 30, 1949, extended section from "August 31, 1949" to "October 31, 1949".

Act July 15, 1949, extended section from "June 30, 1949" to "August 31, 1949".

Act Mar. 30, 1949, extended section from "March 30, 1949" to "June 30, 1949".

1948—Subsec. (a). Act Aug. 10, 1948, struck out "\$5,350,000,000" and inserted in lieu thereof "\$5,750,000,000 except that with the approval of the President such aggregate amount may be increased to not to exceed \$6,150,000,000", and struck out the second proviso and inserted in lieu thereof the present second proviso.

Act Mar. 31, 1948, increased the insurance authorization from \$4,950,000,000 to \$5,350,000,000, and provided for an extension from Mar. 31, 1948, to Apr. 30, 1948.

Subsec. (b)(2). Act Mar. 31, 1948, changed the emergency necessary current-cost formula to the appraised-value formula.

Subsec. (c). Act Aug. 10, 1948, struck out of next to last sentence "and a mortgage on the same property is accepted for insurance at the time of such payment".

1947—Subsec. (a). Act Dec. 27, 1947, increased the mortgage obligation from \$4,000,000,000 to \$4,450,000,000, and increased the amount of obligation from \$4,200,000,000 to \$4,950,000,000 with the President's approval.

Act Aug. 5, 1947, increased mortgage obligation from \$2,800,000,000 to \$4,000,000,000 and the amount of obligation from \$3,800,000,000 to \$4,200,000,000 with the President's approval.

Act June 30, 1947, extended limitation dates in second proviso from June 30, 1947, to Mar. 31, 1948.

1946—Subsec. (a). Act May 22, 1946, amended provisions generally, and among other changes, increased the mortgage obligation from \$1,800,000,000 to \$2,800,000,000, and extended the limitation date from July 1, 1946, to June 30, 1947.

Subsec. (b)(2). Act May 22, 1946, amended provisions generally, and among other changes, inserted proviso.

Subsec. (b)(5). Act May 22, 1946, lowered interest rate from 5 to 4 per centum and struck out provision allowing Administrator to increase the rate in certain cases.

Subsec. (c). Act May 22, 1946, substituted "shortage of housing" for "emergency" in third sentence and amended last sentence.

1945—Subsec. (a). Act Mar. 31, 1945, increased the limit of obligations from \$1,700,000,000 to \$1,800,000,000 and extended the limitation date from 1945 to 1946.

1944—Subsec. (a). Act June 30, 1944, substituted "\$1,700,000,000" for "\$1,600,000,000" and inserted the provision contained in cl. (B).

1943—Subsec. (a). Act Oct. 15, 1943, substituted "\$1,600,000,000" for "\$1,200,000,000" and "July 1, 1945" for "July 1, 1944".

Act Mar. 23, 1943, substituted "\$1,200,000,000" for "\$800,000,000" and "July 1, 1944" for "July 1, 1943".

1942—Act May 21, 1942, §14(b), substituted "War" and "war" for "Defense" and "defense" wherever occurring.

Subsec. (a). Act May 26, 1942, §1, substituted "\$800,000,000" for "\$300,000,000", among other changes.

Subsec. (b)(2). Act May 26, 1942, §2, increased limitations on amount of obligations.

Subsec. (b)(3). Act May 26, 1942, §3, substituted "twenty-five" for "twenty".

Subsec. (c). Act May 26, 1942, §4, amended subsec. (c).

1941—Subsec. (a). Act Sept. 2, 1941, substituted "\$300,000,000" for "\$100,000,000".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act July 15, 1949, effective June 30, 1949, see section 202 of that act, set out as a note under section 1703 of this title.

INFLATION SAFEGUARDS

Act Dec. 27, 1947, ch. 525, §2, 61 Stat. 945, provided: "Title VI of the National Housing Act, as amended [this subchapter], shall be employed to assist in maintaining a high volume of new residential construction without supporting unnecessary or artificial costs. In estimating necessary current cost for the purposes of said title, the Federal Housing Commissioner shall therefore use every feasible means to assure that such estimates will approximate as closely as possible the actual costs of efficient building operations."

§1739. Mortgage insurance benefits

(a) Conveyance and assignment by mortgagee after foreclosure; debentures and certificates of claim; cost of foreclosure

In any case in which the mortgagee under a mortgage insured under section 1738 of this title shall have foreclosed and taken possession of the mortgaged property, in accordance with regulations of, and within a period to be determined by, the Secretary, or shall, with the consent of the Secretary, have otherwise acquired such property from the mortgagor after default, the mortgagee shall be entitled to receive the benefit of the insurance as hereinafter provided, upon (1) the prompt conveyance to the Secretary of title to the property which meets the requirements of rules and regulations of the Secretary in force at the time the mortgage was insured, and which is evidenced in the manner prescribed by such rules and regulations; and (2) the assignment to him of all claims of the mortgagee against the mortgagor or others, arising out of the mortgage transaction or foreclosure proceedings, except such claims as may have been released with the consent of the Secretary. Upon such conveyance and assignment the obligation of the mortgagee to pay the premium charges for insurance shall cease and the Secretary shall, subject to the cash adjustment hereinafter provided, issue to the mortgagee debentures having a total face value equal to the value of the mortgage and a certificate of claim, as hereinafter provided. For the purposes of this subsection, the value of the mortgage shall be determined, in accordance with rules and regulations prescribed by the Secretary, by adding to the amount of the original principal obligation of the mortgage which was unpaid on the date of the institution of foreclosure proceedings, or on the date of the acquisition of the property after default other than by foreclosure, the amount of all payments which have been made by the mortgagee for taxes, ground rents, and water rates, which are liens prior to the mortgage, special assessments which are noted on the application for insurance or which become liens after the insurance of the mortgage, insurance of the mortgaged property, and any mortgage insurance premiums and by deducting from such total amount any amount received on account of the mortgage after either of such dates, and any amount received as rent or other income from the property, less reasonable expenses incurred in handling the property, after either of such dates: *Provided*, That with respect to mortgages which are foreclosed before there shall have been paid on account of the principal obligation of the mortgage a sum equal to 10 per centum of the appraised value of the property as of the date the mortgage was accepted for insurance, there may be included in the debentures issued by the Secretary, on account of the cost of foreclosure (or of acquiring the property by other means) actually paid by the mortgagee and approved by the Secretary an amount—

(1) not in excess of 2 per centum of the unpaid principal of the mortgage as of the date of the institution of foreclosure proceedings and not in excess of \$75; or

(2) not in excess of two-thirds of such cost, whichever is the greater: *Provided further*, That with respect to any debentures issued on or after September 2, 1964, the Secretary may, with the

consent of the mortgagee (in lieu of issuing a certificate of claim as provided in subsection (e)), include in debentures, in addition to amounts otherwise allowed for such costs, an amount not to exceed one-third of the total foreclosure, acquisition, and conveyance costs actually paid by the mortgagee and approved by the Secretary, but in no event may the total allowance for such costs exceed the amount actually paid by the mortgagee: *And provided further*, That with respect to mortgages to which the provisions of sections 302 and 306 of the Soldiers' and Sailors' Civil Relief Act of 1940,¹ as now or hereafter amended, apply and which are insured under section 1738 of this title and subject to such regulations and conditions as the Secretary may prescribe, there shall be included in the debentures an amount which the Secretary finds to be sufficient to compensate the mortgagee for any loss which it may have sustained on account of interest on debentures and the payment of insurance premiums by reason of its having postponed the institution of foreclosure proceedings or the acquisition of the property by other means during any part or all of the period of such military service and three months thereafter.

(b) Consent to release of mortgagee or property

The Secretary may at any time, under such terms and conditions as he may prescribe, consent to the release of the mortgagor from his liability under the mortgage or the credit instrument secured thereby, or consent to the release of parts of the mortgaged property from the lien of the mortgage: *Provided*, That the mortgagor shall not be released from such liability in any case until the Secretary is satisfied that the mortgaged property has been sold to a purchaser satisfactory to the Secretary, and that such purchaser has paid on account of the purchase price, in cash or its equivalent, at least 10 per centum of the Secretary's estimate of the value as of the date the mortgage is accepted for insurance.

(c) Debentures; form and denomination

Debentures issued under this subchapter shall be in such form and denominations in multiples of \$50, shall be subject to such terms and conditions, and shall include such provisions for redemption, if any, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury, and may be in coupon or registered form. Any difference between the value of the mortgage determined as herein provided and the aggregate face value of the debentures issued, not to exceed \$350, shall be adjusted by the payment of cash by the Secretary to the mortgagee from the General Insurance Fund.

(d) Debentures; execution; negotiability; terms; tax exemptions

The debenture issued under this section to any mortgagee shall be executed in the name of the General Insurance Fund as obligor, shall be signed by the Secretary by either his written or engraved signature, and shall be negotiable. All such debentures shall be dated as of the date foreclosure proceedings were instituted, or the property was otherwise acquired by the mortgagee after default, except that debentures issued pursuant to claims for insurance filed on or after September 2, 1964, shall be dated as of the date of default or as of such later date as the Secretary, in his discretion, may establish by regulation. The debentures shall bear interest from such date at a rate determined by the Secretary, with the approval of the Secretary of the Treasury, at the time the mortgage was accepted for insurance, but not to exceed 3 per centum per annum, payable semiannually on the 1st day of January and the 1st day of July of each year. Such debentures as are issued in exchange for property covered by mortgages accepted for insurance under this section on or after May 26, 1942, shall mature ten years after the date thereof. Such debentures as are issued in exchange for property covered by mortgages accepted for insurance under this section prior to May 26, 1942, shall mature three years after the 1st day of July following the maturity date of the mortgage on the property in exchange for which the debentures were issued: *Provided*, That any mortgagee entitled to receive such debentures may elect to receive in lieu thereof debentures which shall mature ten years after the date thereof. Such debentures shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by any Territory, dependency, or possession of the United States, or by the District of Columbia, or by any State, county, municipality, or local taxing authority, and shall be paid out of the General Insurance Fund, which shall be primarily liable therefor, and they shall be fully and unconditionally guaranteed as to principal and interest by the United States, and such guaranty shall be expressed on the face of the

debentures. In the event that the General Insurance Fund fails to pay upon demand, when due, the principal of or interest on any debentures issued under this subchapter, the Secretary of the Treasury shall pay to the holders the amount thereof which is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such debentures.

(e) Certificate of claim

The certificate of claim issued by the Secretary to any mortgagee shall be for an amount which the Secretary determines to be sufficient, when added to the face value of the debentures issued and the cash adjustment paid to the mortgagee, to equal the amount which the mortgagee would have received if, at the time of the conveyance to the Secretary of the property covered by the mortgage, the mortgagor had redeemed the property and paid in full all obligations under the mortgage and a reasonable amount for necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings, or the acquisition of the mortgaged property otherwise, and the conveyance thereof to the Secretary. Each such certificate of claim shall provide that there shall accrue to the holder of such certificate with respect to the face amount of such certificate, an increment at the rate of 3 per centum per annum which shall not be compounded. The amount to which the holder of any such certificate shall be entitled shall be determined as provided in subsection (f).

(f) Division of excess proceeds

(1) If, after deducting (in such manner and amount as the Secretary shall determine to be equitable and in accordance with sound accounting practice) the expenses incurred by the Secretary, the net amount realized from any property conveyed to the Secretary under this section and the claims assigned therewith exceed the face value of the debentures issued and the cash paid in exchange for such property plus all interest paid on such debentures, such excess shall be divided as follows:

(i) If such excess is greater than the total amount payable under the certificate of claim issued in connection with such property, the Secretary shall pay to the holder of such certificate the full amount so payable, and any excess remaining thereafter shall be paid to the mortgagor of such property: *Provided*, That on and after September 2, 1964, any excess remaining after payment to the holder of the full amount of the certificate of claim shall be retained by the Secretary and credited to the General Insurance Fund; and

(ii) If such excess is equal to or less than the total amount payable under such certificate of claim, the Secretary shall pay to the holder of such certificate the full amount of such excess.

(2) Notwithstanding any other provisions of this section, the Secretary is authorized, with the consent of the mortgagee or mortgagor, as the case may be, to effect the settlement of certificates of claim and refunds at any time after the sale or transfer of title to the property conveyed to the Secretary under this section and without awaiting the final liquidation of such property for the purpose of determining the net amount to be realized therefrom: *Provided*, That the settlement authority created by the Housing Amendments of 1955 shall be terminated with respect to any certificate of claim outstanding as of September 2, 1964.

(3) With the consent of the holder thereof, the Secretary is authorized to settle, without awaiting the final liquidation of the Secretary's interest in the property, any certificate of claim issued pursuant to subsection (e), with respect to which a settlement had not been effected prior to September 2, 1964, by making payment in cash to the holder thereof of such amount, not exceeding the face amount of the certificate of claim, together with the accrued interest increment thereon, as the Secretary may consider appropriate: *Provided*, That in any case where the certificate of claim is settled in accordance with the provisions of this paragraph, any amounts realized after September 2, 1964, in the liquidation of the Secretary's interest in the property, shall be retained by the Secretary and credited to the applicable insurance fund.

(g) Handling and disposal of property; settlement of claims

Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, the Secretary shall have power to deal with, complete, rent,

renovate, modernize, insure, make contracts or establish suitable agencies for the management of, or sell for cash or credit, in his discretion, any properties conveyed to him in exchange for debentures and certificates of claim as provided in this subchapter; and notwithstanding any other provision of law, the Secretary shall also have power to pursue to final collection, by way of compromise or otherwise, all claims against mortgagors assigned by mortgagees to the Secretary as provided in this subchapter, except that no suit or action shall be commenced by the Secretary against any such mortgagor on account of any claim so assigned with respect to mortgages insured under section 1738 of this title unless such suit or action is commenced within six months after the assignment of such claim to the Secretary, or within six months after the last payment was made to the Secretary with respect to the claim so assigned, whichever is later: *Provided*, That section 6101 of title 41 shall not be construed to apply to any contract for hazard insurance, or to any purchase or contract for services or supplies on account of such property if the amount thereof does not exceed \$1,000. The power to convey and to execute in the name of the Secretary deeds of conveyances, deeds of release, assignments, and satisfactions of mortgages, and any other written instrument relating to real property or any interest therein heretofore or hereafter acquired by the Secretary pursuant to the provisions of this chapter, may be exercised by an officer appointed by him, without the execution of any express delegation of power or power of attorney: *Provided*, That nothing in this subsection shall be construed to prevent the Secretary from delegating such power by order or by power of attorney in his discretion, to any officer, agent, or employee he may appoint.

(h) Mortgagor's or mortgagee's interest in property or claim conveyed

No mortgagee or mortgagor shall have and no certificate of claim shall be construed to give to any mortgagee or mortgagor, any right or interest in any property conveyed to the Secretary or in any claim assigned to him; nor shall the Secretary owe any duty to any mortgagee or mortgagor with respect to the handling or disposal of any such property or the collection of any such claim.

(June 27, 1934, ch. 847, title VI, §604, as added Mar. 28, 1941, ch. 31, §1, 55 Stat. 58; amended May 26, 1942, ch. 319, §§5–8, 14(b), 56 Stat. 302, 305; Oct. 14, 1943, ch. 258, §2, 57 Stat. 570; May 22, 1946, ch. 268, §10(e), 60 Stat. 213; Mar. 31, 1948, ch. 165, §1(d), 62 Stat. 101; Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Aug. 11, 1955, ch. 783, title I, §104, 69 Stat. 637; Pub. L. 88–560, title I, §105(d), (f), Sept. 2, 1964, 78 Stat. 772, 774; Pub. L. 89–117, title XI, §1108(p), Aug. 10, 1965, 79 Stat. 506; Pub. L. 90–19, §1(a)(3), (4), (d), May 25, 1967, 81 Stat. 17, 18.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

Sections 302 and 306 of the Soldiers' and Sailors' Civil Relief Act of 1940, referred to in subsec. (a)(2), are sections 302 and 306, respectively, of act Oct. 17, 1940, ch. 888, 54 Stat. 1178. That Act was amended generally and renamed the "Servicemembers Civil Relief Act" by Pub. L. 108–189, §1, Dec. 19, 2003, 117 Stat. 2835. As so amended, provisions of the Servicemembers Civil Relief Act that are similar to those contained in former sections 302 and 306 of act Oct. 17, 1940, are now contained in sections 3953 and 3959 of Title 50, War and National Defense.

The Housing Amendments of 1955, referred to in subsec. (f)(2), is act Aug. 11, 1955, ch. 783, 69 Stat. 635. For complete classification of this Act to the Code, see Short Title of 1955 Amendments note set out under section 1701 of this title and Tables.

CODIFICATION

In subsec. (g), "section 6101 of title 41" substituted for "section 3709 of the Revised Statutes" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1967—Pub. L. 90–19, §1(a)(3), substituted "Secretary" for "Commissioner" wherever appearing in subssecs. (a), (a)(2), (b) to (e), (f)(1), (f)(1)(i), (ii), (f)(2), (3), (g), and (h).

Pub. L. 90–19, §1(a)(4), substituted "Secretary's" for "Commissioner's" wherever appearing in subssecs. (b) and (f)(3) of this section.

Subsec. (g). Pub. L. 90-19, §1(d), substituted "an officer" for "the Commissioner or by any Assistant Commissioner".

1965—Subsecs. (c), (d), (f)(1)(i). Pub. L. 89-117 substituted "General Insurance Fund" for "War Housing Insurance Fund".

1964—Subsec. (a). Pub. L. 88-560, §105(d)(1), (f), inserted "*Provided further*, That with respect to any debentures issued on or after September 2, 1964, the Commissioner may, with the consent of the mortgagee (in lieu of issuing a certificate of claim as provided in subsection (e)), include in debentures, in addition to amounts otherwise allowed for such costs, an amount not to exceed one-third of the total foreclosure, acquisition, and conveyance costs actually paid by the mortgagee and approved by the Commissioner, but in no event may the total allowance for such costs exceed the amount actually paid by the mortgagee;" and struck out of third sentence "paid after either of such dates" after "mortgage insurance premiums", respectively.

Subsec. (c). Pub. L. 88-560, §105(d)(2), increased limitation on difference between value of mortgage and aggregate face value of debentures issued from \$50 to \$350.

Subsec. (d). Pub. L. 88-560, §105(d)(3), substituted in second sentence "default, except that debentures issued pursuant to claims for insurance filed on or after September 2, 1964, shall be dated as of the date of default or as of such later date as the Commissioner, in his discretion, may establish by regulation. The debentures" for "default, and".

Subsec. (f). Pub. L. 88-560, §105(d)(4)-(8), designated introductory par. as par. (1) and substituted "If, after deducting (in such manner and amount as the Commissioner shall determine to be equitable and in accordance with sound accounting practice) the expenses incurred by the Commissioner, the net amount realized from any property conveyed to the Commissioner under this section and the claims assigned therewith exceed the face value" for "If the net amount realized from any property conveyed to the Commissioner under this section and the claims assigned therewith, after deducting all expenses incurred by the Commissioner in handling, dealing with, and disposing of such property and in collecting such claims, exceeds the face value"; redesignated former par. (1) as (i) and substituted "property: *Provided*, That on and after September 2, 1964, any excess remaining after payment to the holder of the full amount of the certificate of claim shall be retained by the Commissioner and credited to the War Housing Insurance Fund; and" for "property; and"; redesignated former par. (2) as (ii); designated concluding par. as par. (2) and inserted proviso; and added par. (3), respectively.

1955—Subsec. (f). Act Aug. 11, 1955, authorized the Commissioner to effect the settlement of certificates of claim and refunds at any time after the sale or transfer of title to the property.

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator" wherever appearing.

1948—Subsec. (b). Act Mar. 31, 1948, substituted "value" for "necessary current cost".

1946—Subsec. (b). Act May 22, 1946, substituted "Administrator's estimate of the necessary current cost" after "10 per centum of the" for "appraised value of such property as determined by the Administrator".

1943—Subsec. (a). Act Oct. 14, 1943, inserted proviso dealing with losses due to nonforeclosure of mortgages to last sentence.

1942—Act May 26, 1942, §14(b), substituted "War" and "war" for "Defense" and "defense" wherever occurring.

Subsec. (a). Act May 26, 1942, §5, substituted "section 1738 of this title" for "this subchapter".

Subsec. (c). Act May 26, 1942, §6, substituted "subchapter" for "section".

Subsec. (d). Act May 26, 1942, §7, amended subsec. (d).

Subsec. (g). Act May 26, 1942, §8, substituted "subchapter" for "section" and inserted "with respect to mortgages insured under section 1738 of this title".

¹ [See References in Text note below.](#)

§1740. Repealed. Pub. L. 89-117, title XI, §1108(aa), Aug. 10, 1965, 79 Stat. 507

Section, act June 27, 1934, ch. 847, title VI, §605, as added Mar. 28, 1941, ch. 31, §1, 55 Stat. 61; amended May 26, 1942, ch. 319, §§9, 14(b), 56 Stat. 303, 305; 1947 Reorg. Plan No. 3, §3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59, provided for disposition and investment of surplus money in the War Housing Insurance Fund and for credit and payment of charges and fees.

§1741. State taxation of realty held by Secretary

Nothing in this subchapter shall be construed to exempt any real property acquired and held by the Secretary under this subchapter from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed.

(June 27, 1934, ch. 847, title VI, §606, as added Mar. 28, 1941, ch. 31, §1, 55 Stat. 61; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner".

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator".

§1742. Rules and regulations

The Secretary is authorized and directed to make such rules and regulations as may be necessary to carry out the provisions of this subchapter.

(June 27, 1934, ch. 847, title VI, §607, as added Mar. 28, 1941, ch. 31, §1, 55 Stat. 61; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner".

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator".

§1743. Insurance of mortgages

(a) Additional authorization; advances during construction

In addition to mortgages insured under section 1738 of this title, the Secretary is authorized to insure mortgages as defined in section 1736 of this title (including advances on such mortgages during construction) which are eligible for insurance as hereinafter provided.

(b) Eligibility requirements

To be eligible for insurance under this section a mortgage shall meet the following conditions:

(1) The mortgaged property shall be held by a mortgagor approved by the Secretary. The Secretary may, in his discretion, require such mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation. The Secretary may make such contracts with, and acquire for not to exceed \$100 stock or interest in any such mortgagor, as the Secretary may deem necessary to render effective such restriction or regulation. Such stock or interest shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

(2) Preference or priority of opportunity in the occupancy of the mortgaged property for veterans of World War II and their immediate families, and for hardship cases as defined by the Secretary, shall be provided under such regulations and procedures as may be prescribed by the Secretary.

(3) The mortgage shall involve a principal obligation in an amount—

(A) not to exceed \$5,000,000; and

(B) not to exceed 90 per centum of the amount which the Secretary estimates will be the necessary current cost of the completed property or project, including the land; the proposed physical improvements; utilities within the boundaries of the property or project; architects'

fees; taxes and interest accruing during construction; and other miscellaneous charges incidental to construction and approved by the Secretary: *Provided*, That such mortgage shall not in any event exceed the amount which the Secretary estimates will be the cost of the completed physical improvements on the property or project, exclusive of off-site public utilities and streets, and organization and legal expenses: *And provided further*, That the principal obligation of the mortgage shall not, in any event, exceed 90 per centum of the Secretary's estimate of the replacement cost of the property or project on the basis of the costs prevailing on December 31, 1947, for properties or projects of comparable quality in the locality where such property or project is to be located; and

(C) not to exceed \$8,100 per family unit for such part of such property or project as may be attributable to dwelling use.

The mortgage shall provide for complete amortization by periodic payment within such term as the Secretary shall prescribe, and shall bear interest (exclusive of premium charges for insurance) at not to exceed 4½ per centum per annum on the amount of the principal obligation outstanding at any time. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release.

(c) Payments; default; insurance benefits for mortgagee; value of mortgage; foreclosure of mortgage

The failure of the mortgagor to make any payment due under or provided to be paid by the terms of a mortgage insured under this section shall be considered a default under such mortgage, and if such default continues for a period of thirty days, the mortgagee shall be entitled to receive the benefits of the insurance as hereinafter provided, upon assignment, transfer, and delivery to the Secretary, within a period and in accordance with rules and regulations to be prescribed by the Secretary of (1) all rights and interests arising under the mortgage so in default; (2) all claims of the mortgagee against the mortgagors or others, arising out of the mortgage transaction; (3) all policies of title or other insurance or surety bonds or other guaranties and any and all claims thereunder; (4) any balance of the mortgage loan not advanced to the mortgagor; (5) any cash or property held by the mortgagee, or to which it is entitled, as deposits made for the account of the mortgagor and which have not been applied in reduction of the principal of the mortgage indebtedness; and (6) all records, documents, books, papers, and accounts relating to the mortgage transaction. Upon such assignment, transfer, and delivery the obligation of the mortgagee to pay the premium charges for mortgage insurance shall cease, and the Secretary shall, subject to the cash adjustment provided for in section 1739(c) of this title, issue to the mortgagee debentures having a total face value equal to the value of the mortgage, and a certificate of claim as hereinafter provided. For the purposes of this subsection, the value of the mortgage shall be determined in accordance with rules and regulations prescribed by the Secretary, by adding to the amount of the original principal obligation of the mortgage which was unpaid on the date of default, the amount the mortgagee may have paid for (A) taxes, special assessments, and water rates, which are liens prior to the mortgage; (B) insurance on the property; and (C) reasonable expenses for the completion and preservation of the property and any mortgage insurance premiums paid after default; less the sum of (i) an amount equivalent to 1 per centum of the unpaid amount of such principal obligation on the date of default; (ii) any amount received on account of the mortgage after such date; and (iii) any net income received by the mortgagee from the property after such date: *Provided*, That the mortgagee in the event of a default under the mortgage may, at its option and in accordance with regulations of, and in a period to be determined by the Secretary, proceed to foreclose on and obtain possession of or otherwise acquire such property from the mortgagor after default, and receive the benefits of the insurance as herein provided, upon (1) the prompt conveyance to the Secretary of title to the property which meets the requirements of the rules and regulations of the Secretary in force at the time the mortgage was insured, and which is evidenced in the manner prescribed by such rules and regulations; and (2) the assignment to him of all claims of the mortgagee against the mortgagor or others, arising out of the mortgage transaction or foreclosure proceedings, except such claims that may have been released

with the consent of the Secretary. Upon such conveyance and assignment, the obligation of the mortgagee to pay the premium charges for insurance shall cease and the mortgagee shall be entitled to receive the benefits of the insurance as provided in this subsection, except that in such event the 1 per centum deduction, set out in (i) hereof, shall not apply.

(d) Certificates of claim; amount

The certificate of claim issued by the Secretary to any mortgagee in connection with the insurance of mortgages under this section shall be for an amount determined in accordance with subsections (e) and (f) of section 1739 of this title, except that any amount remaining after the payment of the full amount under the certificate of claim shall be retained by the Secretary and credited to the General Insurance Fund.

(e) Debentures; date of issuance; interest

Debentures issued under this section shall be issued in accordance with the provisions of section 1739 (d) of this title except that such debentures shall be dated as of the date of default as determined in subsection (c) of this section, and shall bear interest from such date.

(f) Applicability of other provisions

The provisions of section 1713(k) of this title shall be applicable to mortgages insured under this section, except that, as applied to such mortgages, the reference therein to subsection (g) shall be construed to refer to subsection (c) of this section.

(g) Mortgages in connection with sale of property under subchapter I, II, VIII, or X

The Secretary shall also have power to insure under this subchapter or subchapter I, II, VIII, or X any mortgage executed in connection with the sale by him of any property acquired under any of such subchapters without regard to limitations upon eligibility, time, or aggregate amount contained therein.

(June 27, 1934, ch. 847, title VI, §608, as added May 26, 1942, ch. 319, §11, 56 Stat. 303; amended Mar. 31, 1945, ch. 48, §2, 59 Stat. 47; May 22, 1946, ch. 268, §10(f), (g), 60 Stat. 214; Aug. 10, 1948, ch. 832, title I, §101(b), (c), 62 Stat. 1269; Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Sept. 1, 1951, ch. 378, title II, §206, 65 Stat. 303; Pub. L. 89-117, title XI, §1108(q), Aug. 10, 1965, 79 Stat. 506; Pub. L. 90-19, §1(a)(3), (4), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Insurance Fund, referred to in subsecs. (b) and (d), was established by section 1735c of this title.

AMENDMENTS

1967—Pub. L. 90-19, §1(a)(3), substituted "Secretary" for "Commissioner" wherever appearing in subsecs. (a), (b)(1), (2), (3)(B), following (C), (c), (d), and (g).

Subsec. (b)(3)(B). Pub. L. 90-19, §1(a)(4), substituted "Secretary's" for "Commissioner's".

1965—Subsecs. (b)(1), (d). Pub. L. 89-117, §1108(q)(1), substituted "General Insurance Fund" for "War Housing Insurance Fund".

Subsec. (f). Pub. L. 89-117, §1108(q)(2), struck out provisions that, as applied to mortgages insured under this section, all references in section 1713(k) of this title to the "Housing Fund" shall be construed to refer to the "War Housing Insurance Fund".

1951—Subsec. (g). Act Sept. 1, 1951, inserted references to subchapters I, VIII and X of this chapter.

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator" wherever appearing.

1948—Subsec. (b). Act Aug. 10, 1948, inserted second proviso in par. (3)(B), substituted "\$8,100 per family unit" for "\$1,500 per room" and struck out proviso relating to authority to increase "\$1,500" to "\$1,800" per room.

1946—Subsec. (b)(2). Act May 22, 1946, substituted "Preference or priority of opportunity in the occupancy of the mortgaged property for veterans of World War II and their immediate families, and for hardship cases as defined by the Administrator, shall be provided under such regulations and procedures as

may be prescribed by the Administrator" for "The mortgaged property shall be designed for rent for residential use by warworkers".

Subsec. (b)(3). Act May 22, 1946, substituted "necessary current cost" after "estimates will be the" for "reasonable replacement cost" in par. (B), and increased mortgage per room from \$1,350 to \$1,500 and inserted proviso in par. (C).

Subsec. (c). Act May 22, 1946, inserted "and any mortgage insurance premiums paid after default" before semicolon in cl. (C) of third sentence.

1945—Subsec. (g). Act Mar. 31, 1945, inserted provisions empowering Commissioner to insure mortgages without regard to any limitations upon time or aggregate amount contained in this subchapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONSTRUCTION OF ACT MAY 26, 1942, WITH EX. ORD. NO. 9070, CONSOLIDATING NATIONAL HOUSING AGENCY

Act May 26, 1942, ch. 319, §12, 56 Stat. 305, provided that nothing contained in act May 26, 1942, was to be construed to supersede or be inconsistent with the provisions of Ex. Ord. No. 9070, Feb. 24, 1942.

§1744. Insurance of loans for manufacture of houses

(a) Relief of housing shortage; advances

In order to assist in relieving the acute shortage of housing which now exists and to promote the production of housing for veterans of World War II at moderate prices or rentals within their reasonable ability to pay, through the application of modern industrial processes, the Secretary is authorized to insure loans to finance the manufacture of housing (including advances on such loans) when such loans are eligible for insurance as hereinafter provided.

(b) Eligibility requirements

Loans for the manufacture of houses shall be eligible for insurance under this section if at the time of such insurance, the Secretary determines they meet the following conditions:

(1) The manufacturer shall establish that binding purchase contracts have been executed satisfactory to the Secretary providing for the purchase and delivery of the houses to be manufactured, which contracts shall provide for the payment of the purchase price at such time as may be agreed to by the parties thereto, but, in no event, shall the purchase price be payable on a date in excess of thirty days after the date of delivery of such houses, unless not less than 20 per centum of such purchase price is paid on or before the date of delivery and the lender has accepted and discounted or has agreed to accept and discount, pursuant to subsection (i) of this section a promissory note or notes, executed by the purchaser, representing the unpaid portion of such purchase price, in which event such unpaid portion of the purchase price may be payable on a date not in excess of one hundred and eighty days from the date of delivery of such houses;

(2) Such houses to be manufactured shall meet such requirements of sound quality, durability, livability, and safety as may be prescribed by the Secretary;

(3) The borrower shall establish to the satisfaction of the Secretary that he has or will have adequate plant facilities, sufficient capital funds, taking into account the loan applied for, and the experience necessary, to achieve the required production schedule;

(4) The loan shall involve a principal obligation in an amount not to exceed 90 per centum of the amount which the Secretary estimates will be the necessary current cost, exclusive of profit, of manufacturing the houses, which are the subject of such purchase contracts assigned to secure the loan, less any sums paid by the purchaser under said purchase contracts prior to the assignment thereof. The loan shall be secured by an assignment of the aforesaid purchase contracts and of all sums payable thereunder on or after the date of such assignment, with the right in the assignee to proceed against such security in case of default as provided in the assignment, which assignment shall be in such form and contain such terms and conditions, as may be prescribed by the Secretary; and the Secretary may require such other agreements and undertakings to further secure the loan as he may determine, including the right, in case of default or at any time necessary to

protect the lender, to compel delivery to the lender of any houses then owned and in the possession of the borrower. The loan shall have a maturity not in excess of one year from the date of the note, except that any such loan may be refinanced and extended in accordance with such terms and conditions as the Secretary may prescribe for an additional term not to exceed one year, and shall bear interest (exclusive of premium charges for insurance) at not to exceed 4 per centum per annum on the amount of the principal obligation outstanding at any time.

(c) Release of security

The Secretary may consent to the release of a part or parts of the property assigned or delivered as security for the loan, upon such terms and conditions as he may prescribe and the security documents may provide for such release.

(d) Payments; default; insurance benefits for mortgagee; prerequisites; value of mortgage

The failure of the borrower to make any payment due under or provided to be paid by the terms of a loan under this section, or the failure to perform any other covenant or obligation contained in any assignment, agreement, or undertaking executed by the borrower in connection with such loan, shall be considered as a default under this section, and if such default continues for a period of thirty days, the lender shall be entitled to receive the benefits of the insurance hereinafter provided upon assignment, transfer, and delivery to the Secretary within a period and in accordance with the rules and regulations prescribed by the Secretary of (1) all rights and interest arising with respect to the loan so in default; (2) all claims of the lender against the borrower or others arising out of the loan transaction; (3) any cash or property held by the lender, or to which it is entitled, as deposits made for the account of the borrower and which have not been applied in reduction of the principal of the loan; and (4) all records, documents, books, papers, and accounts relating to the loan transaction. Upon such assignment, transfer, and delivery, the Secretary shall, subject to the cash adjustment provided for in section 1739(c) of this title, issue to the lender debentures having a face value equal to the unpaid principal balance of the loan.

(e) Debentures; date of issuance; interest

Debentures issued under this section shall be issued in accordance with the provisions of section 1739(d) of this title except that such debentures shall be dated as of the date of default as determined in subsection (d) of this section and shall bear interest from such date.

(f) Applicability of other provisions

The provisions of sections 1713(k) and 1738(a) of this title shall be applicable to loans insured under this section, except that as applied to such loans (1) the reference in section 1713(k) of this title to "subsection (g)" shall be construed to refer to "subsection (d)" of this section; (2) the references in section 1713(k) of this title to insured mortgages shall be construed to refer to the assignment or other security for loans insured under this section; and (3) the references in section 1738(a) of this title to a mortgage or mortgages shall be construed to include a loan or loans under this section. The provisions of section 1738(d) of this title shall also be applicable to loans insured under this section and the reference in section 1738(d) of this title to a mortgage shall be construed to include a loan or loans with respect to which a contract of insurance is issued pursuant to this section.

(g) Disposal of evidence of debt, contract, claim, personal property, or security; collection or compromise of obligations and rights

Notwithstanding any other provision of law, the Secretary shall have the power to assign or sell at public or private sale, or otherwise dispose of, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with the payment of insurance heretofore or hereafter granted under this section, and to collect or compromise all obligations assigned to or held by him and all legal or equitable rights accruing to him in connection with the payment of such insurance until such time as such obligations may be referred to the Attorney General for suit or collection.

(h) Premium charges; amount; manner of payment; application fees

The Secretary shall fix a premium charge for the insurance granted under this section, but such premium charge shall not exceed an amount equivalent to 1 per centum of the original principal of such loan, and such premium charge shall be payable in advance by the financial institution and shall be paid at such time and in such manner as may be prescribed by the Secretary. In addition to the premium charge herein provided for, the Secretary is authorized to charge and collect such amounts as he may deem reasonable for examining and processing applications for the insurance of loans under this section, including such additional inspections as the Secretary may deem necessary.

(i) Insurance for accepting and discounting promissory notes; contract provisions; default in payments; remedies; debentures; interest; premium charges

(1) In addition to the insurance of the principal loan to finance the manufacture of housing, as provided in this section, and in order to provide short-term financing in the sale of houses to be delivered pursuant to the purchase contract or contracts assigned as security for such principal loan, the Secretary is authorized, under such terms and conditions and subject to such limitations as he may prescribe, to insure the lender against any losses it may sustain resulting from the acceptance and discount of a promissory note or notes executed by a purchaser of any such houses representing an unpaid portion of the purchase price of any such houses. No such promissory note or notes accepted and discounted by the lender pursuant to this subsection shall involve a principal obligation in excess of 80 per centum of the purchase price of the manufactured house or houses; have a maturity in excess of one hundred and eighty days from the date of the note or bear interest in excess of 4 per centum per annum; nor may the principal amount of such promissory notes, with respect to any individual principal loan, outstanding and unpaid at any one time, exceed in the aggregate an amount prescribed by the Secretary.

(2) The Secretary is authorized to include in any contract of insurance executed by him with respect to the insurance of a loan to finance the manufacture of houses, provisions to effectuate the insurance against any such losses under this subsection.

(3) The failure of the purchaser to make any payment due under or provided to be paid by the terms of any note or notes executed by the purchaser and accepted and discounted by the lender under the provisions of this subsection, shall be considered as a default under this subsection, and if such default continues for a period of thirty days, the lender shall be entitled to receive the benefits of the insurance, as provided in subsection (d) of this section except that debentures issued pursuant to this subsection shall have a face value equal to the unpaid principal balance of the loan plus interest at the rate of 4 per centum per annum from the date of default to the date the application is filed for the insurance benefits.

(4) Debentures issued with respect to the insurance granted under this subsection shall be issued in accordance with the provisions of section 1739(d) of this title except that such debentures shall be dated as of the date application is filed for the insurance benefits and shall bear interest from such date.

(5) The Secretary is authorized to fix a premium charge for the insurance granted under this subsection, in addition to the premium charge authorized under subsection (h) of this section. Such premium charge shall not exceed an amount equivalent to 1 per centum of the original principal of such promissory note or notes and shall be paid at such time and in such manner as may be prescribed by the Secretary.

(June 27, 1934, ch. 847, title VI, §609, as added June 30, 1947, ch. 163, title I, §3, 61 Stat. 193; amended Aug. 10, 1948, ch. 832, title I, §101(d), 62 Stat. 1269; Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Pub. L. 89-117, title XI, §1108(r), Aug. 10, 1965, 79 Stat. 506; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing in subsecs. (a), (b), (b)(1) to (4), (c), (d), (g), (h), and (i)(1), (2), (5).

1965—Subsec. (f). Pub. L. 89-117, struck out cl. (1) of the first sentence which provided that all references in section 1713(k) of this title to the "Housing Fund" shall be construed to refer to the "War Housing Insurance Fund" and redesignated cls. (2), (3), and (4) thereof as cls. (1), (2), and (3), respectively.

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator" wherever appearing.

1948—Subsec. (b). Act Aug. 10, 1948, §101(d)(1), (2), struck out par. (1) and inserted new par. (1), and struck out first two sentences of par. (4) and inserted two new sentences.

Subsec. (f). Act Aug. 10, 1948, §101(d)(3), inserted last sentence.

Subsec. (i). Act Aug. 10, 1948, §101(d)(4), added subsec. (i).

§1745. Insurance of mortgages on sales of Government housing; limits and conditions; Greenbelt towns; State housing

Notwithstanding any of the provisions of this subchapter, the Secretary is authorized, upon application by the mortgagee, to insure or to make commitments to insure under section 1738 or section 1743 of this title any mortgage executed in connection with the sale by the Government, or any agency or official thereof, of any housing acquired or constructed under Public Law 849, Seventy-sixth Congress, as amended; Public Law 781, Seventy-sixth Congress, as amended; or Public Laws 9, 73, or 353, Seventy-seventh Congress, as amended (including any property acquired, held or constructed in connection with such housing or to serve the inhabitants thereof), without regard to—

- (1) any limit as to the time when any mortgage may be insured under this subchapter;
- (2) any limit as to the aggregate amount of principal obligations of all mortgages insured under this subchapter, but the aggregate amount of principal obligations of all mortgages insured pursuant to this section shall not exceed \$750,000,000;
- (3) any requirement that the obligation be approved for mortgage insurance prior to the beginning of construction or that the construction be new construction;
- (4) any of the provisions of subsections (b)(2) or (b)(5) of section 1738 of this title or paragraphs (B) and (C) of the first sentence of section 1743(b)(3) of this title:

Provided, That such mortgage shall (1) otherwise be eligible for insurance under section 1738 or section 1743 of this title as the case may be, (2) have a maturity not exceeding twenty-five years from the date of insurance, (3) involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not exceeding 90 per centum of the appraised value of the mortgage property as determined by the Secretary, and (4) bear interest (exclusive of premium charges) at not to exceed 5 per centum per annum on the amount of the principal obligation outstanding at any time if such mortgage covers property on which there is located a dwelling designed principally for residential use for not more than four families in the aggregate, irrespective of whether such dwelling or dwellings have a party wall or are otherwise physically connected with another dwelling or dwellings, or bear interest at not to exceed 4½ per centum per annum on the amount of the principal obligation outstanding at any time if such mortgage covers property upon which there is located a dwelling or dwellings designed principally for residential use for more than four families.

The Secretary is further authorized to insure or to make commitments to insure in accordance with the provisions of this section any mortgage executed in connection with the sale by the Secretary, or by any public housing agency with the approval of the Secretary, of any housing (including any property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof) owned or financially assisted pursuant to the provisions of Public Law 671, Seventy-sixth Congress.

The Secretary is further authorized to insure or to make commitments to insure in accordance with the provisions of this section any mortgage executed in connection with the sale by the Government, or any agency or official thereof, of any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin, developed under the Emergency Relief Appropriation Act of 1935, or of any of the

village properties under the jurisdiction of the Tennessee Valley Authority, and any mortgage executed in connection with the first resale, within two years from the date of its acquisition from the Government, of any portion of a project or property of the character described in this section.

The Secretary is further authorized to insure or to make commitments to insure under section 1743 of this title in accordance with the provisions of this section any mortgage executed in connection with the sale by a State or municipality, or an agency, instrumentality, or body politic of either, of any permanent housing (including any property acquired, held, or constructed in connection therewith or to serve the inhabitants thereof), constructed by or on behalf of such State, municipality, agency, instrumentality or body politic, for the occupancy of veterans of World War II, their families, and others: *Provided*, That the principal obligation of any such mortgage does not exceed either 85 per centum of the appraised value of the mortgage property as determined by the Secretary or \$8,100 per family unit for such part of such property as may be attributable to dwelling use.

(June 27, 1934, ch. 847, title VI, §610, as added Aug. 5, 1947, ch. 495, §2, 61 Stat. 777; amended Aug. 10, 1948, ch. 832, title I, §101(e), 62 Stat. 1270; Apr. 20, 1950, ch. 94, title I, §§120, 122, 64 Stat. 58, 59; July 14, 1952, ch. 723, §14, 66 Stat. 605; Pub. L. 90-19, §1(a)(3), (o), May 25, 1967, 81 Stat. 17, 19.)

EDITORIAL NOTES

REFERENCES IN TEXT

Public Law 849, Seventy-sixth Congress, as amended, referred to in text, is act Oct. 14, 1940, ch. 862, 54 Stat. 1125, known as the "Lanham Public War Housing Act", which is classified generally to subchapters II to VII (§§1521 et seq., 1531 et seq., 1541 et seq., 1561 et seq., 1571 et seq., and 1581 et seq.) of chapter 9 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 42 and Tables.

Public Law 781, Seventy-sixth Congress, as amended, referred to in text, is the Second Supplemental National Defense Appropriation Act, 1941, act Sept. 9, 1940, ch. 717, 54 Stat. 872. Section 201 thereof appropriated \$100,000,000 to the President for allocation to the former "War" Department, and to the Navy Department, for the construction of housing necessary to the national defense program. This provision was not classified to the code.

Public Laws 9, 73, or 353, Seventy-seventh Congress, as amended, referred to in text, refer to the following acts, respectively: Public Law 9, Urgent Deficiency Appropriation Act, 1941, act Mar. 1, 1941, ch. 9, 55 Stat. 14; Public Law 73, Additional Urgent Deficiency Appropriation Act, 1941, act May 24, 1941, ch. 132, 55 Stat. 197; and Public Law 353, Third Supplemental National Defense Appropriation Act, 1942, act Dec. 17, 1941, ch. 591, 55 Stat. 810. These three acts appropriated a total of \$320,000,000 to the President for the purpose of providing housing necessary because of national defense activities and conditions arising out of World War II. These provisions were not classified to the code, although all three acts are cited in a "Prior Additional Appropriations" note under section 1523 of Title 42, The Public Health and Welfare.

Public Law 671, Seventy-sixth Congress, referred to in text, is act June 28, 1940, ch. 440, 54 Stat. 676. Provisions of the Act relating to housing are contained in title II, which is classified generally to subchapter I (§1501 et seq.) of chapter 9 of Title 42. For complete classification of this Act to the Code, see Tables.

The Emergency Relief Appropriation Act of 1935, referred to in text, is Joint Res. Apr. 8, 1935, ch. 48, 49 Stat. 115. It was a temporary legislation, and was formerly set out in a note in former chapter 16 of Title 15, Commerce and Trade. See notes under sections 721 to 728 of that title.

AMENDMENTS

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing, and "Secretary" for "Public Housing Administration" and "said Administration" in second par., respectively.

1952—Act July 14, 1952, inserted last par.

1950—Act Apr. 20, 1950, §120, made the insurance authority of this section applicable to sale by the Public Housing Administration, or any public housing agency, of any housing owned or financially assisted pursuant to the provisions of sections 1501 to 1505 of Title 42, The Public Health and Welfare, which provided for the construction of war housing out of prior authorizations for low-rent public housing on the condition that such housing would be converted to low-rent use after termination of its use for war housing.

Act Apr. 20, 1950, §122, substituted "Commissioner" for "Administrator" wherever appearing.

1948—Act Aug. 10, 1948, inserted last par. relating to the Greenbelt towns.

§1746. Insurance on mortgages on large-scale housing projects

(a) Additional authorization; encouragement of cost-reduction techniques; advances

In addition to mortgages insured under other sections of this subchapter, and in order to assist and encourage the application of cost-reduction techniques through large-scale modernized site construction of housing and the erection of houses produced by modern industrial processes, the Secretary is authorized to insure mortgages (including advances on such mortgages during construction) which are eligible for insurance as hereinafter provided.

(b) Eligibility requirements

To be eligible for insurance under this section, a mortgage shall—

(1) have been made to and be held by a mortgagee approved by the Secretary as responsible and able to service the mortgage properly;

(2) cover property, held by a mortgagor approved by the Secretary, upon which there is to be constructed or erected dwelling units for not less than twenty-five families consisting of a group of single-family dwellings approved by the Secretary for mortgage insurance prior to the beginning of construction: *Provided*, That during the course of construction there may be located upon the mortgaged property a plant for the fabrication or storage of such dwellings or sections or parts thereof, and the Secretary may consent to the removal or release of such plant from the lien of the mortgage upon such terms and conditions as he may approve;

(3) involve a principal obligation in an amount—

(A) not to exceed 85 per centum of the amount which the Secretary estimates will be the value of the completed property or project, exclusive of any plant of the character described in paragraph (2) of this subsection located thereon, and

(B) not to exceed a sum computed on the individual dwellings comprising the total project as follows: \$5,950 or 85 per centum of the valuation, whichever is the lower amount, with respect to each single-family dwelling: *Provided*, That if the Secretary finds that it is not feasible, within the dollar amount limitation in this clause on the principal obligation of the mortgage, to construct dwellings containing three or four bedrooms without sacrifice of sound standards of construction, design, and livability, he may increase such dollar amount limitation by not exceeding \$850 for each additional bedroom (as defined by the Secretary) in excess of two contained in each such dwelling if he finds that such dwelling meets sound standards of design and livability as a three-bedroom unit or a four-bedroom unit, as the case may be, but the amount computed under this clause for each such dwelling shall not exceed, in any event, \$7,650.

With respect to the insurance of advances during construction, the Secretary is authorized to approve advances by the mortgagee to cover the cost of materials delivered upon the mortgaged property and labor performed in the fabrication or erection thereof;

(4) provide for complete amortization by periodic payments within such term as the Secretary shall prescribe and shall bear interest (exclusive of premium charges for insurance) as not to exceed 4 per centum per annum on the amount of the principal obligation outstanding at any time: *Provided*, That the Secretary with the approval of the Secretary of the Treasury, may prescribe by regulation a higher maximum rate of interest, not exceeding 4½ per centum per annum on the amount of the principal obligation outstanding at any time, if he finds that the mortgage market demands it. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release, and the mortgage may provide that, upon the completion of the construction of the project, such mortgage may be replaced by individual mortgages covering each individual dwelling in the project. Each such individual mortgage may be insured under this section with the mortgagor being either the builder who constructed the dwellings or the owner and occupant of the dwelling at the time, and where the mortgagor is the owner and

occupant, may involve a principal obligation in such amount and have such maturity and interest rate as a mortgage eligible for insurance under section 1709(b)(2)(D) of this title.

(c) Preferences in occupancy for veterans and hardship cases

Preference or priority of opportunity in the occupancy of the mortgaged property for veterans of World War II and their immediate families and for hardship cases as defined by the Secretary shall be provided under such regulations and procedures as may be prescribed by the Secretary.

(d) Applicability of other provisions

The provisions of subsections (c), (d), (e), and (f) of section 1743 of this title shall be applicable to mortgages insured under this section covering a project described in subsection (b) of this section, and the provisions of subsections (a) to (f), and (h) of section 1739 of this title shall be applicable to the individual mortgages insured pursuant to subsection (b)(4) of this section covering individual dwellings in the project.

(June 27, 1934, ch. 847, title VI, §611, as added Aug. 10, 1948, ch. 832, title I, §101(f), 62 Stat. 1271; amended Apr. 20, 1950, ch. 94, title I, §§121, 122, 64 Stat. 58, 59; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1709(b)(2)(D) of this title, referred to in subsec. (b)(4), is a reference to subsec. (b)(2)(D) of section 1709 prior to amendment by section 104 of act Aug. 2, 1954, ch. 649, 68 Stat. 590.

AMENDMENTS

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing in subsections (a), (b), and (c).

1950—Act Apr. 20, 1950, §122, substituted "Commissioner" for "Administrator" wherever appearing.

Subsec. (b)(3). Act Apr. 20, 1950, §121(1), (2), substituted "85" for "80" in cl. (A), and inserted entirely new material in cl. (B).

Subsec. (b)(4). Act Apr. 20, 1950, §121(2), inserted ", and the mortgage may provide that, upon the completion of the construction of the project, such mortgage may be replaced by individual mortgages covering each individual dwelling in the project. Each such individual mortgage may be insured under this section with the mortgagor being either the builder who constructed the dwellings or the owner and occupant of the dwelling at the time, and where the mortgagor is the owner and occupant, may involve a principal obligation in such amount and have such maturity and interest rate as a mortgage eligible for insurance under section 1709(b)(2)(D) of this title".

Subsec. (d). Act Apr. 20, 1950, §121(3), inserted "covering a project described in subsection (b) of this section, and the provisions of subsections (a) to (f), and (h) of section 1739 of this title shall be applicable to the individual mortgages insured pursuant to subsection (b)(4) of this section covering individual dwellings in the project".

§1746a. Termination of commitment authority under this subchapter

Notwithstanding any other provision of this subchapter, no mortgage or loan shall be insured under any section of this subchapter after August 2, 1954 except pursuant to a commitment to insure issued on or before such date.

(June 27, 1934, ch. 847, title VI, §612, as added Aug. 2, 1954, ch. 649, title I, §127, 68 Stat. 609.)

**SUBCHAPTER VII—INSURANCE FOR INVESTMENTS IN RENTAL
HOUSING FOR FAMILIES OF MODERATE INCOME**

§1747. Purpose of subchapter; authorization; terms and conditions; expiration of insurance contract

The purpose of this subchapter is to supplement the existing systems of mortgage insurance for rental housing under this chapter by a special system of insurance designed to encourage equity investment in rental housing at rents within the capacity of families of moderate income. To effectuate this purpose, the Secretary is authorized, upon application by the investor, to insure as hereinafter provided, and, prior to the execution of insurance contracts and upon such terms as the Secretary shall prescribe, to make commitments to insure, the minimum annual amortization charge and an annual return on the outstanding investment of such investor in any project which is eligible for insurance as hereinafter provided in an amount (herein called the "insured annual return") equal to such rate of return, not exceeding $2\frac{3}{4}$ per centum per annum, on such outstanding investment as shall, after consultation with the Secretary of the Treasury, be fixed in the insurance contract or in the commitment to insure: *Provided*, That any insurance contract made pursuant to this subchapter shall expire as of the first day of the operating year for which the outstanding investment amounts to not more than 10 per centum of the established investment.

(June 27, 1934, ch. 847, title VII, §701, as added Aug. 10, 1948, ch. 832, title IV, §401, 62 Stat. 1276; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Pub. L. 86-372, title I, §118, Sept. 23, 1959, 73 Stat. 664; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing.

1959—Pub. L. 86-372 struck out provisions which limited the aggregate amount of contingent liabilities outstanding at any one time under insurance contracts and commitments to insure made pursuant to this subchapter to not more than \$1,000,000,000.

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SEPARABILITY

Act Aug. 10, 1948, ch. 832, title V, §505, 62 Stat. 1285, provided that: "Except as may be otherwise expressly provided in this Act [sections 1701c, 1701e to 1701g-3, 1702, 1703, 1709, 1710, 1713, 1716, 1738, 1743 to 1746 and 1747 to 1747l of this title, section 846 of former Title 31, Money and Finance, section 694 of former Title 38, Pensions, Bonuses, and Veterans' Relief, and section 1404a of Title 42, The Public Health and Welfare], all powers and authorities conferred by this Act shall be cumulative and additional to and not in derogation of any powers and authorities otherwise existing. Notwithstanding any other evidences of the intention of Congress, it is hereby declared to be the controlling intent of Congress that if any provisions of this Act, or the application thereof to any person or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act or its application to other persons and circumstances, but shall be confined in its operation to the provisions of this Act, or the application thereof to the persons and circumstances, directly involved in the controversy in which such judgment shall have been rendered."

INCONSISTENT PROVISIONS

Act Aug. 10, 1948, ch. 832, title V, §504, 62 Stat. 1285, provided that: "Insofar as the provisions of any other law are inconsistent with the provisions of this Act [sections 1701c, 1701e to 1701g-3, 1702, 1703, 1709, 1710, 1713, 1716, 1738, 1743 to 1746 and 1747 to 1747l of this title, section 846 of former Title 31, Money and Finance, section 694 of former Title 38, Pensions, Bonuses, and Veterans' Relief, and section 1404a of Title 42, The Public Health and Welfare], the provisions of this Act shall be controlling."

§1747a. Eligibility for insurance

(a) To be eligible for insurance under this subchapter, a project shall meet the following conditions:

(1) The Secretary shall be satisfied that there is, in the locality or metropolitan area of such project, a need for new rental dwellings at rents comparable to the rents proposed to be charged for the dwellings in such project.

(2) Such project shall be economically sound, and the dwellings in such project shall be acceptable to the Secretary as to quality, design, size, and type.

(b) Any insurance contract executed by the Secretary under this subchapter shall be conclusive evidence of the eligibility of the project and the investor for such insurance, and the validity of any insurance contract so executed shall be incontestable in the hands of an investor from the date of the execution of such contract, except for fraud or misrepresentation on the part of such investor.

(c) After completion of the project the investor must establish in a manner satisfactory to the Secretary that the project is free and clear of liens and that there are no other outstanding unpaid obligations contracted in connection with the construction of the project, except taxes and such other liens and obligations as may be approved or prescribed by the Secretary. Debentures issued by the investor which are payable out of net income from the project and from the benefits of the insurance contract shall not be construed as "unpaid obligations" as such term is used in this subsection.

(June 27, 1934, ch. 847, title VII, §702, as added Aug. 10, 1948, ch. 832, title IV, §401, 62 Stat. 1276; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Sept. 1, 1951, ch. 378, title VI, §609(a), 65 Stat. 316; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing in subsecs. (a)(1), (2), (b), and (c).

1951—Subsec. (c). Act Sept. 1, 1951, added subsec. (c).

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator" wherever appearing.

§1747b. Premium charges; fees for examination and inspection

(a) For insurance granted pursuant to this subchapter the Secretary shall fix and collect a premium charge in an amount not exceeding one-half of 1 per centum of the outstanding investment for the operating year for which such premium charge is payable without taking into account the excess earnings, if any, applied, in addition to the minimum annual amortization charge, to amortization of the outstanding investment. Such premium charge shall be payable annually in advance by the investor, either in cash or in debentures issued by the Secretary under this subchapter at par plus accrued interest: *Provided*, That, if in any operating year the gross income shall be less than the operating expenses, the premium charge payable during such operating year shall be waived, but only to the extent of the amount of the difference between such expenses and such income and subject to subsequent payment out of any excess earnings as hereinafter provided.

(b) With respect to any project offered for insurance under this subchapter, the Secretary is authorized to charge and collect reasonable fees for examination, and for inspection during the construction of the project: *Provided*, That such fees shall not aggregate more than one-half of 1 per centum of the estimated investment.

(June 27, 1934, ch. 847, title VII, §703, as added Aug. 10, 1948, ch. 832, title IV, §401, 62 Stat. 1277; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing in subsecs. (a) and (b).

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator" wherever appearing.

§1747c. Rent schedules

The Secretary shall require that the rents for the dwellings in any project insured under this subchapter shall be established in accordance with a rent schedule approved by the Secretary, and that the investor shall not charge or collect rents for any dwellings in the project in excess of the appropriate rents therefor as shown in the latest rent schedule approved pursuant to this section. Prior to approving the initial or any subsequent rent schedule pursuant to this section, the Secretary shall find that such schedule affords reasonable assurance that the rents to be established thereunder are (1) not lower than necessary, together with all other income to be derived from or in connection with the project, to produce reasonably stable revenues sufficient to provide for the payment of the operating expenses, the minimum annual amortization charge, and the minimum annual return; and (2) not higher than necessary to meet the need for dwellings for families of moderate income.

(June 27, 1934, ch. 847, title VII, §704, as added Aug. 10, 1948, ch. 832, title IV, §401, 62 Stat. 1277; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing.

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator" wherever appearing.

§1747d. Excess earnings used for amortization of original investment

For all of the purposes of any insurance contract made pursuant to this subchapter, 50 per centum of the excess earnings, if any, for any operating year may be applied, in addition to the minimum annual return, to return on the outstanding investment but only to the extent that such application thereof does not result in an annual return of more than 5 per centum of the outstanding investment for such operating year, and the balance of any such excess earnings shall be applied, in addition to the minimum annual amortization charge, to amortization of the outstanding investment: *Provided*, That if in any preceding operating years the gross income shall have been less than the operating expenses, such excess earnings shall be applied to the extent necessary in whole or in part, first, to the reimbursement of the amount of the difference between such expenses (exclusive of any premium charges previously waived hereunder) and such income, and, second, to the payment of any premium charges previously waived hereunder.

(June 27, 1934, ch. 847, title VII, §705, as added Aug. 10, 1948, ch. 832, title IV, §401, 62 Stat. 1277.)

§1747e. Financial statements by Secretary

With respect to each project insured under this subchapter, the Secretary shall provide that, after the close of each operating year, the investor shall submit to him for approval a financial and operating statement covering such operating year. If any such financial and operating statement shall not have been submitted or, for proper cause, shall not have been approved by the Secretary, payment of any claim submitted by the investor may, at the option of the Secretary, be withheld, in whole or in part, until such statement shall have been submitted and approved.

(June 27, 1934, ch. 847, title VII, §706, as added Aug. 10, 1948, ch. 832, title IV, §401, 62 Stat. 1278; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing.

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator" wherever appearing.

§1747f. Payment of claims; assignment of benefits by investors

If in any operating year the net income of a project insured under this subchapter is less than the aggregate of the minimum annual amortization charge and the insured annual return, the Secretary, upon submission by the investor of a claim for the payment of the amount of the difference between such net income and the aggregate of the minimum annual amortization charge and the insured annual return and after proof of the validity of such claim, shall pay to the investor, in cash from the General Insurance Fund, the amount of such difference, as determined by the Secretary, but not exceeding, in any event, an amount equal to the aggregate of the minimum annual amortization charge and the insured annual return. Nothing contained in this subchapter or any other provision of law shall be construed as preventing or restricting an investor from assigning, pledging, or otherwise transferring or disposing of, subject to rules and regulations of the Secretary, any or all rights, claims, or other benefits under any insurance contract made pursuant to this subchapter to an assignee, pledgee, or other transferee, including the holders (or the trustee for such holders) of any debentures issued by the investor in connection with the project to which such insurance contract relates, and the Secretary is authorized to pay claims or issue debentures in accordance with the provisions of this section and section 1747g of this title to any such assignee, pledgee, or other transferee.

(June 27, 1934, ch. 847, title VII, §707, as added Aug. 10, 1948, ch. 832, title IV, §401, 62 Stat. 1278; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Sept. 1, 1951, ch. 378, title VI, §609(b), 65 Stat. 316; Pub. L. 89-117, title XI, §1108(s), Aug. 10, 1965, 79 Stat. 506; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

AMENDMENTS

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing.

1965—Pub. L. 89-117 substituted "General Insurance Fund" for "Housing Investment Insurance Fund".

1951—Act Sept. 1, 1951, inserted second sentence.

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator" wherever appearing.

§1747g. Debentures

(a) Acquisition of project by Secretary; issuance of debentures

If the aggregate of the amounts paid to the investor pursuant to section 1747f of this title with respect to a project insured under this subchapter shall at any time equal or exceed 15 per centum of the established investment, the Secretary thereafter shall have the right, after written notice to the investor of his intentions so to do, to acquire, as of the first day of any operating year, such project in consideration of the issuance and delivery to the investor of debentures having a total face value

equal to 90 per centum of the outstanding investment for such operating year. In any such case the investor shall be obligated to convey to said Secretary title to the project which meets the requirements of the rules and regulations of the Secretary in force at the time the insurance contract was executed and which is evidenced in the manner prescribed by such rules and regulations, and, in the event that the investor fails so to do, said Secretary may, at his option, terminate the insurance contract.

(b) Relinquishment of project by investor

If in any operating year the aggregate of the differences between the operating expenses (exclusive of any premium charges previously waived hereunder) and the gross income for the preceding operating years, less the aggregate of any deficits in such operating expenses reimbursed from excess earnings as hereinbefore provided, shall at any time equal or exceed 5 per centum of the established investment, the investor shall thereafter have the right, after written notice to the Secretary of his intention so to do, to convey to the Secretary, as of the first day of any operating year, title to the project which meets the requirements of the rules and regulations of the Secretary in force at the time the insurance contract was executed and which is evidenced in the manner prescribed by such rules and regulations, and to receive from the Secretary debentures having a total face value equal to 90 per centum of the outstanding investment for such operating year.

(c) Adjustment of difference between outstanding investment and total face value of debentures

Any difference, not exceeding \$50, between 90 per centum of the outstanding investment for the operating year in which a project is acquired by the Secretary pursuant to this section and the total face value of the debentures to be issued and delivered to the investment pursuant to this section shall be adjusted by the payment of cash by the Secretary to the investor from the General Insurance Fund.

(d) Termination of insurance contract by Secretary

Upon the acquisition of a project by the Secretary pursuant to this section, the insurance contract shall terminate.

(e) Issuance and execution of debentures

Debentures issued under this subchapter to any investor shall be executed in the name of the General Insurance Fund as obligor, shall be signed by the Secretary, by either his written or engraved signature, and shall be negotiable. Such debentures shall be dated as of the first day of the operating year in which the project for which such debentures were issued was acquired by the Secretary, shall bear interest at a rate to be determined by the Secretary, with the approval of the Secretary of the Treasury, at the time the insurance contract was executed, but not to exceed $2\frac{3}{4}$ per centum per annum, payable semiannually on the 1st day of January and the 1st day of July of each year, and shall mature on the 1st day of July in such calendar year or years, not later than the fortieth following the date of the issuance thereof, as shall be determined by the Secretary and stated on the face of such debentures.

(f) Terms and conditions of debentures

Such debentures shall be in such form and in such denominations in multiples of \$50, shall be subject to such terms and conditions, and may include such provisions of redemption as shall be prescribed by the Secretary, with the approval of the Secretary of the Treasury, and may be issued in either coupon or registered form.

(g) Exemption from taxation; exceptions; guaranty

Such debentures shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by any Territory, dependency, or possession of the United States, or by the District of Columbia, or by any State, county, municipality, or local taxing authority, shall be payable out of the General Insurance Fund, which shall be primarily liable therefor, and shall be fully and unconditionally guaranteed, as to both the principal thereof and the interest thereon, by the United States, and such guaranty shall be expressed

on the face thereof. In the event that the General Insurance Fund fails to pay upon demand, when due, the principal of or the interest on any debentures so guaranteed, the Secretary of the Treasury shall pay to the holders the amount thereof, which is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon, to the extent of the amount so paid, the Secretary of the Treasury shall succeed to all the rights of the holders of such debentures.

(h) Payment of expenses and charges; collection of claims

Notwithstanding any other provisions of law relating to the acquisition, handling, or disposal of real and other property by the United States, the Secretary shall have power, for the protection of the General Insurance Fund, to pay out of said Fund all expenses or charges in connection with, and to deal with, complete, reconstruct, rent, renovate, modernize, insure, make contracts for the management of, or establish suitable agencies for the management of, or sell for cash or credit or lease in his discretion, in whole or in part, any project acquired pursuant to this subchapter; and, notwithstanding any other provisions of law, the Secretary shall also have power to pursue to final collection by way of compromise or otherwise all claims acquired by, or assigned or transferred to, him in connection with the acquisition or disposal of any project pursuant to this subchapter:

Provided, That section 6101 of title 41 shall not be construed to apply to any contract for hazard insurance, or to any purchase or contract for services or supplies on account of any project acquired pursuant to this subchapter if the amount of such purchase or contract does not exceed \$1,000.

(June 27, 1934, ch. 847, title VII, §708, as added Aug. 10, 1948, ch. 832, title IV, §401, 62 Stat. 1278; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Pub. L. 89-117, title XI, §1108(t), Aug. 10, 1965, 79 Stat. 506; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

CODIFICATION

In subsec. (h), "section 6101 of title 41" substituted for "section 3709 of the Revised Statutes" on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1967—Subsecs. (a) to (f), (h). Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing.

1965—Subsecs. (c), (e), (g), (h). Pub. L. 89-117 substituted "General Insurance Fund" for "Housing Investment Insurance Fund" wherever appearing.

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator" wherever appearing.

§1747h. Termination of insurance contract by investor

The investor, after written notice to the Secretary of his intention so to do, may terminate, as of the close of any operating year, any insurance contract made pursuant to this subchapter. The Secretary shall prescribe the events and conditions under which said Secretary shall have the option to terminate any insurance contract made pursuant to this subchapter, and the events and conditions under which said Secretary may reinstate any insurance contract terminated pursuant to this section or section 1747g(a) of this title. If any insurance contract is terminated pursuant to this section, the Secretary may require the investor to pay an adjusted premium charge in such amount as the Secretary determines to be equitable, but not in excess of the aggregate amount of the premium charges which such investor otherwise would have been required to pay if such insurance contract had not been so terminated.

(June 27, 1934, ch. 847, title VII, §709, as added Aug. 10, 1948, ch. 832, title IV, §401, 62 Stat. 1280; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Pub. L. 90–19 substituted "Secretary" for "Commissioner" wherever appearing.

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator" wherever appearing.

§1747i. Repealed. Pub. L. 89–117, title XI, §1108(aa), Aug. 10, 1965, 79 Stat. 507

Section, act June 27, 1934, ch. 847, title VII, §710, as added Aug. 10, 1948, ch. 832, title IV, §401, 62 Stat. 1280; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59, created the Housing Investment Insurance Fund, provided for the transfer of funds thereto, and authorized the payment of claims and the issue and cancellation of debentures.

For establishment of the General Insurance Fund, see section 1735c of this title.

§1747j. Taxation of real property

Nothing in this subchapter shall be construed to exempt any real property acquired and held by the Secretary under this subchapter from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed.

(June 27, 1934, ch. 847, title VII, §711, as added Aug. 10, 1948, ch. 832, title IV, §401, 62 Stat. 1281; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Pub. L. 90–19 substituted "Secretary" for "Commissioner".

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator" wherever appearing.

§1747k. Rules and regulations

The Secretary may make such rules and regulations as may be necessary or desirable to carry out the provisions of this subchapter, including, without limiting the foregoing, rules and regulations relating to the maintenance by the investor of books, records, and accounts with respect to the project and the examination of such books, records, and accounts by representatives of the Secretary; the submission of financial and operating statements and the approval thereof; the submission of claims for payments under insurance contracts, the proof of the validity of such claims, and the payment or disallowance thereof; the increase of the established investment if the investor shall make capital improvements or additions to the project; the decrease of the established investment if the investor shall sell part of the project; and the reduction of the outstanding investment for the appropriate operating year or operating years pending the restoration of dwelling or nondwelling facilities damaged by fire or other casualty. With respect to any investor which is subject to supervision or regulation by a State banking, insurance, or other State department or agency, the Secretary may, in carrying out any of his supervisory and regulatory functions with respect to projects insured under this subchapter, utilize, contract with, and act through, such department or agency and without regard to section 6101 of title 41.

(June 27, 1934, ch. 847, title VII, §712, as added Aug. 10, 1948, ch. 832, title IV, §401, 62 Stat. 1281; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

CODIFICATION

In text, "section 6101 of title 41" substituted for "section 3709 of the Revised Statutes" on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing.

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator" wherever appearing.

§1747l. Definitions

The following terms shall have the meanings, respectively, ascribed to them below, and, unless the context clearly indicates otherwise, shall include the plural as well as the singular number:

(a) "Investor" shall mean (1) any natural person; (2) any group of not more than ten natural persons; (3) any corporation, company, association, trust, or other legal entity; or (4) any combination of two or more corporations, companies, associations, trusts, or other legal entities, having all the powers necessary to comply with the requirements of this subchapter, which the Secretary (i) shall find to be qualified by business experience and facilities, to afford assurance of the necessary continuity of long-term investment, and to have available the necessary capital required for long-term investment in the project, and (ii) shall approve as eligible for insurance under this subchapter.

(b) "Project" shall mean a project (including all property, real and personal, contracts, rights, and choses in action acquired, owned, or held by the investor in connection therewith) of an investor designed and used primarily for the purpose of providing dwellings the occupancy of which is permitted by the investor in consideration of agreed charges: *Provided*, That nothing in this subchapter shall be construed as prohibiting the inclusion in a project of such stores, offices, or other commercial facilities, recreational or community facilities, or other nondwelling facilities as the Secretary shall determine to be necessary or desirable appurtenances to such project.

(c) "Estimated investment" shall mean the estimated cost of the development of the project, as stated in the application submitted to the Secretary for insurance under this subchapter.

(d) "Established investment" shall mean the amount of the reasonable costs, as approved by the Secretary, incurred by the investor in, and necessary for, carrying out all works and undertakings for the development of a project and shall include the premium charge for the first operating year and the cost of all necessary surveys, plans and specifications, architectural, engineering, or other special services, land acquisition, site preparation, construction, and equipment; a reasonable return on the funds of the investor paid out in the course of the development of the project, up to and including the initial occupancy date; necessary expenses in connection with the initial occupancy of the project; and the cost of such other items as the Secretary shall determine to be necessary for the development of the project, (1) less the amount by which the rents and revenues derived from the project up to and including the initial occupancy date exceeded the reasonable and proper expenses, as approved by the Secretary, incurred by the investor in, and necessary for, operating and maintaining said project up to and including the initial occupancy date, or (2) plus the amount by which such expenses exceeded such rents and revenues, as the case may be.

(e) "Physical completion date" shall mean the last day of the calendar month in which the Secretary determines that the construction of the project is substantially completed and substantially all of the dwellings therein are available for occupancy.

(f) "Initial occupancy date" shall mean the last day of the calendar month in which 90 per centum in number of the dwellings in the project on the physical completion date shall have been occupied, but shall in no event be later than the last day of the sixth calendar month next following the physical completion date.

(g) "Operating year" shall mean the period of twelve consecutive calendar months next following the initial occupancy date and each succeeding period of twelve consecutive calendar months, and the period of the first twelve consecutive calendar months next following the initial occupancy date

shall be the first operating year.

(h) "Gross income" for any operating year shall mean the total rents and revenues and other income derived from, or in connection with, the project during such operating year.

(i) "Operating expenses" for any operating year shall mean the amounts, as approved by the Secretary, necessary to meet the reasonable and proper costs of, and to provide for, operating and maintaining the project, and to establish and maintain reasonable and proper reserves for repairs, maintenance, and replacements, and other necessary reserves during such operating year, and shall include necessary expenses for real estate taxes, special assessments, premium charges made pursuant to this subchapter, administrative expenses, the annual rental under any lease pursuant to which the real property comprising the site of the project is held by the investor, and insurance charges, together with such other expenses as the Secretary shall determine to be necessary for the proper operation and maintenance of the project, but shall not include income taxes.

(j) "Net income" for any operating year shall mean gross income remaining after the payment of the operating expenses.

(k) "Minimum annual amortization charge" shall mean an amount equal to 2 per centum of the established investment, except that, in the case of a project where the real property comprising the site thereof is held by the investor under a lease, if (notwithstanding the proviso of section 1747b(a) of this title) the gross income for any operating year shall be less than the amount required to pay the operating expenses (including the annual rental under such lease), the minimum annual amortization charge for such operating year shall mean an amount equal to 2 per centum of the established investment plus the amount of the annual rental under such lease to the extent that the same is not paid from the gross income.

(l) "Annual return" for any operating year shall mean the net income remaining after the payment of the minimum annual amortization charge.

(m) "Insured annual return" shall have the meaning ascribed to it in section 1747 of this title.

(n) "Minimum annual return" for any operating year shall mean an amount equal to $3\frac{1}{2}$ per centum of the outstanding investment for such operating year or such lesser amount as shall be agreed upon by the investor and the Secretary.

(o) "Excess earnings" for any operating year shall mean the net income derived from a project in excess of the minimum annual amortization charge and the minimum annual return and income taxes.

(p) "Outstanding investment" for any operating year shall mean the established investment, less an amount equal to (1) the aggregate of the minimum annual amortization charge for each preceding operating year, plus (2) the aggregate of the excess earnings, if any, during each preceding operating year applied, in addition to the minimum annual amortization charge, to amortization in accordance with the provisions of section 1747d of this title.

(q) "State" shall include the several States and Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.

(June 27, 1934, ch. 847, title VII, §713, as added Aug. 10, 1948, ch. 832, title IV, §401, 62 Stat. 1281; amended Apr. 20, 1950, ch. 94, title I, §122, 64 Stat. 59; Sept. 1, 1951, ch. 378, title VI, §§610, 612, 65 Stat. 316; July 14, 1952, ch. 723, §10(a)(4), 66 Stat. 603; Pub. L. 86-70, §10(a), June 25, 1959, 73 Stat. 142; Pub. L. 86-624, §6, July 12, 1960, 74 Stat. 411; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing in subsecs. (a) to (e), (i), and (n).

1960—Subsec. (q). Pub. L. 86-624 struck out "Hawaii," before "Puerto Rico".

1959—Subsec. (q). Pub. L. 86-70 struck out "Alaska," before "Hawaii".

1952—Subsec. (q). Act July 14, 1952, added subsec. (q).

1951—Subsec. (n). Act Sept. 1, 1951, §610, inserted "or such lesser amount as shall be agreed upon by the

investor and the Commissioner".

Subsec. (o). Act Sept. 1, 1951, §612, inserted "and income taxes".

1950—Act Apr. 20, 1950, substituted "Commissioner" for "Administrator" wherever appearing.

SUBCHAPTER VIII—ARMED SERVICES HOUSING MORTGAGE INSURANCE

EDITORIAL NOTES

AMENDMENTS

1955—Act Aug. 11, 1955, ch. 783, title IV, §401, 69 Stat. 646, substituted "ARMED SERVICES" for "MILITARY" and inserted "MORTGAGE" in subchapter heading.

§1748. Definitions

As used in this subchapter—

(a) The term "mortgage" means a first mortgage on real estate, in fee simple, or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable; or (2) under a lease for a period of not less than fifty years to run from the date the mortgage was executed; and the term "first mortgage" means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

(b) The term "mortgagee" includes the original lender under a mortgage, and his successors and assigns approved by the Secretary; and the term "mortgagor" includes the original borrower under a mortgage, his successors and assigns.

(c) The term "maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

(d) The term "housing accommodations" means housing designed for occupancy by military personnel and their dependents, assigned to duty at or near the military installation where such housing units are constructed.

(e) The term "personnel" shall include military and civilian personnel approved by the Secretary of Defense, or his designee, and the dependents of all such personnel.

(f) The term "military" includes Army, Navy, Marine Corps, Air Force, and Coast Guard.

(g) The term "State" includes the several States, and Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Canal Zone, and Midway Island.

(June 27, 1934, ch. 847, title VIII, §801, as added Aug. 8, 1949, ch. 403, §1, 63 Stat. 570; amended July 14, 1952, ch. 723, §10(a)(2), 66 Stat. 603; Aug. 11, 1955, ch. 783, title IV, §401, 69 Stat. 646; Aug. 7, 1956, ch. 1029, title V, §501, 70 Stat. 1109; Pub. L. 86–70, §10(a), June 25, 1959, 73 Stat. 142; Pub. L. 86–624, §6, July 12, 1960, 74 Stat. 411; Pub. L. 90–19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (g), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1967—Subsec. (b). Pub. L. 90–19 substituted "Secretary" for "Commissioner".

1960—Subsec. (g). Pub. L. 86–624 struck out "Hawaii," before "Puerto Rico".

1959—Subsec. (g). Pub. L. 86–70 struck out "Alaska," before "Hawaii".

1956—Subsec. (g). Act Aug. 7, 1956, inserted reference to Canal Zone and Midway Island.

1955—Act Aug. 11, 1955, inserted definitions of "housing accommodations" and "personnel" and included the Coast Guard in definition of "military".

1952—Subsec. (f). Act July 14, 1952, inserted "Guam," after "District of Columbia,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

SAVINGS PROVISION

Act Aug. 11, 1955, ch. 783, title IV, §408, 69 Stat. 653, as amended by act Aug. 7, 1956, ch. 1029, title V, §511, 70 Stat. 1110, provided that: "Notwithstanding the provisions of section 401 of this Act [amending this subchapter], the provisions of title VIII of the National Housing Act [this subchapter] in effect prior to the enactment of the Housing Amendments of 1955 [August 11, 1955] shall continue in full force and effect with respect to all mortgages insured pursuant to a certification by the Secretary of Defense or his designee made on or before June 30, 1955, and a commitment to insure issued on or before June 30, 1956 or pursuant to a certification by the Atomic Energy Commission or its designee made on or before June 30, 1956, except that the maximum dollar amount for each such mortgage shall be \$12,500,000.] Nothing contained in the provisions of title VIII of the National Housing Act [this subchapter] in effect prior to August 11, 1955 or any related provision of law, shall be construed to exempt from State or local taxes or assessments the interest of a lessee from the Federal Government in or with respect to any property covered by a mortgage insured under such provisions of title VIII: *Provided*, That, no such taxes or assessments (not paid or encumbering such property or interest prior to June 15, 1956) on the interest of such lessee shall exceed the amount of taxes or assessments on other similar property of similar value, less such amount as the Secretary of Defense or his designee determines to be equal to (1) any payments made by the Federal Government to the local taxing or other public agencies involved with respect to such property, plus (2) such amount as may be appropriate for any expenditures made by the Federal Government or the lessee for the provision or maintenance of streets, sidewalks, curbs, gutters, sewers, lighting, snow removal or any other services or facilities which are customarily provided by the State, county, city, or other local taxing authority with respect to such other similar property: *And provided further*, That the provisions of this section shall not apply to properties leased pursuant to the provisions of section 805 of the National Housing Act [12 U.S.C. 1748d] as amended on or after August 11, 1955, which properties shall be exempt from State or local taxes or assessments."

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

COAST GUARD

Subchapter as applicable to Coast Guard, see section 1594e of Title 42, The Public Health and Welfare.

§1748a. Repealed. Pub. L. 89–117, title XI, §1108(aa), Aug. 10, 1965, 79 Stat. 507

Section, act June 27, 1934, ch. 847, title VIII, §802, as added Aug. 8, 1949, ch. 403, §1, 63 Stat. 571; amended Aug. 11, 1955, ch. 783, title IV, §401, 69 Stat. 646, created the Armed Services Housing Insurance Fund.

For establishment of the General Insurance Fund, see section 1735c of this title.

§1748b. Insurance of mortgages

(a) Aggregate amount of insurance; termination date

In order to assist in relieving the acute shortage and urgent need for family housing which now exists at or in areas adjacent to military installations because of uncertainty as to the permanency of such installations and to increase the supply of necessary family housing accommodations for personnel at such installations, the Secretary is authorized, upon application of the mortgagee, to

insure mortgages (including advances on such mortgages during construction) which are eligible for insurance as hereinafter provided, and, upon such terms as the Secretary may prescribe, to make commitments for so insuring such mortgages prior to the date of their execution or disbursement thereon: *Provided*, That the aggregate amount of principal obligations of all mortgages insured under this subchapter (except mortgages insured pursuant to the provisions of this subchapter in effect prior to August 11, 1955) shall not exceed \$2,300,000,000: *And provided further*, That the limitation in section 1715h of this title shall not apply to this subchapter: *And provided further*, That no more mortgages shall be insured under this section after October 1, 1962, except pursuant to a commitment to insure before such date, and not more than twenty-eight thousand family housing units shall be contracted for after June 30, 1959, pursuant to any mortgage insured under this section after such date.

(b) Eligibility for insurance

To be eligible for insurance under this subchapter a mortgage shall meet the following conditions:

(1) The mortgaged property shall be held by a mortgagor approved by the Secretary. The Secretary may, in his discretion, require such mortgagor to be regulated or restricted as to capital structure, and methods of operation. The Secretary may make such contracts with, and acquire for not to exceed \$100 stock or interest in, any such mortgagor, as the Secretary may deem necessary to render effective such restriction or regulation. Such stock or interest shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

(2) The mortgaged property shall be designed for use for residential purposes by personnel of the armed services and situated at or near a military installation, and the Secretary of Defense or his designee shall have certified that there is no intention, so far as can reasonably be foreseen, to substantially curtail the personnel assigned or to be assigned to such installation, and (i) shall have determined that for reasons of safety, security, or other essential military requirements, it is necessary that the personnel involved reside in public quarters: *Provided, however*, That for the purposes of this subsection housing covered by a mortgage insured, or for which a commitment to insure has been issued, under this section prior to August 11, 1955, may be considered the same as available quarters, and (ii) with the approval of the Secretary, shall have determined that adequate housing is not available for such personnel at reasonable rentals within reasonable commuting distance of the installation and that the mortgaged property will not, so far as can reasonably be foreseen, substantially curtail occupancy in existing housing covered by mortgages insured under this chapter. The housing accommodations shall comply with such standards and conditions as the Secretary may prescribe to establish the acceptability of such property for mortgage insurance, except that the certification of the Secretary of Defense or his designee shall (for purposes of mortgage insurance under this subchapter) be conclusive evidence to the Secretary of the existence of the need for such housing. However, if the Secretary does not concur in the housing needs as certified by the Secretary of Defense, the Secretary may require the Secretary of Defense to guarantee the General Insurance Fund against loss with respect to the mortgage covering such housing. There are authorized to be appropriated such sums as may be necessary to provide for payment to meet losses arising from such guaranty.

(3) The mortgage shall involve a principal obligation in an amount—

(A) not to exceed the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed improvements are completed (the cost of the property or project as such term is used in this paragraph may include the cost of the land, the physical improvements, and utilities within the boundaries of the property or project);

(B) not to exceed an average of \$16,500 per family unit for such part of such property or project (including ranges, refrigerators, shades, screens, and fixtures) as may be attributable to dwelling use: *Provided*, That the replacement cost of the property or project as determined by the Secretary, including the estimated value of any usable utilities within the boundaries of the property or project where owned by the United States and not provided for out of the proceeds of the mortgage, shall not exceed an average of \$16,500 per family unit: *Provided further*, That should the financing of housing be constructed pursuant to a single invitation for bids be

accomplished by two or more mortgages, the principal obligation of any single mortgage may exceed an average of \$16,500 per family unit if the sum of the principal obligations of all mortgages for such housing does not exceed an average of \$16,500 per family unit: *And provided further*, That subject to the limitations of this paragraph no family unit included in any mortgaged property shall be contracted for after June 8, 1960 if the cost of such unit exceeds \$19,800; and

(C) not to exceed the bid of the eligible bidder with respect to the property or project under section 1594 of title 42.

The mortgage shall provide for complete amortization by periodic payments within such terms as the Secretary shall prescribe, but not to exceed thirty years from the beginning of amortization of the mortgage, and shall bear interest (exclusive of premium charges for insurance) as not to exceed 4½ per centum per annum of the amount of the principal obligation outstanding at any time. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release. The property or project may include such nondwelling facilities as the Secretary deems adequate to serve the occupants.

(c) Premium charges

The Secretary is authorized to fix a premium charge for the insurance of mortgages under this subchapter but in the case of any mortgage such charge shall not be less than an amount equivalent to one-half of 1 per centum per annum nor more than an amount equivalent to 1½ per centum per annum of the amount of the principal obligation of the mortgage outstanding at any time, without taking into account delinquent payments or prepayments. Such premium charges shall be payable by the mortgagee, either in cash, or in debentures issued by the Secretary under this subchapter at par plus accrued interest, in such manner as may be prescribed by the Secretary: *Provided*, That the Secretary may require the payment of one or more such premium charges at the time the mortgage is insured, at such discount rate as he may prescribe not in excess of the interest rate specified in the mortgage. If the Secretary finds, upon the presentation of a mortgage for insurance and the tender of the initial premium charge and such other charges as the Secretary may require, that the mortgage complies with the provisions of this subchapter, such mortgage may be accepted for insurance by endorsement or otherwise as the Secretary may prescribe. In the event that the principal obligation of any mortgage accepted for insurance under this subchapter is paid in full prior to the maturity date, the Secretary is authorized to refund to the mortgagee for the account of the mortgagor all, or such portion as he shall determine to be equitable, of the current unearned premium charges theretofore paid. The Secretary may reduce the payment of premiums provided for herein. The Secretary is further authorized to reduce the amount of the premium charge below one-half of 1 per centum per annum with respect to any mortgage on property acquired by the Secretary of Defense or his designee if the mortgage is insured pursuant to the provisions of this subchapter as in effect prior to August 11, 1955.

(d) Default by mortgagor; rights of mortgagee

The failure of the mortgagor to make any payment due under or provided to be paid by the terms of a mortgage insured under this subchapter shall be considered a default under such mortgage, and, if such default continues for a period of thirty days, the mortgagee shall be entitled to receive the benefits of the insurance as hereinafter provided, upon assignment, transfer, and delivery to the Secretary, within a period and in accordance with rules and regulations to be prescribed by the Secretary of (1) all rights and interest arising under the mortgage so in default; (2) all claims of the mortgagee against the mortgagor or others, arising out of the mortgage transactions; (3) all policies of title or other insurance or surety bonds or other guaranties and any and all claims thereunder; (4) any balance of the mortgage loan not advanced to the mortgagor; (5) any cash or property held by the mortgagee, or to which it is entitled, as deposits made for the account of the mortgagor and which have not been applied in reduction of the principal of the mortgage indebtedness; and (6) all records, documents, books, papers, and accounts relating to the mortgage transaction. Upon such

assignment, transfer, and delivery, the obligation of the mortgagee to pay the premium charges for mortgage insurance shall cease, and the Secretary shall, subject to the cash adjustment provided for in subsection (e) of this section, issue to the mortgagee debentures having a total face value equal to the value of the mortgage, and a certificate of claim as hereinafter provided. For the purposes of this subsection, the value of the mortgage shall be determined in accordance with rules and regulations prescribed by the Secretary, by adding to the amount of the original principal obligation of the mortgage which was unpaid on the date of default, the amount the mortgagee may have paid for (A) taxes, special assessments, and water rates, which are liens prior to the mortgage; (B) insurance on the property; and (C) reasonable expenses for the completion and preservation of the property and any mortgage insurance premiums paid after default; less the sum of (i) any amount received on account of the mortgage after such date; and (ii) any net income received by the mortgagee from the property after such date.

(e) Debentures; issuance; form and denomination

Debentures issued under this subchapter shall be in such form and denominations in multiples of \$50, shall be subject to such terms and conditions, and shall include such provisions for redemption, if any, as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury, and may be in coupon or registered form. Any difference between the value of the mortgage determined as herein provided and the aggregate face value of the debentures issued, not to exceed \$50, shall be adjusted by the payment of cash by the Secretary to the mortgagee from the General Insurance Fund.

(f) Debentures; execution; signature; negotiability; interest rate; tax exemption; guarantee

Debentures issued under this subchapter shall be executed in the name of the General Insurance Fund as obligor, shall be signed by the Secretary, by either his written or engraved signature, and shall be negotiable. All such debentures shall be dated as of the date of default as determined in accordance with subsection (d) of this section, and shall bear interest from such date at a rate established by the Secretary pursuant to section 1715o of this title, payable semiannually on the 1st day of January and the 1st day of July of each year, and shall mature twenty years after the date thereof. Such debentures shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by any Territory, dependency, or possession of the United States or by the District of Columbia, or by any State, county, municipality, or local taxing authority. They shall be paid out of the General Insurance Fund, which shall be primarily liable therefor, and they shall be fully and unconditionally guaranteed as to principal and interest by the United States, and such guaranty shall be expressed on the face of the debentures. In the event the General Insurance Fund fails to pay upon demand, when due, the principal of or interest on any debentures so guaranteed, the Secretary of the Treasury shall pay to the holders the amount thereof which is authorized to be appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such debentures.

(g) Claim certificates

The certificate of claim issued by the Secretary to any mortgagee in connection with the insurance of mortgages under this subchapter shall be for an amount determined in accordance with subsections (e) and (f) of section 1739 of this title, except that any amount remaining after the payment of the full amount under the certificate of claim shall be retained by the Secretary and credited to the General Insurance Fund.

(h) Laws applicable

The provisions of section 1713(k) and (l) of this title shall be applicable to mortgages insured under this subchapter and to property acquired by the Secretary hereunder, except that as applied to such mortgages and property, the reference in section 1713(k) of this title to subsection (g) shall be construed to refer to subsection (d) of this section.

(i) Secretary's additional powers to insure certain mortgages

The Secretary shall also have power to insure under this subchapter or subchapter II any mortgage

executed in connection with the sale by him of any property acquired under this subchapter without regard to any limit as to eligibility, time or aggregate amount contained in this subchapter or subchapter II.

(j) Conclusiveness and validity of insurance contract

Any contract of insurance executed by the Secretary under this subchapter shall be conclusive evidence of the eligibility of the mortgage for insurance and the validity of any contract of insurance so executed shall be incontestable in the hands of an approved mortgagee from the date of the execution of such contract, except for fraud or misrepresentation on the part of such approved mortgagee.

(k) Certification as to overtime wages paid to laborers and mechanics

The Secretary shall not insure any mortgage under this section unless the principal contractor or contractors engaged in the construction of the project involved file a certificate or certificates (at such times, in the course of construction or otherwise, as the Secretary may prescribe) certifying that the laborers and mechanics employed in the construction of such project have been paid not less than one and one-half times the regular rate of pay for employment in excess of eight hours in any one day or in excess of forty hours in any one week.

(June 27, 1934, ch. 847, title VIII, §803, as added Aug. 8, 1949, ch. 403, §1, 63 Stat. 571; amended Sept. 1, 1951, ch. 378, title VI, §601(a)–(c), 65 Stat. 312; June 30, 1953, ch. 170, §10, 67 Stat. 124; June 29, 1954, ch. 410, §1(2), 68 Stat. 320; Aug. 2, 1954, ch. 649, title I, §§112(c), 128(a), 130, 68 Stat. 593, 609; June 30, 1955, ch. 251, §1(2), 69 Stat. 225; Aug. 11, 1955, ch. 783, title IV, §401, 69 Stat. 647; Aug. 7, 1956, ch. 1029, title V, §§502–506(a), 70 Stat. 1109, 1110; Pub. L. 85–104, title I, §108(c), title V, §§501, 502, July 12, 1957, 71 Stat. 297, 303; Pub. L. 85–364, §3(b), Apr. 1, 1958, 72 Stat. 73; Pub. L. 86–149, title IV, §414(a), Aug. 10, 1959, 73 Stat. 322; Pub. L. 86–372, title VII, §701, Sept. 23, 1959, 73 Stat. 682; Pub. L. 86–500, title V, §507(a), (c), June 8, 1960, 74 Stat. 185, 186; Pub. L. 87–57, title VI, §607(a), June 27, 1961, 75 Stat. 111; Pub. L. 87–70, title VI, §604(d), June 30, 1961, 75 Stat. 177; Pub. L. 87–623, §1, Aug. 31, 1962, 76 Stat. 418; Pub. L. 89–117, title XI, §1108(u), Aug. 10, 1965, 79 Stat. 506; Pub. L. 90–19, §1(a)(3), (p), May 25, 1967, 81 Stat. 17, 19; Pub. L. 96–470, title I, §107(b), Oct. 19, 1980, 94 Stat. 2238.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

AMENDMENTS

1980—Subsec. (b)(2). Pub. L. 96–470 struck out provision requiring the Secretary to report to the Committees on Banking and Currency of the Senate and the House of Representatives each instance in which he has required the Secretary of Defense to guarantee the General Insurance Fund and the reasons therefor.

1967—Pub. L. 90–19, §1(a)(3), substituted "Secretary" for "Commissioner" wherever appearing in subsecs. (a), (b)(1), (2), (3)(A), (B), following (C), and (c) to (k).

Subsec. (b)(2). Pub. L. 90–19, §1(p)(1)–(4), substituted "Secretary of Defense" for "Secretary" in first, third, and fourth sentences.

1965—Subsecs. (b)(1), (b)(2), (e), (f), (g). Pub. L. 89–117, §1108(u)(1), substituted "General Insurance Fund" for "Armed Services Housing Mortgage Insurance Fund" wherever appearing.

Subsec. (h). Pub. L. 89–117, §1108(u)(2), struck out provision that, as applied to mortgages insured under this subchapter and to property acquired by the Commissioner hereunder, reference in subsecs. (k) and (l) of section 1713 of this title to the "Housing Fund" shall be construed to refer to the "Armed Services Housing Mortgage Insurance Fund".

1962—Subsec. (a). Pub. L. 87–623 substituted "mortgages shall be insured under this section after October 1, 1962" for "mortgages shall be insured under this subchapter after October 1, 1962".

1961—Subsec. (a). Pub. L. 87–70 made amendment identical to that made by Pub. L. 87–57.

Pub. L. 87–57 substituted "October 1, 1962" for "October 1, 1961", and "twenty-eight thousand family units" for "twenty-five thousand family housing units".

1960—Subsec. (a). Pub. L. 86-500, §507(a), substituted "twenty-five thousand family housing units" for "twenty thousand family housing units".

Subsec. (b)(3). Pub. L. 86-500, §507(c), inserted proviso prohibiting, subject to the limitations of par. (B), the contracting for any family unit included in any mortgaged property after June 8, 1960, if the cost of the unit exceeds \$19,800.

1959—Subsec. (a). Pub. L. 86-372, §701(a), substituted "October 1, 1961" for "September 30, 1960".

Pub. L. 86-149 inserted provisions in subsec. (a) to prohibit insurance of mortgages under this subchapter after Sept. 30, 1960, and to limit the number of housing units which may be contracted for after June 30, 1959 to not more than 20,000.

Subsec. (b)(3). Pub. L. 86-372, §701(b), (c), substituted "but not to exceed thirty years from the beginning of amortization of the mortgage" for "have a maturity of not to exceed twenty-five years", and inserted provisions authorizing the property or project to include such nondwelling facilities as the Commission deems adequate to serve the occupants.

Subsec. (c). Pub. L. 86-372, §701(d), authorized the Commissioner to reduce the amount of the premium charge below one-half of 1 per centum per annum with respect to any mortgage on property acquired by the Secretary of Defense or his designee if the mortgage is insured pursuant to the provisions of this subchapter as in effect prior to August 11, 1955.

Subsec. (k). Pub. L. 86-372, §701(e), added subsec. (k).

1958—Subsec. (b). Pub. L. 85-364 increased the maximum amount of interest from 4 to 4½ per centum per annum.

1957—Subsec. (a). Pub. L. 85-104, §501, substituted "June 30, 1959" for "June 30, 1958".

Subsec. (b)(3)(B). Pub. L. 85-104, §502, inserted proviso that should financing of housing to be constructed pursuant to a single invitation for bids be accomplished by two or more mortgages, any single mortgage may exceed an average of \$16,500 if sum of all mortgages for such housing does not exceed average of \$16,500.

Subsec. (f). Pub. L. 85-104, §108(c), substituted, in second sentence, "established by the Commissioner pursuant to section 1715o of this title" for "determined by the Commissioner with the approval of the Secretary of the Treasury, at the time the mortgage was accepted for insurance, but not to exceed 3 per centum per annum".

1956—Subsec. (a). Act Aug. 7, 1956, §§502, 503, inserted "(except mortgages insured pursuant to the provisions of this subchapter in effect prior to August 11, 1955)" and substituted "\$2,300,000" for "\$1,363,500,000" in first proviso and "June 30, 1958" for "September 30, 1956" in third proviso.

Subsec. (b)(2). Act Aug. 7, 1956, §504, required approval of Commissioner, with determination of Secretary, that new units will not substantially curtail occupancy in existing houses covered by mortgages insured under this chapter, and provided that if Commissioner requires Secretary to guarantee the armed services housing mortgages insurance fund from loss, he shall report to the Committees on Banking and Currency of the Senate and House of Representatives each instance in which he required such a guarantee.

Subsec. (b)(3)(B). Act Aug. 7, 1956, §505, substituted "\$16,500" for "\$13,500" in two places, and inserted "(including ranges, refrigerators, shades, screens, and fixtures)".

Subsec. (b)(3)(C). Act Aug. 7, 1956, §506(a), substituted "eligible bidder with respect to" for "eligible builder of".

1955—Subsec. (a). Act Aug. 11, 1955, increased authorization from \$500,000,000 to \$1,363,500,000, and extended from June 30, 1955, to September 30, 1956, period within which mortgages can be insured.

Act June 30, 1955, extended termination date, with respect to authority to insure, from June 30, 1955, to July 31, 1955.

Subsec. (b). Act Aug. 11, 1955, authorized issuance of insurance for units necessary for reasons of safety, security, or other essential military requirements, or where adequate housing is not available at reasonable rentals within reasonable commuting distance, limited the amount of the mortgage to not more than the replacement cost of the property or project, restricted the amount of the mortgage to not more than an average of \$13,500 for a family unit, and required the mortgage to mature in not more than 25 years.

Subsec. (c). Act Aug. 11, 1955, struck out authorization of Commissioner to require payment by mortgagee of an adjusted premium charge in event that principal obligation of mortgage is paid in full prior to maturity date.

Subsec. (d). Act Aug. 11, 1955, struck out provisions which authorized mortgagee to proceed to foreclose mortgage in event of a default, and which granted mortgagee right to elect benefits of insurance when the United States acquires, or commences condemnation proceedings to acquire, all or a substantial part, of mortgaged property.

Subsecs. (e) to (h). Act Aug. 11, 1955, substituted "Armed Services Housing Mortgage Insurance Fund" for

"Military Housing Insurance Fund," wherever appearing.

Subsec. (i). Act Aug. 11, 1955, struck out the power of the Commissioner to insure under subchapter VI of this chapter.

Subsec. (j). Act Aug. 11, 1955, reenacted provisions without change.

Subsec. (k). Act Aug. 11, 1955, struck out provisions which authorized utilization of the powers of the Federal National Mortgage Association and of any other Federal corporation or other Federal agency to purchase, service, or sell any mortgages, or partial interest therein.

1954—Subsec. (a). Acts Aug. 2, 1954, §128(a), and June 29, 1954, extended termination date, with respect to authority to insure, from July 31, 1954, to June 30, 1955, and from July 1, 1954, to July 31, 1954, respectively.

Subsec. (b). Act Aug. 2, 1954, §130, in par. immediately following subpar. (C) of par. (3) of the subsection, substituted the requirement that the mortgagor shall enter into the agreement required by section 1715r of this title for former provisions relating to certification of builders' costs, the certifications now being prescribed into section 1715r.

Subsec. (f). Act Aug. 2, 1954, §112(c), in second sentence, substituted a twenty-year period for ten-year period, with respect to the maturity of debentures.

1953—Subsec. (a). Act June 30, 1953, §10(a), in second proviso substituted "July 1, 1954" for "July 1, 1953".

Subsec. (b). Act June 30, 1953, §10(b), (c), inserted par. commencing "The mortgagor shall agree"; and, in first sentence of par. commencing "The mortgage shall provide", substituted "4½ per centum" for "4 per centum".

1951—Subsec. (a). Act Sept. 1, 1951, §601(a), substituted "July 1, 1953" for "July 1, 1951" in second proviso.

Subsec. (b)(3)(C). Act Sept. 1, 1951, §601(b), inserted proviso.

Subsec. (d). Act Sept. 1, 1951, §601(c), inserted reference to the Atomic Energy Commission in last sentence.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 112(c) of act Aug. 2, 1954, as not applicable in any case where the mortgage involved was insured or the commitment for such insurance was issued prior to Aug. 2, 1954, see section 112(e) of that act, set out as a note under section 1710 of this title.

EFFECTIVE DATE OF 1951 AMENDMENT

Act Sept. 1, 1951, ch. 378, §601(a), 65 Stat. 312, provided that the amendment made by that section is effective July 1, 1951.

§1748c. Repealed. Pub. L. 89–117, title XI, §1108(aa), Aug. 10, 1965, 79 Stat. 507

Section, act June 27, 1934, ch. 847, title VIII, §804, as added Aug. 8, 1949, ch. 403, §1, 63 Stat. 575; amended Aug. 11, 1955, ch. 783, title IV, §401, 69 Stat. 650, provided for disposition and use of excess moneys in Armed Services Housing Mortgage Insurance Fund, issue and cancellation of debentures, and receipt and payment of credits and charges.

§1748d. Lease of property; terms and conditions

Whenever the Secretary of the Army, Navy, or Air Force determines that it is necessary to lease any land held by the United States on or near a military installation to effectuate the purposes of this subchapter, he may lease such land upon such terms and conditions as will, in his opinion, best serve the national interest. The authority conferred by this section shall be in addition to and not in derogation of any other power or authority of the Secretary of the Army, Navy, or Air Force.

(June 27, 1934, ch. 847, title VIII, §805, as added Aug. 8, 1949, ch. 403, §1, 63 Stat. 576; amended Aug. 11, 1955, ch. 783, title IV, §401, 69 Stat. 651.)

EDITORIAL NOTES

AMENDMENTS

1955—Act Aug. 11, 1955, struck out specific references to sections authorizing leases of property, and struck out the power to sell, transfer, and convey real property.

§1748e. Mortgages on property in Alaska

The second sentence of section 1715d of this title, as amended, relating to housing in the State of Alaska, shall not apply to mortgages insured under this subchapter on property in said State.

(June 27, 1934, ch. 847, title VIII, §806, as added Aug. 8, 1949, ch. 403, §1, 63 Stat. 576; amended Aug. 11, 1955, ch. 783, title IV, §401, 69 Stat. 651; Pub. L. 86–70, §10(d), June 25, 1959, 73 Stat. 143.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1715d of this title, referred to in text, was in the original "section 214 of the National Housing Act, as amended". Section 214 of that Act was classified originally to section 1715d of this title and to section 484d of Title 48, Territories and Insular Possessions. Section 484d of Title 48 has been omitted from the Code.

AMENDMENTS

1959—Pub. L. 86–70 substituted "State" for "Territory" in two places.

1955—Act Aug. 11, 1955, reenacted section without change.

§1748f. Rules and regulations

The Secretary is authorized and directed to make such rules and regulations as may be necessary to carry out the provisions of this subchapter.

(June 27, 1934, ch. 847, title VIII, §807, as added Aug. 8, 1949, ch. 403, §1, 63 Stat. 576; amended Aug. 11, 1955, ch. 783, title IV, §401, 69 Stat. 651; Pub. L. 90–19, §1(a)(3), (q), May 25, 1967, 81 Stat. 17, 19.)

EDITORIAL NOTES

AMENDMENTS

1967—Pub. L. 90–19 substituted "Secretary" for "Commissioner" and struck out authorization for appointment by the Commissioner of a Special Assistant for Armed Services Housing for Mortgage Insurance with an adequate staff to expedite operations and eliminate administrative obstacles to this subchapter, respectively.

1955—Act Aug. 11, 1955, amended section generally, striking out provisions which stated that nothing should be construed as exempting property from taxation, and inserting provisions authorizing the Commissioner to make rules and regulations and to appoint a Special Assistant.

§1748g. Cost certification

Except in the case of mortgages on multifamily rental housing projects insured under section 1748h–2 of this title, the cost certification required under section 1715r of this title shall not be required with respect to mortgages insured under the provisions of this subchapter.

(June 27, 1934, ch. 847, title VIII, §808, as added Aug. 8, 1949, ch. 403, §1, 63 Stat. 576; amended Aug. 11, 1955, ch. 783, title IV, §401, 69 Stat. 651; Pub. L. 86–372, title VII, §704(b), Sept. 23,

1959, 73 Stat. 686.)

EDITORIAL NOTES

AMENDMENTS

1959—Pub. L. 86–372 substituted "Except in the case of mortgages on multifamily rental housing projects insured under section 1748h–2 of this title, the" for "The".

1955—Act Aug. 11, 1955, struck out provisions requiring cost certifications.

§§1748g–1, 1748h. Omitted

EDITORIAL NOTES

CODIFICATION

Section 1748g–1, act June 27, 1934, ch. 847, title VIII, §810, as added Sept. 1, 1951, ch. 378, title VI, §601(d), 65 Stat. 313, which related to mortgages on housing constructed for personnel of the Atomic Energy Commission, was omitted from the amendments to title VIII of act June 27, 1934, this subchapter, by act Aug. 11, 1955, ch. 783, title IV, §401, 69 Stat. 646.

Section 1748h, act June 27, 1934, ch. 847, title VIII, §809, as added May 2, 1950, ch. 151, 64 Stat. 97, which related to the procurement of services of architects and engineers by the Secretaries of the Army, Navy and Air Force to effectuate the purposes of this subchapter, was omitted from the amendment to title VIII of act June 27, 1934, this subchapter, by act Aug. 11, 1955, ch. 783, title IV, §401, 69 Stat. 646.

§1748h–1. Civilian employees of Armed Forces

(a) Requirements; certificate of need for housing and employment status

Notwithstanding any other provisions of this subchapter and in addition to mortgages insured under section 1748b of this title, the Secretary may insure any mortgage under this section which meets the eligibility requirements set forth in section 1709(b) of this title: *Provided*, That a mortgage insured under this section shall have been executed by a mortgagor who at the time of insurance is the owner of the property and either occupies the property or certifies that his failure to do so is the result of a change in his employment by the Armed Forces or a contractor thereof and to whom the Secretary of Defense or his designee has issued a certificate indicating that such person requires housing and is at the date of the certificate a civilian employee at a research or development installation of one of the military departments of the United States or a contractor thereof and is considered by such military department to be an essential, nontemporary employee at such date. Such certificate shall be conclusive evidence to the Secretary of the employment status of the mortgagor and of the mortgagor's need for housing.

(b) Certification of housing need to Secretary; guaranty from loss; authorization of appropriations

No mortgage shall be insured under this section unless the Secretary of Defense or his designee shall have certified to the Secretary that the housing is necessary to provide adequate housing for such civilians employed in connection with such a research or development installation and that there is no present intention to substantially curtail the number of such civilian personnel assigned or to be assigned to such installation. Such certification shall be conclusive evidence to the Secretary of the need for such housing but if the Secretary determines that insurance of mortgages on such housing is not an acceptable risk, he may require the Secretary of Defense to guarantee the General Insurance Fund from loss with respect to mortgages insured pursuant to this section: *Provided*, That the Secretary shall relieve the Secretary of Defense from any obligation to guarantee the General Insurance Fund from loss with respect to a mortgage assumed by a person ineligible to receive a certificate under subsection (a), if the original mortgage is issued another certificate with respect to

a mortgage insured under this section on property which the Secretary determines is not an acceptable risk. There are authorized to be appropriated such sums as may be necessary to provide for payment to meet losses arising from such guaranty.

(c) Economic soundness of property

The Secretary may accept any mortgage for insurance under this section without regard to any requirement in any other section of this chapter, that the project or property be economically sound or an acceptable risk.

(d) Insurance benefits to which mortgagee entitled

Any mortgagee under a mortgage insured under this section is entitled to the benefits of insurance as provided in section 1710(a) of this title with respect to mortgages insured under section 1709 of this title.

(e) Payment of insurance; meaning of terms

The provisions of subsections (b), (c), (d), (e), (f), (g), (h), ¹(j), and (k) ¹ of section 1710 of this title shall apply to mortgages insured under this section except that as applicable to those mortgages: (1) all references to the "Fund" or "Mutual Mortgage Insurance Fund" shall refer to the "General Insurance Fund" and (2) all references to section 1709 of this title shall refer to this section.

(f) Provisions of subchapter applicable; termination date

The provisions of sections 1748, 1748a, ¹1748b(c), 1748b(i), 1748b(j), 1748c(a), ¹1748c(b), ¹ and 1748f of this title and the provisions of section 1748b(a) of this title relating to the aggregate amount of all mortgages insured under this subchapter, shall be applicable to mortgages insured under this section.

(g) Housing for persons employed by National Aeronautics and Space Administration or Atomic Energy Commission; guaranty from loss; definitions

(1) A mortgage secured by property which is intended to provide housing for a person (i) employed or assigned to duty at or in connection with any research or development installation of the National Aeronautics and Space Administration and which is located at or near such installation, or (ii) employed at any research or development installation of the Atomic Energy Commission and which is located at or near such installation, may (if the mortgage otherwise meets the requirements of this section) be insured by the Secretary under the provisions of this section. The Administrator of the National Aeronautics and Space Administration (or his designee), in the case of any mortgage secured by property intended to provide housing for any person employed or assigned to duty at any such installation of the National Aeronautics and Space Administration, or the Chairman of the Atomic Energy Commission (or his designee), in the case of any mortgage secured by property intended to provide housing for any person employed at such installation of the Atomic Energy Commission, is authorized to guarantee and indemnify the General Insurance Fund against loss to the extent required by the Secretary, in accordance with the provisions of subsection (b) of this section.

(2) For purposes of this subsection—

(i) The terms "Armed Forces", "one of the military departments of the United States", "military department", "Secretary of Defense or his designee", and "Secretary of Defense", when used in subsections (a) and (b) of this section, shall be deemed to refer to the National Aeronautics and Space Administration (or the Administrator thereof), or the Atomic Energy Commission (or the Chairman thereof), as may be appropriate;

(ii) The term "Secretary of the Army, Navy, or Air Force", when used in section 1748d of this title, shall be deemed to refer to the National Aeronautics and Space Administration or the Administrator thereof, as may be appropriate;

(iii) The terms "civilian employee", "civilians", and "civilian personnel", as used in this section, shall be deemed to refer to (A) employees of the National Aeronautics and Space Administration

or a contractor thereof or to military personnel assigned to duty at an installation of the National Aeronautics and Space Administration, or (B) persons employed at or in connection with any research or development installation of the Atomic Energy Commission, as the case may be; and

(iv) The term "military installation" when used in section 1748d of this title shall be deemed to refer to an installation of the National Aeronautics and Space Administration.

(June 27, 1934, ch. 847, title VIII, §809, as added June 13, 1956, ch. 381, 70 Stat. 273; amended Pub. L. 86-372, title I, §116(b), Sept. 23, 1959, 73 Stat. 664; Pub. L. 86-578, July 5, 1960, 74 Stat. 314; Pub. L. 86-774, §3, Sept. 13, 1960, 74 Stat. 915; Pub. L. 87-623, §2, Aug. 31, 1962, 76 Stat. 418; Pub. L. 88-127, §1, Sept. 23, 1963, 77 Stat. 163; Pub. L. 89-117, title II, §202(c), title XI, §1108(v), Aug. 10, 1965, 79 Stat. 466, 506; Pub. L. 90-19, §1(a)(3), (r), May 25, 1967, 81 Stat. 17, 19; Pub. L. 91-78, §2(d), Sept. 30, 1969, 83 Stat. 125; Pub. L. 91-152, title I, §101(f), Dec. 24, 1969, 83 Stat. 379; Pub. L. 91-432, §1(d), Oct. 2, 1970, 84 Stat. 887; Pub. L. 91-473, §1(d), Oct. 21, 1970, 84 Stat. 1065; Pub. L. 91-525, §1(d), Dec. 1, 1970, 84 Stat. 1384; Pub. L. 91-609, title I, §§101(f), 112, Dec. 31, 1970, 84 Stat. 1770, 1772; Pub. L. 92-503, §1(f), Oct. 18, 1972, 86 Stat. 906; Pub. L. 93-85, §1(f), Aug. 10, 1973, 87 Stat. 220; Pub. L. 93-117, §1(f), Oct. 2, 1973, 87 Stat. 421; Pub. L. 93-383, title III, §316(d), Aug. 22, 1974, 88 Stat. 685; Pub. L. 95-60, §1(e), June 30, 1977, 91 Stat. 257; Pub. L. 95-80, §1(e), July 31, 1977, 91 Stat. 339; Pub. L. 95-128, title III, §301(h), Oct. 12, 1977, 91 Stat. 1131; Pub. L. 95-406, §1(h), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95-557, title III, §301(h), Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96-71, §1(h), Sept. 28, 1979, 93 Stat. 501; Pub. L. 96-105, §1(h), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96-153, title III, §301(h), Dec. 21, 1979, 93 Stat. 1112; Pub. L. 96-372, §1(h), Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96-399, title III, §301(h), Oct. 8, 1980, 94 Stat. 1638; Pub. L. 97-35, title III, §331(h)(1), Aug. 13, 1981, 95 Stat. 413; Pub. L. 97-289, §1(h), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 98-35, §1(h), May 26, 1983, 97 Stat. 197; Pub. L. 98-109, §1(h), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98-181, title I [title IV, §401(g)], Nov. 30, 1983, 97 Stat. 1208; Pub. L. 99-120, §1(h)(1), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99-156, §1(h)(1), Nov. 15, 1985, 99 Stat. 815; Pub. L. 99-219, §1(h)(1), Dec. 26, 1985, 99 Stat. 1730; Pub. L. 99-267, §1(i)(1), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99-272, title III, §3007(h)(1), Apr. 7, 1986, 100 Stat. 105; Pub. L. 99-289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99-345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99-430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100-122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100-154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100-170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100-179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100-200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100-242, title IV, §401(a)(5), Feb. 5, 1988, 101 Stat. 1898; Pub. L. 101-625, title IX, §952(b), Nov. 28, 1990, 104 Stat. 4418; Pub. L. 102-550, title IX, §904(b), Oct. 28, 1992, 106 Stat. 3868.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

Subsection (h) of section 1710 of this title, referred to in subsec. (e), was redesignated subsec. (i) by Pub. L. 105-276, title VI, §602(1), Oct. 21, 1998, 112 Stat. 2674.

Subsection (k) of section 1710 of this title, referred to in subsec. (e), was repealed by Pub. L. 105-276, title VI, §601(c), Oct. 21, 1998, 112 Stat. 2673.

Sections 1748a and 1748c of this title, referred to in subsec. (f), were repealed by Pub. L. 89-117, title XI, §1108(aa), Aug. 10, 1965, 79 Stat. 507.

PRIOR PROVISIONS

A prior section 809 of title VIII of act June 27, 1934, as added May 2, 1950, ch. 151, 64 Stat. 97, which related to the procurement of services of architects and engineers by the armed services to effectuate purposes of this subchapter, was classified to section 1748h of this title.

AMENDMENTS

1992—Subsec. (h). Pub. L. 102-550 struck out subsec. (h) which related to an Advanced Building Technology Program. See section 1701j-2(h) of this title.

1990—Subsecs. (h) to (j). Pub. L. 101-625, §952(b), which directed the addition of subsec. (h) relating to an Advanced Building Technology Program and the redesignation of subsecs. (h) and (i) as (i) and (j),

respectively, was executed by adding subsec. (h) because this section did not contain subsec. (h) or (i).

1988—Subsec. (f). Pub. L. 100-242 struck out "No more mortgages shall be insured under this section after March 15, 1988, except pursuant to a commitment to insure before such date."

1987—Subsec. (f). Pub. L. 100-200 substituted "March 15, 1988" for "December 16, 1987".

Pub. L. 100-179 substituted "December 16, 1987" for "December 2, 1987".

Pub. L. 100-170 substituted "December 2, 1987" for "November 15, 1987".

Pub. L. 100-154 substituted "November 15, 1987" for "October 31, 1987".

Pub. L. 100-122 substituted "October 31, 1987" for "September 30, 1987".

1986—Subsec. (f). Pub. L. 99-430 substituted "September 30, 1987" for "September 30, 1986".

Pub. L. 99-345 substituted "September 30, 1986" for "June 6, 1986".

Pub. L. 99-289 substituted "June 6, 1986" for "April 30, 1986".

Pub. L. 99-272 made amendment identical to Pub. L. 99-219. See 1985 Amendment note below.

Pub. L. 99-267 substituted "April 30, 1986" for "March 17, 1986".

1985—Subsec. (f). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1983—Subsec. (f). Pub. L. 98-181 substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

1982—Subsec. (f). Pub. L. 97-289 substituted "May 20, 1983" for "September 30, 1982".

1981—Subsec. (f). Pub. L. 97-35 substituted "1982" for "1981".

1980—Subsec. (f). Pub. L. 96-399 substituted "September 30, 1981" for "October 15, 1980".

Pub. L. 96-372 substituted "October 15, 1980" for "September 30, 1980".

1979—Subsec. (f). Pub. L. 96-153 substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96-105 substituted "November 30, 1979" for "October 31, 1979".

Pub. L. 96-71 substituted "October 31, 1979" for "September 30, 1979".

1978—Subsec. (f). Pub. L. 95-557 substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Subsec. (f). Pub. L. 95-128 substituted "September 30, 1978" for "September 30, 1977".

Pub. L. 95-80 substituted "September 30, 1977" for "July 31, 1977".

Pub. L. 95-60 substituted "July 31, 1977" for "June 30, 1977".

1974—Subsec. (f). Pub. L. 93-383 substituted "June 30, 1977" for "October 1, 1974".

1973—Subsec. (f). Pub. L. 93-117 substituted "October 1, 1974" for "October 1, 1973".

Pub. L. 93-85 substituted "October 1, 1973" for "June 30, 1973".

1972—Subsec. (f). Pub. L. 92-503 substituted "June 30, 1973" for "October 1, 1972".

1970—Subsec. (b). Pub. L. 91-609, §112, inserted the proviso.

Subsec. (f). Pub. L. 91-609, §101(f), substituted "October 1, 1972" for "January 1, 1971".

Pub. L. 91-525 substituted "January 1, 1971" for "December 1, 1970".

Pub. L. 91-473 substituted "December 1, 1970" for "November 1, 1970".

Pub. L. 91-432 substituted "November 1, 1970" for "October 1, 1970".

1969—Subsec. (f). Pub. L. 91-152 substituted "October 1, 1970" for "January 1, 1970".

Pub. L. 91-78 substituted "January 1, 1970" for "October 1, 1969".

1967—Pub. L. 90-19, §1(a)(3), substituted "Secretary" for "Commissioner" wherever appearing in subsecs. (a) to (c) and (g)(1).

Subsec. (a). Pub. L. 90-19, §1(r)(1), substituted "Secretary of Defense" for "Secretary".

Subsec. (b). Pub. L. 90-19, §1(r)(1), (2), substituted "Secretary of Defense" for "Secretary" wherever appearing.

Subsec. (g)(2). Pub. L. 90-19, §1(r)(3), (4), substituted "Secretary of Defense" for "Secretary" in cl. (i) and "the National Aeronautics and Space Administration" for "such Administration", wherever appearing, respectively.

1965—Subsecs. (b), (e). Pub. L. 89-117, §1108(v), substituted "General Insurance Fund" for "Armed Services Housing Mortgage Insurance Fund" wherever appearing.

Subsec. (f). Pub. L. 89-117, §202(c), substituted "October 1, 1969" for "October 1, 1965".

Subsec. (g). Pub. L. 89-117, §1108(v), substituted "General Insurance Fund" for "Armed Services Housing Mortgage Insurance Fund" wherever appearing.

1963—Subsec. (f). Pub. L. 88-127, §1(1), substituted "October 1, 1965" for "October 1, 1963".

Subsec. (g)(1). Pub. L. 88-127, §1(2), substituted "or in connection with any" for "a", struck out requirement that such installation belong to a military department of the United States on or after June 13,

1956, before its transfer to the Administration, in cl. (i), and extended cl. (ii) to include persons at any installation of the Atomic Energy Commission instead of only the one in Los Alamos County, N. Mex.

Subsec. (g)(2)(iii). Pub. L. 88-127, §1(3), extended cl. (B) to include persons at any installation of the Atomic Energy Commission instead of only the one in Los Alamos, N. Mex.

1962—Subsec. (f). Pub. L. 87-623 provided that no mortgages shall be insured under this section after October 1, 1963, except pursuant to a commitment before such date, and struck out "and the expiration date of the Commissioner's authority to insure" after "amount of all mortgages insured".

1960—Subsec. (g). Pub. L. 86-774 designated part of existing provisions as par. (1), inserting cl. (ii) and "in the case of any mortgage secured by property intended to provide housing for any person employed or assigned to duty at any such installation of the National Aeronautics and Space Administration, or the Chairman of the Atomic Energy Commission (or his designee), in the case of any mortgage secured by property intended to provide housing for any person employed at such installation of the Atomic Energy Commission" and striking out "in the case of mortgages referred to in this subsection" after "subsection (b) of this section", and designated cl. (1) as par. (2)(i) and (ii), cl. (2) as par. (2)(iii), adding subpar. (B), and cl. (3) as par. (2)(iv).

Subsec. (g). Pub. L. 86-578 added subsec. (g).

1959—Subsec. (e). Pub. L. 86-372 inserted reference to subsec. (k) to section 1710 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of this title.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See also Transfer of Functions notes set out under those sections.

¹ See References in Text note below.

§1748h-2. Insurance of mortgages for defense housing for impacted areas

(a) Authorization

Notwithstanding any other provision of this subchapter, the Secretary may insure and make commitments to insure any mortgage under this section which meets the eligibility requirements hereinafter set forth.

(b) Eligibility requirements

No mortgage shall be insured under this section unless (1) the housing which is covered by the insured mortgage is necessary in the interest of national security in order to provide adequate housing for (A) military personnel and essential civilian personnel serving or employed in connection with any installation of one of the armed services of the United States, or (B) essential personnel employed or assigned to duty at or in connection with any research or development installation of the National Aeronautics and Space Administration or of the Atomic Energy Commission, (2) there is no present intention to curtail substantially the number of such personnel assigned or to be assigned to the installation, (3) adequate housing is not available for such personnel at reasonable rentals within reasonable commuting distances of such installation, and (4) the mortgaged property will not so far as can be reasonably foreseen substantially curtail occupancy in any existing housing in the vicinity of the installation which is covered by mortgages insured under this chapter.

(c) Economical soundness of property or project

The Secretary may accept any mortgage for insurance under this section without regard to any requirement in any other section of this chapter that the property or project be economically sound.

(d) Rental conditions; preferences and priorities in the sale or rental of dwellings

The Secretary shall require each project covered by a mortgage insured under this section to be held for rental for a period of not less than five years after the project or dwelling is made available for initial occupancy or until he finds that the housing may be released from such rental condition. The Secretary shall prescribe such procedures as in his judgment are necessary to secure reasonable preference or priority in the sale or rental of dwellings covered by a mortgage insured under this section for military personnel and essential civilian employees of the armed services, employees of contractors for the armed services, and persons described in clause (1)(B) of subsection (b) of this section.

(e) Property held by mortgagor approved by Secretary; acquisition of stock or interest; redemption

For the purpose of providing multifamily rental housing projects or housing projects consisting of individual single-family dwellings for sale, the Secretary is authorized to insure mortgages (including advances on such mortgages during construction) which cover property held by a mortgagor approved by the Secretary. Any such mortgagor shall possess powers necessary therefor and incidental thereto and shall until the termination of all obligations of the Secretary under such insurance be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation to such extent and in such manner as to provide reasonable rentals to tenants and a reasonable return on the investment. The Secretary may make such contracts with, and acquire for not to exceed \$100 such stock or interest in, any such mortgagor as he may deem necessary to render effective such restriction or regulation. Such stock or interest shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

(f) Mortgage limitations for multifamily rental property or project

To be eligible for insurance under this section, a mortgage on any multifamily rental property or project shall involve a principal obligation in an amount not to exceed, for such part of such property or project as may be attributable to dwelling use, \$9,000 per family unit without a bedroom, \$12,500 per family unit with one bedroom, \$15,000 per family unit with two bedrooms, and \$18,500 per family unit with three or more bedrooms, and not to exceed 90 per centum of the estimated value of the property or project when the proposed physical improvements are completed. The Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this paragraph by not to exceed 45 per centum in any geographical area where he finds that cost levels so require.

(g) Mortgage limitation for property or project constructed for eventual sale of single-family dwellings

To be eligible for insurance under this section a mortgage on any property or project constructed for eventual sale of single-family dwellings shall involve a principal obligation in an amount not to exceed a sum computed on the basis of a separate mortgage for each single-family dwelling (irrespective of whether such dwelling has a party wall or is otherwise physically connected with another dwelling or dwellings) comprising the property or project equal to the total of each of the maximum principal obligations of such mortgages which would meet the requirements of section 1709(b)(2) of this title if the mortgagor were the owner and occupant who had made the required payment on account of the property prescribed in such paragraph.

(h) Amortization; interest; release of part of mortgaged property from lien; replacement of certain mortgages by individual mortgages; commercial and community facilities

Any mortgage insured under this section shall provide for complete amortization by periodic payments within such terms as the Secretary may prescribe but not to exceed the maximum term applicable to mortgages under section 1713 of this title and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee, except that individual mortgages of the character described in subsection (g) covering the individual dwellings in the project may have a term not in excess of the maximum term applicable to mortgages insured under section 1709 of this title or the unexpired term of the project mortgage at the time of the release of the mortgaged property from

such project mortgage, whichever is the greater, and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release, and a mortgage of the character described in subsection (g) of this section may provide that, at any time after the release of the project from the rental period prescribed by subsection (d), such mortgage may be replaced, in whole or in part, by individual mortgages covering each individual dwelling in the project in amounts not to exceed the unpaid balance of the blanket mortgage allocable to the individual property. Each such individual mortgage may be insured under this section. Property covered by a mortgage insured under this section may include eight or more family units and may include such commercial and community facilities as the Secretary deems adequate to serve the occupants.

(i) Limitation on aggregate number of dwelling units

The aggregate number of dwelling units (including all units in multifamily projects or individual dwellings) covered by outstanding commitments to insure and mortgages insured under this section shall at no time exceed five thousand dwelling units.

(j) Applicability of other laws

The provisions of subsections (d), (e), (g), (h), (i), (j), (k), (l), and (n) of section 1713 of this title shall be applicable to mortgages insured under this section except individual mortgages of the character described in subsection (g) of this section covering the individual dwellings in the project, and as to such individual mortgages the provisions of subsections (a), (c), (d), (e), (f), (g), (h), ¹(j), and (k) ¹ of section 1710 of this title shall be applicable: *Provided*, That wherever the words "Fund" or "Mutual Mortgage Insurance Fund" appear in section 1710 of this title, such reference shall refer to the General Insurance Fund with respect to mortgages insured under this section.

(k) Aggregate amount of mortgages insured; termination date

The provisions of sections 1748, 1748a, ¹1748b(c), 1748b(i), 1748b(j), 1748c(a), 1748c(b), ¹and 1748f of this title and the provisions of section 1748b(a) of this title relating to the aggregate amount of all mortgages insured under this subchapter shall be applicable to mortgages insured under this section.

(June 27, 1934, ch. 847, title VIII, §810, as added Pub. L. 86-372, title VII, §704(a), Sept. 23, 1959, 73 Stat. 683; amended Pub. L. 87-70, title VI, §611(a), June 30, 1961, 75 Stat. 180; Pub. L. 87-623, §3, Aug. 31, 1962, 76 Stat. 418; Pub. L. 88-127, §2, Sept. 23, 1963, 77 Stat. 163; Pub. L. 88-560, title I, §107(f), Sept. 2, 1964, 78 Stat. 776; Pub. L. 89-117, title II, §202(c), title XI, §1108(w), Aug. 10, 1965, 79 Stat. 466, 506; Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17; Pub. L. 90-448, title XVII, §1722(f), Aug. 1, 1968, 82 Stat. 611; Pub. L. 91-78, §2(e), Sept. 30, 1969, 83 Stat. 125; Pub. L. 91-152, title I, §101(g), Dec. 24, 1969, 83 Stat. 379; Pub. L. 91-432, §1(e), Oct. 2, 1970, 84 Stat. 887; Pub. L. 91-473, §1(e), Oct. 21, 1970, 84 Stat. 1065; Pub. L. 91-525, §1(e), Dec. 1, 1970, 84 Stat. 1384; Pub. L. 91-609, title I, §101(g), Dec. 31, 1970, 84 Stat. 1770; Pub. L. 92-503, §1(g), Oct. 18, 1972, 86 Stat. 906; Pub. L. 93-85, §1(g), Aug. 10, 1973, 87 Stat. 220; Pub. L. 93-117, §1(g), Oct. 2, 1973, 87 Stat. 421; Pub. L. 93-383, title III, §§304(j), 316(e), Aug. 22, 1974, 88 Stat. 678, 685; Pub. L. 95-60, §1(f), June 30, 1977, 91 Stat. 257; Pub. L. 95-80, §1(f), July 31, 1977, 91 Stat. 339; Pub. L. 95-128, title III, §301(i), Oct. 12, 1977, 91 Stat. 1131; Pub. L. 95-406, §1(i), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95-557, title III, §301(i), Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96-71, §1(i), Sept. 28, 1979, 93 Stat. 501; Pub. L. 96-105, §1(i), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96-153, title III, §301(i), Dec. 21, 1979, 93 Stat. 1112; Pub. L. 96-372, §1(i), Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96-399, title III, §301(i), Oct. 8, 1980, 94 Stat. 1639; Pub. L. 97-35, title III, §331(h)(2), Aug. 13, 1981, 95 Stat. 413; Pub. L. 97-289, §1(i), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 98-35, §1(i), May 26, 1983, 97 Stat. 197; Pub. L. 98-109, §1(i), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98-181, title I [title IV, §401(h)], Nov. 30, 1983, 97 Stat. 1208; Pub. L. 99-120, §1(h)(2), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99-156, §1(h)(2), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99-219, §1(h)(2), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99-267, §1(i)(2), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99-272, title III, §3007(h)(2), Apr. 7, 1986, 100 Stat. 105; Pub. L. 99-289, §1(b), May 2, 1986, 100 Stat. 412;

Pub. L. 99-345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99-430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100-122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100-154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100-170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100-179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100-200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100-242, title IV, §§401(a)(6), 429(k), Feb. 5, 1988, 101 Stat. 1898, 1919.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

Subsection (h) of section 1710 of this title, referred to in subsec. (j), was redesignated subsec. (i) by Pub. L. 105-276, title VI, §602(1), Oct. 21, 1998, 112 Stat. 2674.

Subsection (k) of section 1710 of this title, referred to in subsec. (j), was repealed by Pub. L. 105-276, title VI, §601(c), Oct. 21, 1998, 112 Stat. 2673.

Sections 1748a and 1748c of this title, referred to in subsec. (k), were repealed by Pub. L. 89-117, title XI, §1108 (aa), Aug. 10, 1965, 79 Stat. 507.

PRIOR PROVISIONS

A prior section 810 of title VIII of act June 27, 1934, ch. 847, as added Sept. 1, 1951, ch. 378, title VI, §601(d), 65 Stat. 313, which related to mortgage on housing constructed for personnel of the Atomic Energy Commission, was classified to section 1748g-1 of this title.

AMENDMENTS

1988—Subsec. (h). Pub. L. 100-242, §429(k), substituted "at such rate as may be agreed upon by the mortgagor and the mortgagee" for "(exclusive of premium charges for insurance) at not to exceed the rate applicable to mortgages insured under section 1713 of this title" and "such rate as may be agreed upon by the mortgagor and the mortgagee" for "not to exceed the rate applicable to mortgages insured under section 1709 of this title".

Subsec. (k). Pub. L. 100-242, §401(a)(6), struck out "No more mortgages shall be insured under this section after March 15, 1988, except pursuant to a commitment to insure before such date."

1987—Subsec. (k). Pub. L. 100-200 substituted "March 15, 1988" for "December 16, 1987".

Pub. L. 100-179 substituted "December 16, 1987" for "December 2, 1987".

Pub. L. 100-170 substituted "December 2, 1987" for "November 15, 1987".

Pub. L. 100-154 substituted "November 15, 1987" for "October 31, 1987".

Pub. L. 100-122 substituted "October 31, 1987" for "September 30, 1987".

1986—Subsec. (k). Pub. L. 99-430 substituted "September 30, 1987" for "September 30, 1986".

Pub. L. 99-345 substituted "September 30, 1986" for "June 6, 1986".

Pub. L. 99-289 substituted "June 6, 1986" for "April 30, 1986".

Pub. L. 99-272 made amendment identical to Pub. L. 99-219. See 1985 Amendment note below.

Pub. L. 99-267 substituted "April 30, 1986" for "March 17, 1986".

1985—Subsec. (k). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1983—Subsec. (k). Pub. L. 98-181 substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

1982—Subsec. (k). Pub. L. 97-289 substituted "May 20, 1983" for "September 30, 1982".

1981—Subsec. (k). Pub. L. 97-35 substituted "1982" for "1981".

1980—Subsec. (k). Pub. L. 96-399 substituted "September 30, 1981" for "October 15, 1980".

Pub. L. 96-372 substituted "October 15, 1980" for "September 30, 1980".

1979—Subsec. (k). Pub. L. 96-153 substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96-105 substituted "November 30, 1979" for "October 31, 1979".

Pub. L. 96-71 substituted "October 31, 1979" for "September 30, 1979".

1978—Subsec. (k). Pub. L. 95-557 substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Subsec. (k). Pub. L. 95-128 substituted "September 30, 1978" for "September 30, 1977".

Pub. L. 95-80 substituted "September 30, 1977" for "July 31, 1977".

Pub. L. 95-60 substituted "July 31, 1977" for "June 30, 1977".

1974—Subsec. (f). Pub. L. 93-383, §304(j)(1), struck out "(1) not to exceed \$5,000,000 or (2)" after "in an amount".

Subsec. (g). Pub. L. 93-383, §304(j)(2), struck out "not to exceed \$5,000,000 and" after "in an amount".

Subsec. (k). Pub. L. 93-383, §316(e), substituted "June 30, 1977" for "October 1, 1974".

1973—Subsec. (k). Pub. L. 93-117 substituted "October 1, 1974" for "October 1, 1973".

Pub. L. 93-85 substituted "October 1, 1973" for "June 30, 1973".

1972—Subsec. (k). Pub. L. 92-503 substituted "June 30, 1973" for "October 1, 1972".

1970—Subsec. (k). Pub. L. 91-609 substituted "October 1, 1972" for "January 1, 1971".

Pub. L. 91-525 substituted "January 1, 1971" for "December 1, 1970".

Pub. L. 91-473 substituted "December 1, 1970" for "November 1, 1970".

Pub. L. 91-432 substituted "November 1, 1970" for "October 1, 1970".

1969—Subsec. (k). Pub. L. 91-152 substituted "October 1, 1970" for "January 1, 1970".

Pub. L. 91-78 substituted "January 1, 1970" for "October 1, 1969".

1968—Subsec. (e). Pub. L. 90-448 substituted "mortgagor approved by the Secretary" for "private corporation, association, cooperative society, or trust" in first sentence, and "mortgagor" for "corporation, association, cooperative society, or trust" in third and fourth sentences.

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing in subsecs. (a), (c) to (f), and (h).

1965—Subsec. (e). Pub. L. 89-117, §1108(w)(1), substituted "General Insurance Fund" for "Armed Services Housing Mortgage Insurance Fund".

Subsec. (j). Pub. L. 89-117, §1108(w)(2), (3), struck out reference to subsecs. (m) and (p) of section 1713 of this title and, in proviso, substituted "General Insurance Fund" for "Armed Services Housing Mortgage Insurance Fund" and struck out reference to the appearance of "Housing Insurance Fund" in sections 1710 and 1713 of this title and the appearance of "Fund" or "Mutual Mortgage Insurance Fund" in section 1713 of this title.

Subsec. (k). Pub. L. 89-117, §202(c), substituted "October 1, 1969" for "October 1, 1965".

1964—Subsec. (f). Pub. L. 88-560 changed limits on mortgages for multifamily rental property or project, in cl. (2) of the first sentence from "\$2,500 per room (or \$9,000 per family unit if the number of rooms in such property or project is less than four per family unit)" to "\$9,000 per family unit without a bedroom, \$12,500 per family unit with one bedroom, \$15,000 per family unit with two bedrooms, and \$18,500 per family unit with three or more bedrooms"; and, in the second sentence, inserted ", by regulation," and substituted provisions authorizing an increase "by not to exceed 45 per centum" of any of such limits because of cost levels for former provision authorizing such an increase "by not to exceed \$1,000 per room", respectively.

1963—Subsec. (b)(1). Pub. L. 88-127, §2(1), included essential personnel employed or assigned to duty at or in connection with any research or development installation of the National Aeronautics and Space Administration or of the Atomic Energy Commission.

Subsec. (d). Pub. L. 88-127, §2(2), included persons described in cl. (1)(B) of subsec. (b) of this section.

Subsec. (k). Pub. L. 88-127, §2(3), substituted "October 1, 1965" for "October 1, 1963".

1962—Subsec. (k). Pub. L. 87-623 provided that no mortgages shall be insured under this section after October 1, 1963, except pursuant to a commitment before such date, and struck out "and the expiration date of the Commissioner's authority to insure" after "amount of all mortgages insured".

1961—Subsec. (b). Pub. L. 87-70, §611(a)(1), struck out provisions which required certification by Secretary of Defense or his designee.

Subsec. (d). Pub. L. 87-70, §611(a)(2), struck out provisions which related to certification and advice of Secretary of Defense or his designee.

Subsec. (l). Pub. L. 87-70, §611(a)(3), repealed subsec. (l) which required Secretary of Defense to guarantee Armed Services Housing Mortgage Insurance Fund from loss.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of this title.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The

Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

**AMENDMENTS TO PROVISIONS FOR FAMILY UNIT LIMITS ON RENTAL HOUSING;
EQUITABLE APPLICATION OF SUCH AMENDMENTS OR PRE-AMENDMENT
PROVISIONS TO PROJECTS SUBMITTED FOR CONSIDERATION PRIOR TO
SEPTEMBER 2, 1964**

Equitable application of amendment to subsec. (f) of this section by section 107(f) of Pub. L. 88-560 or pre-amendment provisions to projects submitted for consideration prior to Sept. 2, 1964, see section 107(g) of Pub. L. 88-560, set out as a note under section 1713 of this title.

¹ See References in Text note below.

§1748h-3. Payments in lieu of taxes; limitations; exemption from taxation

(a) The Secretary is authorized to make payments in lieu of taxes on any real property to which title has been or is hereafter acquired by him in fee under section 1748b of this title as effective prior to August 11, 1955, and on which taxes or payments in lieu of such taxes were payable or paid prior to acquisition by the Secretary. Such payments may be made in connection with tax years occurring prior to or subsequent to October 5, 1962. The amount of any such payments shall not exceed taxes on similar property and shall not include interest or penalties. If the Secretary has acquired or hereafter acquires title in fee to real property by foreclosure or by transfer from some other department or agency of the Government or otherwise during a tax year, he may make a payment in lieu of taxes prorated for that portion of the year remaining after his acquisition of title. This subsection shall not authorize any lien against property held by the Secretary, nor the payment of any tax, nor any payment in lieu of any tax, on any interest of the Secretary as lessee or mortgagee.

(b) Nothing in this subchapter shall be construed to exempt any real property which has been or is hereafter acquired and held by the Secretary under section 1748h-1 or 1748h-2 of this title from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed.

(June 27, 1934, ch. 847, title VIII, §811, as added Pub. L. 87-756, Oct. 5, 1962, 76 Stat. 751; amended Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Subsecs. (a), (b). Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing.

§1748i. Omitted

EDITORIAL NOTES

CODIFICATION

Section, act Sept. 28, 1951, ch. 434, title V, §505, 65 Stat. 365, related to appropriation and expenditure of funds for acquisition of land, installation of outside utilities, and site preparation for housing projects constructed under this subchapter.

SUBCHAPTER IX—HOUSING FOR EDUCATIONAL INSTITUTIONS

§§1749 to 1749c. Repealed. Pub. L. 99–498, title VII, §702, Oct. 17, 1986, 100 Stat. 1545

Section 1749, acts Apr. 20, 1950, ch. 94, title IV, §401, 64 Stat. 77; June 30, 1953, ch. 170, §24(b), 67 Stat. 128; Aug. 2, 1954, ch. 649, title VIII, §808(b), 68 Stat. 646; Aug. 11, 1955, ch. 783, title III, §301, 69 Stat. 644; Aug. 7, 1956, ch. 1029, title VI, §601, 70 Stat. 1113; July 12, 1957, Pub. L. 85–104, title VI, §601(a), 71 Stat. 303; Sept. 23, 1959, Pub. L. 86–372, title VI, §§601, 603(b), 73 Stat. 681, 682; Sept. 14, 1960, Pub. L. 86–788, §2(b), 74 Stat. 1028; June 30, 1961, Pub. L. 87–70, title IV, §401, 75 Stat. 172; Aug. 10, 1965, Pub. L. 89–117, title VI, §§601, 602, 604(b), 79 Stat. 489; May 24, 1966, Pub. L. 89–429, §3(b), 80 Stat. 166; Nov. 3, 1966, Pub. L. 89–754, title X, §1014(b), 80 Stat. 1292; May 25, 1967, Pub. L. 90–19, §8(a), 81 Stat. 22; Aug. 1, 1968, Pub. L. 90–448, title XVII, §1705(b)–(e), (g)(1), 82 Stat. 604, 605; Dec. 24, 1969, Pub. L. 91–152, title II, §219, 83 Stat. 390; July 24, 1970, Pub. L. 91–351, title VII, §710, 84 Stat. 463; Dec. 31, 1970, Pub. L. 91–609, title II, §205, 84 Stat. 1777; Oct. 17, 1984, Pub. L. 98–479, title II, §203(e)(1), 98 Stat. 2230, authorized Federal loans and grants to assist educational institutions in providing housing and other educational facilities for students and faculties.

Section 1749a, acts Apr. 20, 1950, ch. 94, title IV, §402, 64 Stat. 78; Sept. 23, 1959, Pub. L. 86–372, title VI, §602, 73 Stat. 681; May 25, 1967, Pub. L. 90–19, §8(a), (b), 81 Stat. 22; Jan. 2, 1975, Pub. L. 93–604, title VII, §705(b), 88 Stat. 1964; Oct. 31, 1983, Pub. L. 98–139, title III, §308, 97 Stat. 895; Oct. 17, 1984, Pub. L. 98–479, title II, §§201(d)(1), 203(e)(2)–(4), 204(d), 98 Stat. 2228, 2230, 2233; Nov. 8, 1984, Pub. L. 98–619, title III, §308, 98 Stat. 3329; Dec. 12, 1985, Pub. L. 99–178, title III, §307, 99 Stat. 1128; Oct. 18, 1986, Pub. L. 99–500, §101(i) [H.R. 5233, title III, §307], 100 Stat. 1783–287, and Oct. 30, 1986, Pub. L. 99–591, §101(i) [H.R. 5233, title III, §307], 100 Stat. 3341–287; Dec. 22, 1987, Pub. L. 100–202, §106, 101 Stat. 1329–433, related to powers and duties of Secretary in carrying out subchapter.

Section 1749b, acts Apr. 20, 1950, ch. 94, title IV, §403, 64 Stat. 80; June 30, 1961, Pub. L. 87–70, title IV, §402, 75 Stat. 173; Aug. 1, 1968, Pub. L. 90–448, title XVII, §1705(f), 82 Stat. 604, related to apportionment of funds.

Section 1749c, acts Apr. 20, 1950, ch. 94, title IV, §404, 64 Stat. 80; Aug. 11, 1955, ch. 783, title III, §§302, 303, 69 Stat. 645; July 12, 1957, Pub. L. 85–104, title VI, §601(b), 71 Stat. 304; Sept. 23, 1959, Pub. L. 86–372, title VI, §603(a), 73 Stat. 682; June 30, 1961, Pub. L. 87–70, title IV, §403, 75 Stat. 173; Sept. 2, 1964, Pub. L. 88–560, title X, §1002, 78 Stat. 806; Aug. 10, 1965, Pub. L. 89–117, title VI, §§603, 604(a), 79 Stat. 489; Nov. 3, 1966, Pub. L. 89–754, title X, §1014(a), 80 Stat. 1292; May 25, 1967, Pub. L. 90–19, §8(a), (c), 81 Stat. 22; Aug. 1, 1968, Pub. L. 90–448, title XVII, §1705(g)(2)–(7), 82 Stat. 605; Oct. 17, 1984, Pub. L. 98–479, title II, §201(d)(2), 98 Stat. 2228, defined terms used in subchapter.

§1749d. Cost of inspections and of providing representatives

On and after December 19, 1963, necessary expenses of inspections and of providing representatives at the site of projects being planned or undertaken by local public agencies pursuant to title I of the Housing Act of 1949, as amended [42 U.S.C. 1450 et seq.], projects financed through loans to educational institutions authorized by title IV of the Housing Act of 1950, as amended [12 U.S.C. 1749 et seq.], projects and facilities financed by loans to public agencies pursuant to title II of the Housing Amendments of 1955, as amended [42 U.S.C. 1491 et seq.], urban planning financed through grants to State and local government agencies pursuant to chapter 35 of title 40, and reserves of planned public works financed through advances to municipalities and other public agencies pursuant to chapter 35 of title 40, as amended, shall be compensated by such agencies or institutions by the payment of fixed fees which in the aggregate will cover the costs of rendering such services, and expenses for such purpose shall be considered nonadministrative; and for the purpose of providing such inspections, the Secretary of Housing and Urban Development may utilize any agency and such agency may accept reimbursement or payment for such services from such institutions, or the Secretary, and shall credit such amounts to the appropriations or funds against which such charges have been made.

(Pub. L. 88–215, title I, Dec. 19, 1963, 77 Stat. 437; Pub. L. 89–174, §5, Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

The Housing Act of 1949, as amended, referred to in text, is act July 15, 1949, ch. 338, 63 Stat. 413. Title I of the Housing Act of 1949 which was classified generally to subchapter II (§1450 et seq.) of chapter 8A of Title 42, The Public Health and Welfare, was omitted from the Code pursuant to section 5316 of Title 42 which terminated the authority to make grants or loans under such chapter after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Housing Act of 1950, referred to in text, is act Apr. 20, 1950, ch. 94, 64 Stat. 48. Title IV of the Act was classified generally to this subchapter and was repealed by Pub. L. 99-498, title VII, §702, Oct. 17, 1986, 100 Stat. 1545. For complete classification of this Act to the Code, see Short Title of 1950 Amendment note set out under section 1701 of this title and Tables.

The Housing Amendments of 1955, referred to in text, is act Aug. 11, 1955, ch. 783, 69 Stat. 645. Title II of the Act was classified generally to chapter 8B (§1491 et seq.) of Title 42, The Public Health and Welfare, and was omitted from the Code pursuant to section 5316 of Title 42 which terminated authority to make grants or loans under such title II after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

CODIFICATION

"Chapter 35 of title 40" substituted in text for "title VII of the Housing Act of 1954, as amended" and for "title VII of the Housing Act of 1954" on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Section was enacted as part of the Independent Offices Appropriation Act, 1964, Pub. L. 88-215, and not as part of the National Housing Act which comprises this chapter or title IV of the Housing Act of 1950 which comprised this subchapter. Similar provisions were contained in the following prior appropriation acts:

Oct. 3, 1962, Pub. L. 87-741, title I, 76 Stat. 728.
Aug. 17, 1961, Pub. L. 87-141, title I, 75 Stat. 353.
July 12, 1960, Pub. L. 86-626, title I, 74 Stat. 434.
Sept. 14, 1959, Pub. L. 86-255, title I, 73 Stat. 508.
Aug. 28, 1958, Pub. L. 85-844, title I, 72 Stat. 1070.
June 29, 1957, Pub. L. 85-69, title I, 71 Stat. 233.
June 27, 1956, ch. 452, title I, 70 Stat. 345.
June 30, 1955, ch. 244, title I, 69 Stat. 206.
June 24, 1954, ch. 359, title I, 68 Stat. 283.
July 31, 1953, ch. 302, title I, 67 Stat. 305.
July 5, 1952, ch. 578, title I, 66 Stat. 402.
Aug. 31, 1951, ch. 376, title I, 65 Stat. 276.
Sept. 6, 1950, ch. 896, Ch. VIII, title I, 64 Stat. 709.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

"Secretary" substituted for "Administrator" pursuant to section 5 of Pub. L. 89-174, Sept. 9, 1965, 79 Stat. 669, which transferred functions, powers, and duties of Housing and Home Finance Agency and its Administrator to Secretary of Housing and Urban Development, and which is classified to section 3534 of Title 42, The Public Health and Welfare.

LIMITATION ON EXPENSE

Pub. L. 89-555, title I, §101, Sept. 6, 1966, 80 Stat. 684, limited nonadministrative expenses to \$5,535,000 for fiscal year 1966. Similar provisions for prior fiscal years were contained in acts Aug. 31, 1951, ch. 376, title I, §101, 65 Stat. 276; July 5, 1952, ch. 578, title I, §101, 66 Stat. 402; July 31, 1953, ch. 302, title I, §101, 67 Stat. 305; June 24, 1954, ch. 359, title I, §101, 68 Stat. 283; June 30, 1955, ch. 244, title I, §101, 69 Stat. 206; May 19, 1956, ch. 313, Ch. V, §501, 70 Stat. 166; June 27, 1956, ch. 452, title I, §101, 70 Stat. 346; June 29, 1957, Pub. L. 85-69, title I, §101, 71 Stat. 233; Aug. 28, 1958, Pub. L. 85-844, title I, §101, 72 Stat. 1070; Sept. 14, 1959, Pub. L. 86-255, title I, §101, 73 Stat. 508; July 12, 1960, Pub. L. 86-626, title I, §101, 74 Stat. 435; Aug. 17, 1961, Pub. L. 87-141, title I, §101, 75 Stat. 353; Oct. 3, 1962, Pub. L. 87-741, title I, §101, 76 Stat. 729; Dec. 19, 1963, Pub. L. 88-215, title I, §101, 77 Stat. 437; Aug. 30, 1964, Pub. L. 88-507, title I, §101, 78 Stat. 655; Aug. 16, 1965, Pub. L. 89-128, title I, §101, 79 Stat. 531.

SUBCHAPTER IX—A—MORTGAGE INSURANCE FOR LAND DEVELOPMENT AND NEW COMMUNITIES

§§1749aa to 1749ll. Repealed. Pub. L. 101–235, title I, §133(a), Dec. 15, 1989, 103 Stat. 2027

Section 1749aa, act June 27, 1934, ch. 847, title X, §1001, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 461; amended Nov. 3, 1966, Pub. L. 89–754, title X, §§1019, 1020(f), 80 Stat. 1295, 1296; May 25, 1967, Pub. L. 90–19, §1(a)(3), 81 Stat. 17, defined terms for this subchapter.

Section 1749bb, act June 27, 1934, ch. 847, title X, §1002, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 462; amended Nov. 3, 1966, Pub. L. 89–754, title IV, §402, 80 Stat. 1272; May 25, 1967, Pub. L. 90–19, §1(a)(3), (4), 81 Stat. 17; Aug. 1, 1968, Pub. L. 90–448, title III, §310, 82 Stat. 509; Sept. 30, 1969, Pub. L. 91–78, §2(f), 83 Stat. 125; Dec. 24, 1969, Pub. L. 91–152, title I, §101(h), 83 Stat. 379; Oct. 2, 1970, Pub. L. 91–432, §1(f), 84 Stat. 887; Oct. 21, 1970, Pub. L. 91–473, §1(f), 84 Stat. 1065; Dec. 1, 1970, Pub. L. 91–525, §1(f), 84 Stat. 1384; Dec. 31, 1970, Pub. L. 91–609, title I, §101(h), 84 Stat. 1770; Oct. 18, 1972, Pub. L. 92–503, §1(h), 86 Stat. 906; Aug. 10, 1973, Pub. L. 93–85, §1(h), 87 Stat. 220; Oct. 2, 1973, Pub. L. 93–117, §1(h), 87 Stat. 422; Aug. 22, 1974, Pub. L. 93–383, title III, §§304(k), 314, 316(f), 88 Stat. 678, 684, 685; June 30, 1977, Pub. L. 95–60, §1(g), 91 Stat. 257; July 31, 1977, Pub. L. 95–80, §1(g), 91 Stat. 339; Oct. 12, 1977, Pub. L. 95–128, title III, §301(j), 91 Stat. 1131; Sept. 30, 1978, Pub. L. 95–406, §1(j), 92 Stat. 879; Oct. 31, 1978, Pub. L. 95–557, title III, §301(j), 92 Stat. 2096; Sept. 28, 1979, Pub. L. 96–71, §1(j), 93 Stat. 501; Nov. 8, 1979, Pub. L. 96–105, §1(j), 93 Stat. 794; Dec. 21, 1979, Pub. L. 96–153, title III, §301(j), 93 Stat. 1112; Oct. 3, 1980, Pub. L. 96–372, §1(j), 94 Stat. 1363; Oct. 8, 1980, Pub. L. 96–399, title III, §301(j), 94 Stat. 1639; Aug. 13, 1981, Pub. L. 97–35, title III, §331(i), 95 Stat. 413; Oct. 6, 1982, Pub. L. 97–289, §1(j), 96 Stat. 1230; May 26, 1983, Pub. L. 98–35, §1(j), 97 Stat. 197; Oct. 1, 1983, Pub. L. 98–109, §1(j), 97 Stat. 745; Nov. 30, 1983, Pub. L. 98–181, title I [title IV, §§401(i), 404(b)(16)], 97 Stat. 1208, 1210; Oct. 8, 1985, Pub. L. 99–120, §1(i), 99 Stat. 503; Nov. 15, 1985, Pub. L. 99–156, §1(i), 99 Stat. 816; Dec. 26, 1985, Pub. L. 99–219, §1(i), 99 Stat. 1731; Mar. 27, 1986, Pub. L. 99–267, §1(j), 100 Stat. 74; Apr. 7, 1986, Pub. L. 99–272, title III, §3007(i), 100 Stat. 105; May 2, 1986, Pub. L. 99–289, §1(b), 100 Stat. 412; June 24, 1986, Pub. L. 99–345, §1, 100 Stat. 673; Sept. 30, 1986, Pub. L. 99–430, 100 Stat. 986; Sept. 30, 1987, Pub. L. 100–122, §1, 101 Stat. 793; Nov. 5, 1987, Pub. L. 100–154, 101 Stat. 890; Nov. 17, 1987, Pub. L. 100–170, 101 Stat. 914; Dec. 3, 1987, Pub. L. 100–179, 101 Stat. 1018; Dec. 21, 1987, Pub. L. 100–200, 101 Stat. 1327; Feb. 5, 1988, Pub. L. 100–242, title IV, §401(a)(7), 101 Stat. 1898, authorized Secretary to insure mortgages in accordance with provisions of this subchapter.

Section 1749cc, act June 27, 1934, ch. 847, title X, §1003, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 463; amended May 25, 1967, Pub. L. 90–19, §1(a)(3), (u), 81 Stat. 17, 19; Dec. 31, 1970, Pub. L. 91–609, title I, §119, 84 Stat. 1775, directed that land development covered by mortgage insured under this subchapter be undertaken pursuant to a schedule and in accordance with an overall development plan.

Section 1749cc–1, act June 27, 1934, ch. 847, title X, §1004, as added Nov. 3, 1966, Pub. L. 89–754, title IV, §401(a), 80 Stat. 1271, related to approval of new communities for mortgage insurance.

Section 1749dd, act June 27, 1934, ch. 847, title X, §1005, formerly §1004, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 463; renumbered §1005 and amended Nov. 3, 1966, Pub. L. 89–754, title IV, §§401(a), 403, 80 Stat. 1271, 1272; May 25, 1967, Pub. L. 90–19, §1(a)(3), 81 Stat. 17, directed adoption of requirements to encourage homebuilding industry and proper balance of housing for moderate and low income families.

Section 1749ee, act June 27, 1934, ch. 847, title X, §1006, formerly §1005, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 463; renumbered §1006 and amended Nov. 3, 1966, Pub. L. 89–754, title IV, §§401(a), 404, 80 Stat. 1271, 1272, related to service of land by public water and sewerage systems after development.

Section 1749ff, act June 27, 1934, ch. 847, title X, §1007, formerly §1006, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 464; renumbered §1007, Nov. 3, 1966, Pub. L. 89–754, title IV, §401(a), 80 Stat. 1271; amended May 25, 1967, Pub. L. 90–19, §1(a)(3), 81 Stat. 17, related to release or subordination of mortgaged property.

Section 1749gg, act June 27, 1934, ch. 847, title X, §1008, formerly §1007, as added Aug. 10, 1965, Pub. L. 89–117, title II, §201(a), 79 Stat. 464; renumbered §1008, Nov. 3, 1966, Pub. L. 89–754, title IV, §401(a), 80 Stat. 1271; amended May 25, 1967, Pub. L. 90–19, §1(a)(3), 81 Stat. 17, related to premium rates and other

charges for mortgage insurance and report to Congress thereon.

Section 1749hh, act June 27, 1934, ch. 847, title X, §1009, formerly §1008, as added Aug. 10, 1965, Pub. L. 89-117, title II, §201(a), 79 Stat. 464; renumbered §1009, Nov. 3, 1966, Pub. L. 89-754, title IV, §401(a), 80 Stat. 1271; amended May 25, 1967, Pub. L. 90-19, §1(a)(3), 81 Stat. 17, related to applicability of other provisions of law to this subchapter.

Section 1749ii, act June 27, 1934, ch. 847, title X, §1010, formerly §1009, as added Aug. 10, 1965, Pub. L. 89-117, title II, §201(a), 79 Stat. 464; renumbered §1010, Nov. 3, 1966, Pub. L. 89-754, title IV, §401(a), 80 Stat. 1271; amended May 25, 1967, Pub. L. 90-19, §1(a)(3), 81 Stat. 17, provided that insurance contract under this subchapter was conclusive evidence of eligibility for insurance and that the validity of such contract was incontestable.

Section 1749jj, act June 27, 1934, ch. 847, title X, §1011, formerly §1010, as added Aug. 10, 1965, Pub. L. 89-117, title II, §201(a), 79 Stat. 464; renumbered §1011, Nov. 3, 1966, Pub. L. 89-754, title IV, §401(a), 80 Stat. 1271; amended May 25, 1967, Pub. L. 90-19, §1(a)(3), 81 Stat. 17, authorized making rules and regulations to carry out provisions of subchapter.

Section 1749kk, act June 27, 1934, ch. 847, title X, §1012, formerly §1011, as added Aug. 10, 1965, Pub. L. 89-117, title II, §201(a), 79 Stat. 464; renumbered §1012, Nov. 3, 1966, Pub. L. 89-754, title IV, §401(a), 80 Stat. 1271; amended May 25, 1967, Pub. L. 90-19, §1(a)(3), 81 Stat. 17, related to taxation of real property acquired by Secretary.

Section 1749ll, act June 27, 1934, ch. 847, title X, §1013, formerly §1012, as added Aug. 10, 1965, Pub. L. 89-117, title II, §201(a), 79 Stat. 464; renumbered §1013, Nov. 3, 1966, Pub. L. 89-754, title IV, §401(a), 80 Stat. 1271; amended May 25, 1967, Pub. L. 90-19, §1(a)(3), (4), 81 Stat. 17, related to requirements to assure that amount of mortgage was not excessive and to requirement that mortgagor certify costs of land development.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SAVINGS PROVISION

Pub. L. 101-235, title I, §133(c), Dec. 15, 1989, 103 Stat. 2027, provided that: "Any contract of insurance entered into under title X [this subchapter, §§1749aa to 1749ll] before the date of enactment of this Act [Dec. 15, 1989] shall be governed by the provisions of such title as such title existed immediately before such date."

APPLICABILITY OF REPEAL

Pub. L. 101-235, title I, §133(b), Dec. 15, 1989, 103 Stat. 2027, provided that: "On or after the date of enactment of this Act [Dec. 15, 1989], no mortgage may be insured under title X [this subchapter, §§1749aa to 1749ll], as such title existed immediately before such date, except pursuant to a commitment to insure made before such date."

SUBCHAPTER IX—B—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES AND MEDICAL PRACTICE FACILITIES

§1749aaa. Insurance of mortgages

(a) Authority of Secretary; termination date

The Secretary is authorized (1) to insure mortgages (including advances on such mortgages during construction), upon such terms and conditions as he may prescribe, in accordance with the provisions of this subchapter, and (2) to make commitments for the insuring of such mortgages prior to the date of their execution or disbursement thereon.

(b) Eligibility for insurance

To be eligible for insurance under this subchapter, the mortgage shall (1) be executed by a mortgagor that is a group practice unit or organization or other mortgagor approved by the Secretary, (2) be made to and held by a mortgagee approved by the Secretary as responsible and able to service the mortgage properly, and (3) cover a property or project which is approved for mortgage insurance

prior to the beginning of construction or rehabilitation and is designed for use as a group practice facility or medical practice facility which the Secretary finds will be constructed in an economical manner, will not be of elaborate or extravagant design or materials, and will be adequate and suitable for carrying out the purposes of this subchapter. No mortgage shall be insured under this subchapter unless it is shown to the satisfaction of the Secretary that the applicant would be unable to obtain the mortgage loan without such insurance on terms comparable to those specified in subsection (c).

(c) Replacement cost of property; maturity; amortization; interest rate

The mortgage shall—

(1) Repealed. Pub. L. 93–383, title III, §304(l), Aug. 22, 1974, 88 Stat. 678;

(2) not exceed 90 per centum of the amount which the Secretary estimates will be the replacement cost of the property or project when construction or rehabilitation is completed. The replacement cost of the property may include the land and the proposed physical improvements, equipment, utilities within the boundaries of the property, a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42) ¹ in cases where the Secretary determines that such measures are in addition to those required under the minimum property standards and will be cost-effective over the life of the measure, architects' fees, taxes, and interest accruing during construction or rehabilitation, and other miscellaneous charges incident to construction or rehabilitation and approved by the Secretary;

(3) have a maturity satisfactory to the Secretary but not to exceed twenty-five years from the beginning of the amortization of the mortgage, and provide for complete amortization of the principal obligation by periodic payments within such term as the Secretary shall prescribe; and

(4) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee.

(d) Conclusiveness of insurance contract as to eligibility; validity of contract incontestable

Any contract of insurance executed by the Secretary under this subchapter shall be conclusive evidence of the eligibility of the mortgage for insurance, and the validity of any contract for insurance so executed shall be incontestable in the hands of an approved mortgagee from the date of the execution of such contract, except for fraud or misrepresentation on the part of such approved mortgagee.

(e) Undertaking

Each mortgage insured under this subchapter shall contain an undertaking (in accordance with regulations prescribed under this subchapter and in force at the time the mortgage is approved for insurance) to the effect that, except as authorized by the Secretary and the mortgagee, the property will be used as a group practice facility or medical practice facility until the mortgage has been paid in full or the contract of insurance otherwise terminated.

(f) Recordkeeping; reports; examination and audit

No mortgage shall be insured under this subchapter unless the mortgagor and the mortgagee certify (1) that they will keep such records relating to the mortgage transaction and indebtedness, to the construction of the facility covered by the mortgage, and to the use of such facility as a group practice facility or medical practice facility as are prescribed by the Secretary at the time of such certification, (2) that they will make such reports as may from time to time be required by the Secretary pertaining to such matters, and (3) that the Secretary shall have access to and the right to examine and audit such records.

(June 27, 1934, ch. 847, title XI, §1101, as added Pub. L. 89–754, title V, §502(a), Nov. 3, 1966, 80 Stat. 1274; amended Pub. L. 90–448, title XVII, §1722(d), Aug. 1, 1968, 82 Stat. 610; Pub. L. 91–78, §2(g), Sept. 30, 1969, 83 Stat. 125; Pub. L. 91–152, title I, §101(i), title IV, §418(f), Dec. 24, 1969, 83 Stat. 379, 402; Pub. L. 91–432, §1(g), Oct. 2, 1970, 84 Stat. 887; Pub. L. 91–473, §1(g), Oct. 21, 1970, 84 Stat. 1065; Pub. L. 91–525, §1(g), Dec. 1, 1970, 84 Stat. 1384; Pub. L. 91–609, title I, §101(i), Dec. 31, 1970, 84 Stat. 1770; Pub. L. 92–503, §1(i), Oct. 18, 1972, 86 Stat. 906; Pub. L. 93–85, §1(i), Aug. 10, 1973, 87 Stat. 220; Pub. L. 93–117, §1(i), Oct. 2, 1973, 87 Stat. 422; Pub.

L. 93-383, title III, §§304(l), 312(a)(1)-(4), 316(g), Aug. 22, 1974, 88 Stat. 678, 683, 685; Pub. L. 95-60, §1(h), June 30, 1977, 91 Stat. 257; Pub. L. 95-80, §1(h), July 31, 1977, 91 Stat. 339; Pub. L. 95-128, title III, §301(k), Oct. 12, 1977, 91 Stat. 1131; Pub. L. 95-406, §1(k), Sept. 30, 1978, 92 Stat. 879; Pub. L. 95-557, title III, §301(k), Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96-71, §1(k), Sept. 28, 1979, 93 Stat. 501; Pub. L. 96-105, §1(k), Nov. 8, 1979, 93 Stat. 794; Pub. L. 96-153, title III, §301(k), Dec. 21, 1979, 93 Stat. 1112; Pub. L. 96-372, §1(k), Oct. 3, 1980, 94 Stat. 1363; Pub. L. 96-399, title III, §§301(k), 310(i), Oct. 8, 1980, 94 Stat. 1639, 1643; Pub. L. 97-35, title III, §331(j), Aug. 13, 1981, 95 Stat. 413; Pub. L. 97-289, §1(k), Oct. 6, 1982, 96 Stat. 1230; Pub. L. 98-35, §1(k), May 26, 1983, 97 Stat. 197; Pub. L. 98-109, §1(k), Oct. 1, 1983, 97 Stat. 745; Pub. L. 98-181, title I [title IV, §401(j)], Nov. 30, 1983, 97 Stat. 1208; Pub. L. 98-479, title I, §104(a)(8), Oct. 17, 1984, 98 Stat. 2225; Pub. L. 99-120, §1(j), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99-156, §1(j), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99-219, §1(j), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99-267, §1(k), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99-272, title III, §3007(j), Apr. 7, 1986, 100 Stat. 105; Pub. L. 99-289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99-345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99-430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100-122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100-154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100-170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100-179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100-200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100-242, title IV, §401(a)(8), Feb. 5, 1988, 101 Stat. 1898.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 8211 of title 42, referred to in subsec. (c)(2), was omitted from the Code pursuant to section 8229 of Title 42, The Public Health and Welfare, which terminated authority under that section on June 30, 1989.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-242 struck out at end "No mortgage shall be insured under this subchapter after March 15, 1988, except pursuant to a commitment to insure issued before that date."

1987—Subsec. (a). Pub. L. 100-200 substituted "March 15, 1988" for "December 16, 1987".

Pub. L. 100-179 substituted "December 16, 1987" for "December 2, 1987".

Pub. L. 100-170 substituted "December 2, 1987" for "November 15, 1987".

Pub. L. 100-154 substituted "November 15, 1987" for "October 31, 1987".

Pub. L. 100-122 substituted "October 31, 1987" for "September 30, 1987".

1986—Subsec. (a). Pub. L. 99-430 substituted "September 30, 1987" for "September 30, 1986".

Pub. L. 99-345 substituted "September 30, 1986" for "June 6, 1986".

Pub. L. 99-289 substituted "June 6, 1986" for "April 30, 1986".

Pub. L. 99-272 made amendment identical to Pub. L. 99-219. See 1985 Amendment note below.

Pub. L. 99-267 substituted "April 30, 1986" for "March 17, 1986".

1985—Subsec. (a). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1984—Subsec. (c)(4). Pub. L. 98-479 substituted "at such rate as may be agreed upon by the mortgagor and the mortgagee," for "(exclusive of premium charges for insurance, and service charges if any) at a rate of not to exceed 5 per centum per annum of the amount of the principal obligation outstanding at any time, or not to exceed such rate (not in excess of 6 per centum per annum) as the Secretary finds necessary to meet the mortgage market."

1983—Subsec. (a). Pub. L. 98-181 substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

1982—Subsec. (a). Pub. L. 97-289 substituted "May 20, 1983" for "September 30, 1982".

1981—Subsec. (a). Pub. L. 97-35 substituted "1982" for "1981".

1980—Subsec. (a). Pub. L. 96-399, §301(k), substituted "September 30, 1981" for "October 15, 1980".

Pub. L. 96-372 substituted "October 15, 1980" for "September 30, 1980".

Subsec. (c)(2). Pub. L. 96-399, §310(i), inserted provisions relating to solar energy systems and residential energy conservation measures.

1979—Subsec. (a). Pub. L. 96-153 substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96–105 substituted "November 30, 1979" for "October 31, 1979".

Pub. L. 96–71 substituted "October 31, 1979" for "September 30, 1979".

1978—Subsec. (a). Pub. L. 95–557 substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95–406 substituted "October 31, 1978" for "September 30, 1978".

1977—Subsec. (a). Pub. L. 95–128 substituted "September 30, 1978" for "September 30, 1977".

Pub. L. 95–80 substituted "September 30, 1977" for "July 31, 1977".

Pub. L. 95–60 substituted "July 31, 1977" for "June 30, 1977".

1974—Subsec. (a). Pub. L. 93–383, §316(g), substituted "June 30, 1977" for "October 1, 1974".

Subsec. (b). Pub. L. 93–383, §312(a)(1), (2), in cl. (1) inserted "or other mortgagor" after "or organization", and in cl. (3) inserted "or medical practice facility" after "group practice facility".

Subsec. (c)(1). Pub. L. 93–383, §304(l), struck out par. (1) which set forth limitation on amount of mortgage.

Subsecs. (e), (f). Pub. L. 93–383, §312(a)(3), (4), inserted "or medical practice facility" after "group practice facility".

1973—Subsec. (a). Pub. L. 93–117 substituted "October 1, 1974" for "October 1, 1973".

Pub. L. 93–85 substituted "October 1, 1973" for "June 30, 1973".

1972—Subsec. (a). Pub. L. 92–503 substituted "June 30, 1973" for "October 1, 1972".

1970—Subsec. (a). Pub. L. 91–609 substituted "October 1, 1972" for "January 1, 1971".

Pub. L. 91–525 substituted "January 1, 1971" for "December 1, 1970".

Pub. L. 91–473 substituted "December 1, 1970" for "November 1, 1970".

Pub. L. 91–432 substituted "November 1, 1970" for "October 1, 1970".

1969—Subsec. (a). Pub. L. 91–152, §101(i), substituted "October 1, 1970" for "January 1, 1970".

Pub. L. 91–78 substituted "January 1, 1970" for "October 1, 1969".

Subsec. (c)(2). Pub. L. 91–152, §418(f), substituted "replacement cost" for "value" wherever appearing.

1968—Subsec. (c)(3). Pub. L. 90–448 limited term of mortgage to not more than twenty-five years from beginning of amortization of mortgage.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of this title.

DECLARATION OF PURPOSE

Pub. L. 89–754, title V, §501, Nov. 3, 1966, 80 Stat. 1273, provided that: "It is the purpose of this title [enacting this subchapter and amending sections 24, 371, 1715c, and 1715r of this title, section 663 of former Title 11, Bankruptcy, and section 77ddd of Title 15, Commerce and Trade] to assure the availability of credit on reasonable terms to units or organizations engaged in the group practice of medicine, optometry, or dentistry, particularly those in smaller communities and those sponsored by cooperative or other nonprofit organizations, to assist in financing the construction and equipment of group practice facilities."

¹ [*See References in Text note below.*](#)

§1749aaa–1. Premiums and other charges

The Secretary shall fix premium charges for the insurance of mortgages under this subchapter, but such charges shall not be more than 1 per centum per annum of the amount of the principal obligation of the mortgage outstanding at any time, without taking into account delinquent payments or prepayments. In addition to the premium charge, the Secretary is authorized to charge and collect such amounts as he may deem reasonable for the analysis of a proposed project and the appraisal and inspection of the property and improvements. Where the principal obligation of any mortgage accepted for insurance under this subchapter is paid in full prior to the maturity date, the Secretary is authorized to require the payment by the mortgagee of an adjusted premium charge. This charge shall be in such amount as the Secretary determines to be equitable, but not in excess of the aggregate amount of the premium charges that the mortgagee would otherwise have been required to

pay if the mortgage had continued to be insured until the maturity date. Where such prepayment occurs, the Secretary is authorized to refund to the mortgagee for the account of the mortgagor all, or such portion as he shall determine to be equitable, of the current unearned premium charges theretofore paid. Premium charges fixed under this section shall be payable by the mortgagee either in cash, or in debentures which are the obligation of the General Insurance Fund at par plus accrued interest, at such times and in such manner as may be prescribed by the Secretary.

(June 27, 1934, ch. 847, title XI, §1102, as added Pub. L. 89-754, title V, §502(a), Nov. 3, 1966, 80 Stat. 1275.)

§1749aaa-2. Payment of insurance benefits

The mortgagee shall be entitled to receive the benefits of the insurance under this subchapter in the manner provided in subsection (g) of section 1713 of this title with respect to mortgages insured under that section. For such purpose the provisions of subsections (g), (h), (i), (j), (k), (l), and (n) of such section 1713 shall apply to mortgages insured under this subchapter and all references in such subsections to such section 1713 shall be deemed to refer to this subchapter.

(June 27, 1934, ch. 847, title XI, §1103, as added Pub. L. 89-754, title V, §502(a), Nov. 3, 1966, 80 Stat. 1275.)

§1749aaa-3. Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out this subchapter, after consulting with the Secretary of Health and Human Services with respect to any health or medical aspects of the program under this subchapter which may be involved in such regulations.

(June 27, 1934, ch. 847, title XI, §1104, as added Pub. L. 89-754, title V, §502(a), Nov. 3, 1966, 80 Stat. 1275; amended Pub. L. 98-479, title II, §201(a)(2), Oct. 17, 1984, 98 Stat. 2227.)

EDITORIAL NOTES

AMENDMENTS

1984—Pub. L. 98-479 substituted "Health and Human Services" for "Health, Education, and Welfare".

§1749aaa-4. Administration

(a) Technical assistance

At the request of individuals or organizations operating or contemplating the operation of group practice facilities or medical practice facility (as defined in section 1749aaa-5 of this title), the Secretary may provide or obtain technical assistance in the planning for and construction of such facilities.

(b) Utilization of services and facilities of Federal agencies; payment; advances or reimbursement

With a view to avoiding unnecessary duplication of existing staffs and facilities of the Federal Government, the Secretary is authorized to utilize available services and facilities of any agency of the Federal Government in carrying out the provisions of this subchapter, and to pay for such services and facilities, either in advance or by way of reimbursement, in accordance with an agreement between the Secretary and the head of such agency.

(June 27, 1934, ch. 847, title XI, §1105, as added Pub. L. 89-754, title V, §502(a), Nov. 3, 1966, 80 Stat. 1276; amended Pub. L. 93-383, title III, §312(a)(5), Aug. 22, 1974, 88 Stat. 683.)

EDITORIAL NOTES

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–383 substituted "or medical practice facility (as defined in section 1749aaa–5 of this title)" for "(as defined in section 1749aaa–5(1) of this title)".

§1749aaa–5. Definitions

For the purposes of this subchapter—

(1) The term "group practice facility" means a facility in a State for the provision of preventive, diagnostic, and treatment services to ambulatory patients (in which patient care is under the professional supervision of persons licensed to practice medicine or osteopathy in the State or, in the case of optometric care or treatment, is under the professional supervision of persons licensed to practice optometry in the State, or, in the case of dental diagnosis or treatment, is under the professional supervision of persons licensed to practice dentistry in the State, or, in the case of podiatric care or treatment, is under the professional supervision of persons licensed to practice podiatry in the State) and which is primarily for the provision of such health services by a medical or dental group.

(2) The term "medical practice facility" means an adequately equipped facility in which not more than four persons licensed to practice medicine in the State where the facility is located can provide, as may be appropriate, preventive, diagnostic, and treatment services, and which is situated in a rural area or small town, or in a low-income section of an urban area, in which there exists, as determined by the Secretary, a critical shortage of physicians. As used in this paragraph—

(A) the term "small town" means any town, village, or city having a population of not more than 10,000 inhabitants according to the most recent available data compiled by the Bureau of the Census; and

(B) the term "low-income section of an urban area" means a section of a larger urban area in which the median family income is substantially lower, as determined by the Secretary, than the median family income for the area as a whole.

(3) The term "medical or dental group" means a partnership or other association or group of persons licensed to practice medicine, osteopathy, or surgery in the State, or of persons licensed to practice optometry in the State, or of persons licensed to practice dentistry in the State, or of persons licensed to practice podiatry in the State, or of any combination of such persons, who, as their principal professional activity and as a group responsibility, engage or undertake to engage in the coordinated practice of their profession primarily in one or more group practice facilities, and who (in this connection) share common overhead expenses (if and to the extent such expenses are paid by members of the group), medical and other records, and substantial portions of the equipment and the professional, technical, and administrative staffs, and which partnership or association or group is composed of at least such professional personnel and make available at least such health services as may be provided in regulations prescribed under this subchapter.

(4) The term "group practice unit or organization" means—

(A) a private nonprofit agency or organization undertaking to provide, directly or through arrangements with a medical or dental group, comprehensive medical care, osteopathic care, optometric care, dental care, or podiatric care, or any combination thereof, which may include hospitalization, to members or subscribers primarily on a group practice prepayments basis; or

(B) a private nonprofit agency or organization, established for the purpose of improving the availability of medical, osteopathic, optometric, dental or podiatric care in the community or having some function or functions related to the provision of such care, which will, through lease or other arrangement, make the group practice facility with respect to which assistance has been requested under this subchapter available to a medical or dental group for use by it.

(5) The term "nonprofit organization" means a corporation, association, foundation, trust, or other organization no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual except, in the case of an organization the purposes of which include the provision of personal health services to its members or subscribers or their dependents under a plan of such organization for the provision of such services to them (which plan may include the provision of other services or insurance benefits to them), through the provision of such health services (or such other services or insurance benefits) to such members or subscribers or dependents under such plan.

(6) The term "State" includes the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the District of Columbia.

(7) The term "mortgage" means a first mortgage on real estate in fee simple, or on the interest of either the lessor or lessee thereof (A) under a lease for not less than ninety-nine years which is renewable, or (B) under a lease having a period of not less than fifty years to run from the date the mortgage was executed. The term "first mortgage" means such classes of first liens as are commonly given to secure advances (including but not limited to advances during construction) on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby, and any mortgage may be in the form of one or more trust mortgages or mortgage indentures or deeds of trust, securing notes, bonds, or other credit instruments, and, by the same instrument or by a separate instrument, may create a security interest in initial equipment, whether or not attached to the realty.

(8) The term "mortgagee" means the original lender under a mortgage, and his or its successors and assigns, and includes the holders of credit instruments issued under a trust mortgage or deed of trust pursuant to which such holders act by and through a trustee named therein.

(9) The term "mortgagor" means the original borrower under a mortgage and his or its successors and assigns.

(June 27, 1934, ch. 847, title XI, §1106, as added Pub. L. 89-754, title V, §502(a), Nov. 3, 1966, 80 Stat. 1276; amended Pub. L. 93-383, title III, §312(a)(6), (b), Aug. 22, 1974, 88 Stat. 683, 684.)

EDITORIAL NOTES

AMENDMENTS

1974—Par. (1). Pub. L. 93-383, §312(b)(1), inserted references to practice of osteopathy and authorized inclusion of podiatric care or treatment under the professional supervision of persons licensed to practice podiatry in the State.

Par. (2). Pub. L. 93-383, §312(a)(6), added par. (2). Former par. (2) redesignated (3).

Par. (3). Pub. L. 93-383, §312(a)(6), (b)(2), redesignated former par. (2) as par. (3) and inserted references to persons licensed to practice osteopathy and persons licensed to practice podiatry. Former par. (3) redesignated (4).

Par. (4). Pub. L. 93-383, §312(a)(6), (b)(3), (4), redesignated former par. (3) as par. (4) and in cls. (A) and (B) inserted references to osteopathic care and podiatric care wherever appearing. Former par. (4) redesignated (5).

Pars. (5) to (9). Pub. L. 93-383, §312(a)(6), redesignated former pars. (4) to (8) as pars. (5) to (9), respectively.

SUBCHAPTER IX—C—NATIONAL INSURANCE DEVELOPMENT PROGRAM

§§1749bbb to 1749bbb-2. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 1749bbb to 1749bbb-2 were omitted in view of the termination of parts A to D of this subchapter by former section 1749bbb of this title.

Section 1749bbb, act June 27, 1934, ch. 847, title XII, §1201, as added Pub. L. 90-448, title XI, §1103, Aug. 1, 1968, 82 Stat. 556; amended Pub. L. 91-609, title VI, §602(a), Dec. 31, 1970, 84 Stat. 1788; Pub. L. 94-13, §2, Apr. 8, 1975, 89 Stat. 69; Pub. L. 95-24, title I, §104(a), Apr. 30, 1977, 91 Stat. 55; Pub. L. 95-406, §5, Sept. 30, 1978, 92 Stat. 880; Pub. L. 95-557, title III, §307(a), Oct. 31, 1978, 92 Stat. 2097; Pub. L. 96-153, title VI, §601, Dec. 21, 1979, 93 Stat. 1137; Pub. L. 97-35, title III, §342(a), Aug. 13, 1981, 95 Stat. 420; Pub. L. 97-289, §4(c), Oct. 6, 1982, 96 Stat. 1231; Pub. L. 98-35, §4(c), May 26, 1983, 97 Stat. 198; Pub. L. 98-109, §5(c), Oct. 1, 1983, 97 Stat. 746; Pub. L. 98-181, title I [title IV, §452(a), (b)(1)], Nov. 30, 1983, 97 Stat. 1230; Pub. L. 98-473, title I, §113, Oct. 12, 1984, 98 Stat. 1964; Pub. L. 99-120, §4(b), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99-156, §4(b), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99-219, §4(b), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99-267, §4(b), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99-272, title III, §3010(b), Apr. 7, 1986, 100 Stat. 106; Pub. L. 99-289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99-345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99-430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100-122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100-154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100-170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100-179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100-200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100-242, title V, §§542(a), (b), 545(a), Feb. 5, 1988, 101 Stat. 1940, 1942; Pub. L. 101-137, §6(a), (b), Nov. 3, 1989, 103 Stat. 825; Pub. L. 101-508, title II, §2301(a), (b), Nov. 5, 1990, 104 Stat. 1388-23, read as follows:

"(a) The Director is authorized to establish and carry out the programs provided for in parts A, B, C, and D of this subchapter.

"(b) The powers of the Director under part B shall terminate on November 30, 1983, and part A shall terminate on September 30, 1985, and parts C and D shall terminate on September 30, 1995, except to the extent necessary—

"(1) to continue reinsurance and direct insurance in accordance with the provisions of sections 1749bbb-9(b) and 1749bbb-10a(c) of this title until September 30, 1985, and September 30, 1996, respectively;

"(2) to process, verify, and pay claims for reinsured losses and directly insured losses and perform other necessary functions in connection therewith; and

"(3) to complete the liquidation and termination of the reinsurance and direct insurance programs."

Section 1749bbb-1, act June 27, 1934, ch. 847, title XII, §1202, as added Pub. L. 90-448, title XI, §1103, Aug. 1, 1968, 82 Stat. 556; amended Pub. L. 98-181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, established an Advisory Board.

Section 1749bbb-2, act June 27, 1934, ch. 847, title XII, §1203, as added Pub. L. 90-448, title XI, §1103, Aug. 1, 1968, 82 Stat. 557; amended Pub. L. 91-609, title VI, §602(b), Dec. 31, 1970, 84 Stat. 1788; Pub. L. 98-181, title I [title IV, §452(b)(1), (2)], Nov. 30, 1983, 97 Stat. 1230, defined terms for this subchapter.

PART A—STATEWIDE PLANS TO ASSURE FAIR ACCESS TO INSURANCE REQUIREMENTS

§§1749bbb-3 to 1749bbb-6a. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 1749bbb-3 to 1749bbb-6a, comprising part A of this subchapter, terminated on Sept. 30, 1985, pursuant to former section 1749bbb(b) of this title.

Section 1749bbb-3, act June 27, 1934, ch. 847, title XII, §1211, as added Pub. L. 90-448, title XI, §1103, Aug. 1, 1968, 82 Stat. 558; amended Pub. L. 95-557, title III, §307(b), (c), Oct. 31, 1978, 92 Stat. 2097, 2098; Pub. L. 97-35, title III, §342(b), Aug. 13, 1981, 95 Stat. 420; Pub. L. 98-181, title I [title IV, §452(b)(1)],

Nov. 30, 1983, 97 Stat. 1230, related to fair access to insurance requirements (FAIR plans).

Section 1749bbb-4, act June 27, 1934, ch. 847, title XII, §1212, as added Pub. L. 90-448, title XI, §1103, Aug. 1, 1968, 82 Stat. 560, related to all-industry placement facility.

Section 1749bbb-5, act June 27, 1934, ch. 847, title XII, §1213, as added Pub. L. 90-448, title XI, §1103, Aug. 1, 1968, 82 Stat. 560; amended Pub. L. 98-181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, related to cooperation within insurance industry.

Section 1749bbb-6, act June 27, 1934, ch. 847, title XII, §1214, as added Pub. L. 90-448, title XI, §1103, Aug. 1, 1968, 82 Stat. 560; amended Pub. L. 98-181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, related to plan evaluation and modification or waiver of plan criteria.

Section 1749bbb-6a, act June 27, 1934, ch. 847, title XII, §1215, as added Pub. L. 91-609, title VI, §603, Dec. 31, 1970, 84 Stat. 1791; amended Pub. L. 98-181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, related to periodic review of plans through an Office of Review and Compliance.

PART B—REINSURANCE COVERAGE

§§1749bbb-7 to 1749bbb-10. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 1749bbb-7 to 1749bbb-10, comprising part B of this subchapter, were omitted in view of termination of powers of Director under this part on Nov. 30, 1983, pursuant to former section 1749bbb(b) of this title.

Section 1749bbb-7, act June 27, 1934, ch. 847, title XII, §1221, as added Pub. L. 90-448, title XI, §1103, Aug. 1, 1968, 82 Stat. 560; amended Pub. L. 91-609, title VI, §602(c), Dec. 31, 1970, 84 Stat. 1789; Pub. L. 98-181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, related to reinsurance of losses from riots or civil disorders.

Section 1749bbb-8, act June 27, 1934, ch. 847, title XII, §1222, as added Pub. L. 90-448, title XI, §1103, Aug. 1, 1968, 82 Stat. 561; amended Pub. L. 91-152, title IV, §405, Dec. 24, 1969, 83 Stat. 396; Pub. L. 91-609, title VI, §602(e), Dec. 31, 1970, 84 Stat. 1790; Pub. L. 95-24, title I, §104(b), Apr. 30, 1977, 91 Stat. 56; Pub. L. 98-181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230; Pub. L. 98-479, title II, §203(i)(1), Oct. 17, 1984, 98 Stat. 2230; Pub. L. 100-242, title V, §545(b), Feb. 5, 1988, 101 Stat. 1942, related to reinsurance agreements and premiums.

Section 1749bbb-9, act June 27, 1934, ch. 847, title XII, §1223, as added Pub. L. 90-448, title XI, §1103, Aug. 1, 1968, 82 Stat. 562; amended Pub. L. 91-152, title IV, §406, Dec. 24, 1969, 83 Stat. 396; Pub. L. 98-181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, related to conditions of reinsurance.

Section 1749bbb-10, act June 27, 1934, ch. 847, title XII, §1224, as added Pub. L. 90-448, title XI, §1103, Aug. 1, 1968, 82 Stat. 563; amended Pub. L. 98-181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, related to recovery of premiums, jurisdiction, and statute of limitations.

PART C—FEDERAL INSURANCE AGAINST BURGLARY AND THEFT

§§1749bbb-10a to 1749bbb-10d. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 1749bbb-10a to 1749bbb-10d, comprising part C of this subchapter, terminated on Sept. 30, 1995, with certain exceptions, pursuant to former section 1749bbb(b) of this title.

Section 1749bbb–10a, act June 27, 1934, ch. 847, title XII, §1231, as added Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789; amended Pub. L. 98–181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, related to review of market availability, Government crime insurance, and termination of insurance.

Section 1749bbb–10b, act June 27, 1934, ch. 847, title XII, §1232, as added Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789; amended Pub. L. 98–181, title I [title IV, §452(b)(1), (3)], Nov. 30, 1983, 97 Stat. 1230, related to use of existing facilities and services.

Section 1749bbb–10c, act June 27, 1934, ch. 847, title XII, §1233, as added Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1790; amended Pub. L. 98–181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, related to establishment of affordable rates, factors considered, uniform national rates, and periodic modification.

Section 1749bbb–10d, act June 27, 1934, ch. 847, title XII, §1234, as added Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1790; amended Pub. L. 96–470, title II, §205(a), Oct. 19, 1980, 94 Stat. 2244; Pub. L. 98–181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230; Pub. L. 101–137, §6(d), Nov. 3, 1989, 103 Stat. 825, related to reports to Congress on operations.

PART D—GENERAL PROVISIONS

§§1749bbb–11 to 1749bbb–21. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 1749bbb–11 to 1749bbb–21, comprising part D of this subchapter, terminated on Sept. 30, 1995, with certain exceptions, pursuant to former section 1749bbb(b) of this title.

Section 1749bbb–11, act June 27, 1934, ch. 847, title XII, §1241, formerly §1231, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 563; renumbered §1241 and amended Pub. L. 91–609, title VI, §602(d), (g), (h), Dec. 31, 1970, 84 Stat. 1789, 1790; Pub. L. 98–181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, related to submission of claims, judicial review, jurisdiction, and statute of limitations.

Section 1749bbb–12, act June 27, 1934, ch. 847, title XII, §1242, formerly §1232, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 563; renumbered §1242 and amended Pub. L. 91–609, title VI, §602(d), (i), Dec. 31, 1970, 84 Stat. 1789, 1790; Pub. L. 98–181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, related to fiscal intermediaries and servicing agents.

Section 1749bbb–13, act June 27, 1934, ch. 847, title XII, §1243, formerly §1233, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 564; renumbered §1243 and amended Pub. L. 91–609, title VI, §602(d), (j), Dec. 31, 1970, 84 Stat. 1789, 1790; Pub. L. 98–181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230; Pub. L. 98–479, title II, §203(i)(2), Oct. 17, 1984, 98 Stat. 2231; Pub. L. 100–242, title V, §545(c), Feb. 5, 1988, 101 Stat. 1942, related to National Insurance Development Fund.

Section 1749bbb–14, act June 27, 1934, ch. 847, title XII, §1244, formerly §1234, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 565; renumbered §1244 and amended Pub. L. 91–609, title VI, §602(d), (f), (k), (l), Dec. 31, 1970, 84 Stat. 1789–1791; Pub. L. 98–181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, related to records, annual statement, and audits.

Section 1749bbb–15, act June 27, 1934, ch. 847, title XII, §1245, formerly §1235, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 565; amended Pub. L. 91–152, title IV, §407, Dec. 24, 1969, 83 Stat. 396; renumbered §1245, Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789; amended Pub. L. 98–181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, related to study of reinsurance and other programs, and report to the President and Congress.

Section 1749bbb–16, act June 27, 1934, ch. 847, title XII, §1246, formerly §1236, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 565; renumbered §1246, Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789; amended Pub. L. 98–181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, related to other studies and cooperation with State insurance authorities and private insurance industry.

Section 1749bbb–17, act June 27, 1934, ch. 847, title XII, §1247, formerly §1237, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 566; renumbered §1247, Pub. L. 91–609, title VI, §602(d), Dec. 31,

1970, 84 Stat. 1789; amended Pub. L. 98–181, title I [title IV, §452(b)(1), (4)], Nov. 30, 1983, 97 Stat. 1230; Pub. L. 98–479, title II, §202(a)(2), Oct. 17, 1984, 98 Stat. 2228, related to general powers of Director.

Section 1749bbb–18, act June 27, 1934, ch. 847, title XII, §1248, formerly §1238, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 566; renumbered §1248, Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789; amended Pub. L. 98–181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, related to utilization of services and facilities of other agencies.

Section 1749bbb–19, act June 27, 1934, ch. 847, title XII, §1249, formerly §1239, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 566; renumbered §1249, Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789; amended Pub. L. 98–181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, related to advance payments.

Section 1749bbb–20, act June 27, 1934, ch. 847, title XII, §1250, formerly §1240, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 566; renumbered §1250, Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789; amended Pub. L. 98–181, title I [title IV, §452(b)(1)], Nov. 30, 1983, 97 Stat. 1230, related to tax issues.

Section 1749bbb–21, act June 27, 1934, ch. 847, title XII, §1251, formerly §1241, as added Pub. L. 90–448, title XI, §1103, Aug. 1, 1968, 82 Stat. 566; renumbered §1251, Pub. L. 91–609, title VI, §602(d), Dec. 31, 1970, 84 Stat. 1789, related to authorization of appropriations for subchapter.

SUBCHAPTER X—NATIONAL DEFENSE HOUSING INSURANCE

STATUTORY NOTES AND RELATED SUBSIDIARIES

EXPIRATION DATE

Insurance of mortgages under this subchapter prohibited, with certain exceptions, after July 31, 1954, see section 1591c of Title 42, The Public Health and Welfare.

§1750. Definitions

As used in this subchapter, the terms "mortgage", "first mortgage", "mortgagee", "mortgagor", "maturity date", and "State" shall have the same meaning as in section 1707 of this title.

(June 27, 1934, ch. 847, title IX, §901, as added Sept. 1, 1951, ch. 378, title II, §201, 65 Stat. 295.)

§1750a. Repealed. Pub. L. 89–117, title XI, §1108(aa), Aug. 10, 1965, 79 Stat. 507

Section, act June 27, 1934, ch. 847, title IX, §902, as added Sept. 1, 1951, ch. 378, title II, §201, 65 Stat. 296, created the National Defense Housing Insurance Fund.

For establishment of the General Insurance Fund, see section 1735c of this title.

§1750a–1. Omitted

EDITORIAL NOTES

CODIFICATION

Section, act Nov. 1, 1951, ch. 665, Ch. V, 65 Stat. 763, authorized the National Defense Housing Insurance Fund to be available for administrative expenses of the Federal Housing Administration. Pub. L. 89–117, title XI, §1108(aa), Aug. 10, 1965, 79 Stat. 507, eliminated the Fund, and all functions, powers, and duties of the Federal Housing Administration and its Administrator were transferred to and vested in the Secretary of Housing and Urban Development by Pub. L. 89–174, §5, Sept. 9, 1965, 79 Stat. 669, classified to section 3534 of Title 42, The Public Health and Welfare. Act June 27, 1934, ch. 847, title V, §519, as added Aug. 10, 1965, Pub. L. 89–117, title II, §214, 79 Stat. 471, classified to section 1735c of this title, created the General

Insurance Fund, which authorized the general expenses of the operations of the Department of Housing and Urban Development relating to mortgages and loans which are obligations of the General Insurance Fund to be charged to the General Insurance Fund.

§1750b. Insurance in critical areas

(a) Limitations; termination of certain commitments; requirements; discrimination against children

This subchapter is designed to supplement systems of mortgage insurance under other provisions of this chapter in order to assist in providing adequate housing in areas which the President, pursuant to section 1591 of title 42, shall have determined to be critical defense housing areas. The Secretary is authorized, upon application by the mortgagee, to insure under this section or section 1750g of this title as hereinafter provided any mortgage which is eligible for insurance as hereinafter provided and upon such terms as the Secretary may prescribe to make commitments for the insuring of such mortgages prior to the date of their execution or disbursement thereon: *Provided*, That the property covered by the mortgage is in an area which the President, pursuant to section 1591 of title 42, shall have determined to be a critical defense housing area, and that the total number of dwelling units in properties covered by mortgages insured under this subchapter in any such area does not exceed the number authorized by the Secretary of Housing and Urban Development from time to time as needed in such area for defense purposes and to be insured pursuant to this subchapter: *Provided further*, That in the event the Secretary has issued a commitment to insure a mortgage under this section, which commitment was in force and effect on June 1, 1953, and the Secretary determines that, because of changes in defense requirements, there is reasonable doubt that such housing is needed for defense purposes and that it is probable that the mortgage would become immediately in default and claim made for payment under the mortgage insurance contract if the unit or units are completed and the mortgage insured, the Secretary is authorized, in the interest of conserving the General Insurance Fund, to pay (in cash from the General Insurance Fund) to the mortgagee for the account of the mortgagor such amount as the Secretary shall determine to be necessary to reimburse the mortgagor the amounts paid or to be paid by the mortgagor on account of labor performed and materials in place, less the Secretary's estimate of the reasonable salvage value of such materials, plus an allowance for development costs equal to 4 per centum of the principal amount of the mortgage specified in such commitment, and no payments shall be made pursuant to this proviso unless a claim therefor is filed not later than six months from date of the determination of lack of need and the claim is in such form and contains such supporting information, documents, and data as the Secretary may require: *Provided further*, That the aggregate amount of principal obligations of all mortgages insured under this subchapter shall not exceed such sum as may be authorized by the President from time to time for the purposes of this subchapter pursuant to his authority under section 1715h ¹ of this title: *Provided further*, That the Secretary shall have power to require properties covered by mortgages insured under this subchapter to be held for rental for such periods of time and at such rentals or other charges as he may prescribe; and, with respect to such properties being held for rental, (1) to require that the property be held by a mortgagor approved by him, and (2) to prescribe such requirements as he deems to be reasonable governing the method of operation and prohibiting or restricting sales of such properties or interests therein or agreements relating to such sales: *Provided further*, That the Secretary shall require each dwelling covered by a mortgage insured under this section, for which a commitment to insure is issued after August 2, 1954, to be held for rental for a period of not less than three years after the dwelling is made available for initial occupancy: *And provided further*, That no mortgage shall be insured under this subchapter unless the mortgagor certifies under oath that in selecting tenants for any property covered by the mortgage he will not discriminate against any family by reason of the fact that there are children in the family, and that he will not sell the property while the insurance is in effect unless the purchaser so certifies, such certification to be filed with the Secretary. Violation of any such certification shall be a misdemeanor punishable by a fine of not to exceed \$500.

(b) Eligibility requirements

To be eligible for insurance under this section a mortgage shall—

(1) have been made to, and be held by, a mortgagee approved by the Secretary as responsible and able to service the mortgage properly;

(2) involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed 90 per centum of the appraised value (as of the date the mortgage is accepted for insurance) of a property, urban, suburban, or rural, upon which there is located a dwelling designed principally for residential use for not more than two families in the aggregate, which is approved for mortgage insurance prior to the beginning of construction, the construction of which is begun after September 1, 1951. The principal obligation of such mortgage shall not, however, exceed \$8,100 if such dwelling is designed for a single-family residence, or \$15,000 if such dwelling is designed for a two-family residence except that the Secretary may by regulation increase these amounts to not to exceed \$9,000 and \$16,000, respectively, in any geographical area where he finds that cost levels so require: *Provided*, That if the Secretary finds that it is not feasible within the aforesaid dollar amount limitations to construct dwellings containing three or four bedrooms per family unit without sacrifice of sound standards of construction, design, and livability, he may increase such dollar amount limitations by not exceeding \$1,080 for each additional bedroom (as defined by the Secretary) in excess of two contained in such family unit if he finds that such unit meets sound standards of livability as a three-bedroom or a four-bedroom unit as the case may be;

(3) have a maturity satisfactory to the Secretary but not to exceed thirty years from the date of the insurance of the mortgage;

(4) contain complete amortization provisions satisfactory to the Secretary;

(5) bear interest (exclusive of premium charges for insurance) at not to exceed 4½ per centum per annum on the amount of the principal obligation outstanding at any time;

(6) provide, in a manner satisfactory to the Secretary, for the application of the mortgagor's periodic payments (exclusive of the amount allocated to interest and to the premium charge which is required for mortgage insurance as herein provided) to amortization of the principal of the mortgage; and

(7) contain such terms and provisions with respect to insurance, repairs, alterations, payment of taxes, default reserves, delinquency charges, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters as the Secretary may in his discretion prescribe.

(c) Premium charges; payments; needs of national defense as prerequisite; adjustments and refunds

The Secretary is authorized to fix a premium charge for the insurance of mortgages under this subchapter but in the case of any mortgage such charge shall not be less than an amount equivalent to one-half of 1 per centum per annum nor more than an amount equivalent to 1½ per centum per annum of the amount of the principal obligation of the mortgage outstanding at any time, without taking into account delinquent payments or prepayments. Such premium charges shall be payable by the mortgagee, either in cash or in debentures issued by the Secretary under this subchapter at par plus accrued interest, in such manner as may be prescribed by the Secretary: *Provided*, That the Secretary may require the payment of one or more such premium charges at the time the mortgage is insured, at such discount rate as he may prescribe not in excess of the interest rate specified in the mortgage. If the Secretary finds upon the presentation of a mortgage for insurance and the tender of the initial premium charge or charges so required that the mortgage complies with the provisions of this subchapter, such mortgage may be accepted for insurance by endorsement or otherwise as the Secretary may prescribe; but no mortgage shall be accepted for insurance under this subchapter unless the Secretary finds that the project with respect to which the mortgage is executed is an acceptable risk in view of the needs of national defense. In the event that the principal obligation of any mortgage accepted for insurance under this subchapter is paid in full prior to the maturity date, the Secretary is further authorized in his discretion to require the payment by the mortgagee of an adjusted premium charge in such amount as the Secretary determines to be equitable, but not in

excess of the aggregate amount of the premium charges that the mortgagee would otherwise have been required to pay if the mortgage has continued to be insured under this subchapter until such maturity date; and in the event that the principal obligation is paid in full as herein set forth the Secretary is authorized to refund to the mortgagee for the account of the mortgagor all, or such portion as he shall determine to be equitable, of the current unearned premium charges theretofore paid. Upon application of the mortgagee with the consent of the mortgagor of a mortgage for which a commitment to insure has been issued pursuant to section 1709 of this title covering property on which the construction of the dwellings thereon was begun prior to the enactment of this subchapter and the determination of prevailing wages in the locality in accordance with section 1715c of this title, the Secretary is authorized, notwithstanding such beginning of construction, to convert such commitment to a commitment under section 1750g of this title; any charges or fees paid to the Secretary with respect to such insurance under section 1709 of this title shall be credited to charges or fees due the Secretary with respect to such insurance under section 1750g of this title; and the determination of prevailing wages in the locality for purposes of section 1715c of this title may be made by the Secretary of Labor at any time prior to the insurance under section 1750g of this title: *Provided*, That such mortgage, or the mortgage covering the same property executed in substitution therefor, is otherwise eligible for insurance under section 1750g of this title.

(d) Preference or priority in purchasing or renting properties

Notwithstanding any other provisions of this chapter or any other Act, except provisions of law enacted hereafter expressly referring to this subsection (d), the Secretary is further authorized to prescribe such procedures as are necessary to secure to persons engaged or to be engaged in national defense activities preference or priority of opportunity to purchase or rent properties, or interests therein, covered by mortgages insured under this subchapter.

(e) Conclusiveness of insurance contract as to eligibility

Any contract of insurance heretofore or hereafter executed by the Secretary under this subchapter shall be conclusive evidence of the eligibility of the mortgage for insurance, and the validity of any contract of insurance so executed shall be incontestable in the hands of an approved mortgagee from the date of the execution of such contract, except for fraud or misrepresentation on the part of such approved mortgagee.

(June 27, 1934, ch. 847, title IX, §903, as added Sept. 1, 1951, ch. 378, title II, §201, 65 Stat. 296; amended July 14, 1952, ch. 723, §13, 66 Stat. 604; June 30, 1953, ch. 170, §11, 67 Stat. 124; Aug. 2, 1954, ch. 649, title I, §128(b), 68 Stat. 609; Pub. L. 89–117, title XI, §1108(x), Aug. 10, 1965, 79 Stat. 507; Pub. L. 90–19, §1(a)(3), (4), (s), (t), May 25, 1967, 81 Stat. 17, 19.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

Section 1715h of this title, referred to in subsec. (a), was repealed by Pub. L. 100–242, title IV, §401(a)(1), Feb. 5, 1988, 101 Stat. 1898.

AMENDMENTS

1967—Pub. L. 90–19, §1(a)(3), substituted "Secretary" for "Commissioner" wherever appearing in subsecs. (a), (b)(1) to (4), (6), (7), and (c) to (e).

Subsec. (a). Pub. L. 90–19, §1(a)(4), (s), substituted "Secretary's" and "Secretary of Housing and Home Development" for "Commissioner's" and "Housing and Home Finance Administrator", respectively.

Subsec. (d). Pub. L. 90–19, §1(t), struck out ", with the approval of the Housing and Home Finance Administrator," before "is further authorized".

1965—Subsec. (a). Pub. L. 89–117 substituted "General Insurance Fund" for "National Defense Housing Insurance Fund".

1954—Subsec. (a). Act Aug. 2, 1954, inserted proviso relating to requirement for rental for a period of not less than three years after dwelling is made available for initial occupancy.

1953—Subsec. (a). Act June 30, 1953, inserted proviso commencing "*Provided further*, That in the event".

1952—Subsec. (c). Act July 14, 1952, inserted last sentence.

¹ [See References in Text note below.](#)

§1750c. Mortgage insurance benefits

(a) Conveyance and assignment by mortgagee after foreclosure; debentures and certificates of claim; cost of foreclosure

In any case in which the mortgagee under a mortgage insured under section 1750b of this title shall have foreclosed and taken possession of the mortgaged property, in accordance with regulations of, and within a period to be determined by, the Secretary, or shall, with the consent of the Secretary, have otherwise acquired such property from the mortgagor after default, the mortgagee shall be entitled to receive the benefit of the insurance as hereinafter provided, upon (1) the prompt conveyance to the Secretary of title to the property which meets the requirements of rules and regulations of the Secretary in force at the time the mortgage was insured, and which is evidenced in the manner prescribed by such rules and regulations; and (2) the assignment to him of all claims of the mortgagee against the mortgagor or others, arising out of the mortgage transaction or foreclosure proceedings, except such claims as may have been released with the consent of the Secretary. Upon such conveyance and assignment the obligation of the mortgagee to pay the premium charges for insurance shall cease and the Secretary shall, subject to the cash adjustment hereinafter provided, issue to the mortgagee debentures having a total face value equal to the value of the mortgage and a certificate of claim, as hereinafter provided. For the purposes of this subsection, the value of the mortgage shall be determined, in accordance with rules and regulations prescribed by the Secretary, by adding to the amount of the original principal obligation of the mortgage which was unpaid on the date of the institution of foreclosure proceedings, or on the date of the acquisition of the property after default other than by foreclosure, the amount of all payments which have been made by the mortgagee for taxes, ground rents, and water rates, which are liens prior to the mortgage, special assessments which are noted on the application for insurance or which become liens after the insurance of the mortgage, insurance of the mortgaged property, and any mortgage insurance premiums and by deducting from such total amount any amount received on account of the mortgage after either of such dates and any amount received as rent or other income from the property, less reasonable expenses incurred in handling the property, after either of such dates: *Provided*, That with respect to mortgages which are foreclosed before there shall have been paid on account of the principal obligation of the mortgage a sum equal to 10 per centum of the appraised value of the property as of the date the mortgage was accepted for insurance, there may be included in the debentures issued by the Secretary, on account of the cost of foreclosure (or of acquiring the property by other means) actually paid by the mortgagee and approved by the Secretary an amount—

(1) not in excess of 2 per centum of the unpaid principal of the mortgage as of the date of the institution of foreclosure proceedings and not in excess of \$75; or

(2) not in excess of two-thirds of such cost, whichever is the greater: *Provided further*, That with respect to any debentures issued on or after September 2, 1964, the Secretary may, with the consent of the mortgagee (in lieu of issuing a certificate of claim as provided in subsection (e)), include in debentures, in addition to amounts otherwise allowed for such costs, an amount not to exceed one-third of the total foreclosure, acquisition, and conveyance costs actually paid by the mortgagee and approved by the Secretary, but in no event may the total allowance for such costs exceed the amount actually paid by the mortgagee: *And provided further*, That with respect to mortgages to which the provisions of sections 302 and 306 of the Soldiers' and Sailors' Civil Relief Act of 1940,¹ as now or hereafter amended, apply and which are insured under section 1750b of this title, and subject to such regulations and conditions as the Secretary may prescribe, there shall be included in the debentures an amount which the Secretary finds to be sufficient to compensate the mortgagee for any loss which it may have sustained on account of interest on debentures and the payment of insurance premiums by reason of its having postponed the

institution of foreclosure proceedings or the acquisition of the property by other means during any part or all of the period of such military service and three months thereafter.

(b) Consent to release of mortgagee or property

The Secretary may at any time, under such terms and conditions as he may prescribe, consent to the release of the mortgagor from his liability under the mortgage or the credit instrument secured thereby, or consent to the release of parts of the mortgaged property from the lien of the mortgage.

(c) Debentures; form and denomination

Debentures issued under this subchapter shall be in such form and denominations in multiples of \$50, shall be subject to such terms and conditions, and shall include such provisions for redemption, if any, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury, and may be in coupon or registered form. Any difference between the amount of debentures to which the mortgagee is entitled under this section or section 1750g of this title and the aggregate face value of the debentures issued, not to exceed \$350, shall be adjusted by the payment of cash by the Secretary to the mortgagee from the General Insurance Fund.

(d) Debentures; execution; negotiability; terms; tax exemptions

The debentures issued under this section to any mortgagee shall be executed in the name of the General Insurance Fund as obligor, shall be signed by the Secretary by either his written or engraved signature, and shall be negotiable. All such debentures shall be dated as of the date foreclosure proceedings were instituted, or the property was otherwise acquired by the mortgagee after default, except that debentures issued pursuant to claims for insurance filed on or after September 2, 1964 shall be dated as of the date of default or as of such later date as the Secretary, in his discretion, may establish by regulation. The debentures shall bear interest from such date at a rate determined by the Secretary, with the approval of the Secretary of the Treasury, at the time the mortgage was accepted for insurance, but not to exceed 3 per centum per annum, payable semiannually on the 1st day of January and the 1st day of July of each year. Such debentures shall mature twenty years after the date thereof. Such debentures shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, or gift taxes) now or hereafter imposed by any Territory, dependency, or possession of the United States, or by the District of Columbia, or by any State, county, municipality, or local taxing authority, and shall be paid out of the General Insurance Fund, which shall be primarily liable therefor, and they shall be fully and unconditionally guaranteed as to principal and interest by the United States, and such guaranty shall be expressed on the face of the debentures. In the event that the General Insurance Fund fails to pay upon demand, when due, the principal of or interest on any debentures issued under this subchapter, the Secretary of the Treasury shall pay to the holders the amount thereof which is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such debentures.

(e) Certificate of claim; division of excess proceeds

The certificate of claim issued by the Secretary to any mortgagee under this section shall be for an amount determined in accordance with, and shall contain provisions and shall be paid in accordance with, the provisions of section 1710(e) and section 1710(f) of this title.

(f) Handling and disposal of property; settlement of claims

Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, the Secretary shall have power to deal with, complete, rent, renovate, modernize, insure, make contracts or establish suitable agencies for the management of, or sell for cash or credit, in his discretion, any properties conveyed to him in exchange for debentures and certificates of claim as provided in this section; and, notwithstanding any other provision of law, the Secretary shall also have power to pursue to final collection, by way of compromise or otherwise, all claims against mortgagors assigned by mortgagees to the Secretary as provided in this subchapter: *Provided*, That section 6101 of title 41 shall not be construed to apply to any purchase or contract for services or supplies on account of such property if the amount thereof does not exceed \$1,000. The

power to convey and to execute in the name of the Secretary deeds of conveyances, deeds of release, assignments, and satisfactions of mortgages, and any other written instrument relating to real property or any interest therein heretofore or hereafter acquired by the Secretary pursuant to the provisions of this chapter, may be exercised by an officer appointed by him, without the execution of any express delegation of power or power of attorney: *Provided*, That nothing in this subsection shall be construed to prevent the Secretary from delegating such power by order or by power of attorney in his discretion, to any officer, agent, or employee he may appoint.

(g) Mortgagor's or mortgagee's interest in property or claim conveyed

No mortgagee or mortgagor shall have, and no certification of claim shall be construed to give to any mortgagee or mortgagor, any right or interest in any property conveyed to the Secretary or in any claim assigned to him; nor shall the Secretary owe any duty to any mortgagee or mortgagor with respect to the handling or disposal of any such property or the collection of any such claim.

(June 27, 1934, ch. 847, title IX, §904, as added Sept. 1, 1951, ch. 378, title II, §201, 65 Stat. 298; amended Aug. 2, 1954, ch. 649, title I, §112(d), 68 Stat. 593; Pub. L. 88-560, title I, §105(e), (f), Sept. 2, 1964, 78 Stat. 773, 774; Pub. L. 89-117, title XI, §1108(y), Aug. 10, 1965, 79 Stat. 507; Pub. L. 90-19, §1(a)(3), (d), May 25, 1967, 81 Stat. 17, 18; Pub. L. 98-479, title II, §204(a)(23), Oct. 17, 1984, 98 Stat. 2233.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

Sections 302 and 306 of the Soldiers' and Sailors' Civil Relief Act of 1940, referred to in subsec. (a)(2), are sections 302 and 306, respectively, of act Oct. 17, 1940, ch. 888, 54 Stat. 1178. That Act was amended generally and renamed the "Servicemembers Civil Relief Act" by Pub. L. 108-189, §1, Dec. 19, 2003, 117 Stat. 2835. As so amended, provisions of the Servicemembers Civil Relief Act that are similar to those contained in former sections 302 and 306 of act Oct. 17, 1940, are now contained in sections 3953 and 3959 of Title 50.

CODIFICATION

In subsec. (f), "section 6101 of title 41" substituted for "section 3709 of the Revised Statutes" on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-479 substituted "authorized" for "auhorized" in last sentence.

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" wherever appearing in subssecs. (a), (a)(2), and (b) to (g).

Subsec. (f). Pub. L. 90-19, §1(d), substituted "an officer" for "the Commissioner or by any Assistant Commissioner".

1965—Subsecs. (c), (d). Pub. L. 89-117, §1108(y)(1), substituted "General Insurance Fund" for "National Defense Housing Insurance Fund".

Subsec. (e). Pub. L. 89-117, §1108(y)(2), removed limitation which had rendered applicable to certificates of claim only those provisions of sections 1710(e) and 1710(f) of this title which were applicable to mortgages insured under section 1713 of this title and struck out provision that reference in section 1710(f) of this title to the "Housing Insurance Fund" shall be deemed for the purpose of this section to be reference to the "National Defense Housing Insurance Fund".

1964—Subsec. (a). Pub. L. 88-560, §105(e)(1), (f), inserted "*Provided further*, That with respect to any debentures issued on or after September 2, 1964, the Commissioner may, with the consent of the mortgagee (in lieu of issuing a certificate of claim as provided in subsection (e)), include in debentures, in addition to amounts otherwise allowed for such costs, an amount not to exceed one-third of the total foreclosure, acquisition, and conveyance costs actually paid by the mortgagee and approved by the Commissioner, but in no event may the total allowance for such costs exceed the amount actually paid by the mortgagee:" and struck out "paid after either of such dates" after "mortgage insurance premiums" in third sentence, respectively.

Subsec. (c). Pub. L. 88-560, §105(e)(2), increased limitation on difference between amount of debentures

to which the mortgagee is entitled under this section or section 1750g of this title and aggregate face value of debentures issued from \$50 to \$350.

Subsec. (d). Pub. L. 88-560, §105(e)(3), substituted in second sentence "default, except that debentures issued pursuant to claims for insurance filed on or after September 2, 1964 shall be dated as of the date of default or as of such later date as the Commissioner, in his discretion, may establish by regulation. The debentures" for "default, and".

1954—Subsec. (d). Act Aug. 2, 1954, in third sentence, substituted a twenty-year period for the ten-year period, with respect to the maturity of debentures.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 2, 1954, as not applicable in any case where the mortgage involved was insured or the commitment for such insurance was issued prior to Aug. 2, 1954, see section 112(e) of that act, set out as a note under section 1710 of this title.

¹ [*See References in Text note below.*](#)

§1750d. Repealed. Pub. L. 89-117, title XI, §1108(aa), Aug. 10, 1965, 79 Stat. 507

Section, act June 27, 1934, ch. 847, title IX, §905, as added Sept. 1, 1951, ch. 378, title II, §201, 65 Stat. 301, provided for management of National Defense Housing Insurance Fund, issue and cancellation of debentures, and receipt and payment of charges and fees.

§1750e. Taxation

Nothing in this subchapter shall be construed to exempt any real property acquired and held by the Secretary under this subchapter from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed.

(June 27, 1934, ch. 847, title IX, §906, as added Sept. 1, 1951, ch. 378, title II, §201, 65 Stat. 301; amended Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner".

§1750f. Rules and regulations

The Secretary is authorized and directed to make such rules and regulations as may be necessary to carry out the provisions of this subchapter.

(June 27, 1934, ch. 847, title IX, §907, as added Sept. 1, 1951, ch. 378, title II, §201, 65 Stat. 301; amended Pub. L. 90-19, §1(a)(3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

AMENDMENTS

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner".

§1750g. Insurance of additional mortgages

(a) Authorization

In addition to mortgages insured under section 1750b of this title, the Secretary is authorized to insure mortgages as defined in section 1750 of this title (including advances on such mortgages during construction) which are eligible for insurance as hereinafter provided.

(b) Eligibility requirements; release of part of property

To be eligible for insurance under this section a mortgage shall meet the following conditions:

(1) The mortgaged property shall be held by a mortgagor approved by the Secretary. The Secretary may, in his discretion, require such mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation. The Secretary may make such contracts with, and acquire for not to exceed \$100 stock or interest in any such mortgagor, as the Secretary may deem necessary to render effective such restriction or regulation. Such stock or interest shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

(2) The mortgage shall involve a principal obligation in an amount—

(A) not to exceed \$5,000,000; and

(B) not to exceed 90 per centum of the amount which the Secretary estimates will be the value of the property or project when the proposed improvements are completed: *Provided*, That such mortgage shall not in any event exceed the amount which the Secretary estimates will be the cost of the completed physical improvements on the property or project exclusive of off-site public utilities and streets and organization and legal expenses; and

(C) not to exceed \$8,100 per family unit (or \$7,200 per family unit if the number of rooms in such property or project does not equal or exceed four per family unit) for such part of such property or project as may be attributable to dwelling use: *Provided*, That the Secretary may by regulation increase such dollar amount limitations by not exceeding \$900 in any geographical area where he finds that cost levels so require.

(3) The mortgagor shall enter into the agreement required by section 1715r of this title.

The mortgage shall provide for complete amortization by periodic payments within such term as the Secretary shall prescribe, and shall bear interest (exclusive of premium charges for insurance) at not to exceed 4½ per centum per annum on the amount of the principal obligation outstanding at any time. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release.

(c) Default; debentures; cash adjustment; certificate of claim

The mortgagee shall be entitled to receive debentures in connection with mortgages insured under this section in the amount and under the conditions specified in subsection (g) of section 1713 of this title, and the references in said subsection (g) to the cash adjustment provided for in subsection (j) of section 1713 and to the certificate of claim provided for in subsection (h) of section 1713 shall be deemed to refer respectively to the cash adjustment provided for in subsection (c) of section 1750c of this title and to the certificate of claim provided for in subsection (d) of this section.

(d) Certificate of claim; contents and payment

The certificate of claim issued by the Secretary to any mortgagee under this section shall be for an amount determined in accordance with, and shall contain provisions and shall be paid in accordance with, the provisions of section 1713(h) of this title.

(e) Debentures; issuance and payment in accordance with section 1750c(c), (d) of this title

Debentures issued under this section shall be issued in accordance with the provisions of section 1750c(c) and (d) of this title except that such debentures shall be dated as of the date of default as determined in subsection (c) of this section, and shall bear interest from such date.

(f) Applicability of section 1713(k), (l) of this title

The provisions of section 1713(k) and (l) of this title shall be applicable to mortgages insured under this section and to property acquired by the Secretary hereunder, except that, as applied to such mortgages and property, the reference therein to subsection (g) shall be construed to refer to subsection (c) of this section.

(g) Applications under section 1743; credit for fees upon reapplication under this section

In any case where an application for insurance under section 1743 of this title was received by the Secretary of Housing and Urban Development on or before March 1, 1950, and has not been rejected or committed upon, the mortgagee upon reapplication for insurance of a mortgage under this section with respect to the same property shall receive credit for any application fees paid in connection with the prior application: *Provided*, That this subsection shall not constitute a waiver of any requirements otherwise applicable to the insurance of mortgages under this section.

(h) Preferences

The Secretary shall grant preference to applications for insurance under this subchapter to mortgages covering housing of lower rents.

(June 27, 1934, ch. 847, title IX, §908, as added Sept. 1, 1951, ch. 378, title II, §201, 65 Stat. 301; amended June 30, 1953, ch. 170, §10(c), 67 Stat. 124; Aug. 2, 1954, ch. 649, title I, §130, 68 Stat. 609; Pub. L. 89-117, title XI, §1108(z), Aug. 10, 1965, 79 Stat. 507; Pub. L. 90-19, §1(a)(2), (3), May 25, 1967, 81 Stat. 17.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Insurance Fund, referred to in text, was established by section 1735c of this title.

AMENDMENTS

1967—Pub. L. 90-19, §1(a)(3), substituted "Secretary" for "Commissioner" wherever appearing in subsecs. (a), (b)(1), (2)(B), (C), last par. following (C), (d), (f), and (h).

Subsec. (g). Pub. L. 90-19, §1(a)(2), substituted "Secretary of Housing and Urban Development" for "Federal Housing Commissioner".

1965—Subsec. (b)(1). Pub. L. 89-117, §1108(z)(1), substituted "General Insurance Fund" for "National Defense Housing Insurance Fund".

Subsec. (d). Pub. L. 89-117, §1108(z)(2), struck out provision that reference in section 1713(h) of this title to "the Housing Insurance Fund" shall be deemed for the purposes of this section to be a reference to the National Defense Housing Insurance Fund.

Subsec. (f). Pub. L. 89-117, §1108(z)(3), struck out provision that references in subsections (k) and (l) of section 1713 of this title "Housing Fund" shall be construed to refer to the "National Defense Housing Insurance Fund".

1954—Subsec. (b)(3). Act Aug. 2, 1954, substituted requirement that mortgagor shall enter into the agreement required by section 1715r of this title for former provisions relating to certification of builders' costs, such certifications now being prescribed in said section 1715r.

1953—Subsec. (b). Act June 30, 1953, in paragraph commencing "The mortgage shall provide", substituted "4½ per centum" for "4 per centum".

SUBCHAPTER XI—VOLUNTARY HOME MORTGAGE CREDIT

EDITORIAL NOTES

CODIFICATION

This subchapter was enacted as part of the Housing Act of 1954, and not as part of the National Housing Act which comprises this chapter.

§§1750aa to 1750jj. Omitted

EDITORIAL NOTES

CODIFICATION

Section 1750aa, act Aug. 2, 1954, ch. 649, title VI, §601, 68 Stat. 637, contained a declaration of policy for voluntary home mortgage credit.

Section 1750bb, acts Aug. 2, 1954, ch. 649, title VI, §602, 68 Stat. 637; Sept. 2, 1958, Pub. L. 85–857, §13(s)(1), 72 Stat. 1266, defined "Insured or guaranteed mortgage loan", "Private financing institutions", "Administrator", and "State".

Section 1750cc, acts Aug. 2, 1954, ch. 649, title VI, §603, 68 Stat. 637; Aug. 11, 1955, ch. 783, title I, §109(a)(3), 69 Stat. 640, provided for establishment and composition of National Voluntary Mortgage Credit Extension Committee.

Section 1750dd, act Aug. 2, 1954, ch. 649, title VI, §604, 68 Stat. 638, provided for establishment, composition, and organization of regional subcommittees of National Voluntary Mortgage Credit Extension Committee.

Section 1750ee, act Aug. 2, 1954, ch. 649, title VI, §605, 68 Stat. 638, set forth general functions of National Committee and regional subcommittees.

Section 1750ff, act Aug. 2, 1954, ch. 649, title VI, §606, 68 Stat. 638, authorized National Committee to study and review demand and supply of funds for residential mortgage loans, to receive reports from and correlate the activities of regional subcommittees to report periodically to Commissioner of Federal Housing Administration and Administrator of Veterans' Affairs, to maintain liaison with State and local government housing officials, and to submit reports to Congress.

Section 1750gg, acts Aug. 2, 1954, ch. 649, title VI, §607, 68 Stat. 639; Sept. 2, 1958, Pub. L. 85–857, §13(s)(1), 72 Stat. 1266, set forth the functions, powers, and duties of regional subcommittees.

Section 1750hh, act Aug. 2, 1954, ch. 649, title VI, §608, 68 Stat. 640, authorized Administrator, after consultation with National Committee, to issue general rules and procedures for implementation of this subchapter and functioning of regional subcommittees.

Section 1750ii, act Aug. 2, 1954, ch. 649, title VI, §609, 68 Stat. 640, exempted laws promulgated pursuant to this subchapter from prohibitions of antitrust laws or Federal Trade Commission Act of United States, provided for status of members of National Committee or any of regional subcommittees, and provided for an office, staff assistance and expenses of members.

Section 1750jj, acts Aug. 2, 1954, ch. 649, title VI, §610, 68 Stat. 640; June 29, 1957, Pub. L. 85–66, 71 Stat. 209; July 12, 1957, Pub. L. 85–104, title VI, §602, 71 Stat. 304; July 31, 1959, Pub. L. 86–119, 73 Stat. 266; Sept. 23, 1959, Pub. L. 86–372, title VIII, §806, 73 Stat. 687; June 30, 1961, Pub. L. 87–70, title IX, §903, 75 Stat. 191, provided that, unless Congress authorized for an earlier termination, this subchapter and all authority conferred hereunder was to terminate at close of Oct. 1, 1965.

CHAPTER 14—FEDERAL CREDIT UNIONS

Sec.

1751. Short title.

1751a. Omitted.

SUBCHAPTER I—GENERAL PROVISIONS

1752. Definitions.

1752a. National Credit Union Administration.

1753. Federal credit union organization.

1754. Approval of organization certificate.

1755. Fees.

1756. Reports and examinations.

1756a. Omitted.

1757. Powers.

1757a. Limitation on member business loans.

1758. Bylaws.

- 1759. Membership.
- 1760. Members' meetings.
- 1761. Management.
- 1761a. Officers of the board.
- 1761b. Board of directors; meetings; powers and duties; executive committee; membership officers; membership application.
- 1761c. Credit committee.
- 1761d. Supervisory committee; powers and duties; suspension of members; passbook.
- 1762. Repealed.
- 1763. Dividends.
- 1764. Expulsion and withdrawal.
- 1765. Minors.
- 1766. Powers of Board.
- 1767. Fiscal agents and depositories; authorization to secure deposits by governmental bodies.
- 1768. Taxation.
- 1769. Separability; right to alter, amend, or repeal chapter.
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§1751. Short title

This chapter may be cited as the "Federal Credit Union Act".

(June 26, 1934, ch. 750, §1, 48 Stat. 1216; Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 628.)

EDITORIAL NOTES

AMENDMENTS

1959—Pub. L. 86–354 reenacted section without change.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2022 AMENDMENT

Pub. L. 117–103, div. T, §101, Mar. 15, 2022, 136 Stat. 823, provided that: "This division [amending section 1764 of this title] may be cited as the 'Credit Union Governance Modernization Act of 2022'."

SHORT TITLE OF 2014 AMENDMENT

Pub. L. 113–252, §1, Dec. 18, 2014, 128 Stat. 2893, provided that: "This Act [amending section 1787 of this title] may be cited as the 'Credit Union Share Insurance Fund Parity Act'."

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–219, §1(a), Aug. 7, 1998, 112 Stat. 913, provided that: "This Act [enacting sections 1757a and 1790d of this title, amending sections 1752a, 1759, 1782, and 1784 to 1787 of this title, repealing section 1762 of this title, and enacting provisions set out as notes under this section and sections 1752a, 1757a, 1759, 1790d, 4801, and 4803 of this title] may be cited as the 'Credit Union Membership Access Act'."

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–86, title VII, §701, Aug. 10, 1987, 101 Stat. 652, provided that: "This title [enacting section 1772c of this title and amending sections 1757, 1761a, 1761b, 1764, 1766, 1767, and 1786 to 1788 of this title and sections 45, 46, and 57a of Title 15, Commerce and Trade] may be cited as the 'Credit Union Amendments of 1987'."

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–630, title XVIII, §1801, Nov. 10, 1978, 92 Stat. 3719, provided that: "This title [enacting subchapter III of this chapter and amending section 1757 of this title, section 709 of Title 18, Crimes and Criminal Procedure, and section 856 of former Title 31, Money and Finance] may be cited as the 'National Credit Union Central Liquidity Facility Act'."

CONGRESSIONAL FINDINGS

Pub. L. 105–219, §2, Aug. 7, 1998, 112 Stat. 913, provided that: "The Congress finds the following:

"(1) The American credit union movement began as a cooperative effort to serve the productive and provident credit needs of individuals of modest means.

"(2) Credit unions continue to fulfill this public purpose, and current members and membership groups should not face divestiture from the financial services institution of their choice as a result of recent court

action.

"(3) To promote thrift and credit extension, a meaningful affinity and bond among members, manifested by a commonality of routine interaction, shared and related work experiences, interests, or activities, or the maintenance of an otherwise well-understood sense of cohesion or identity is essential to the fulfillment of the public mission of credit unions.

"(4) Credit unions, unlike many other participants in the financial services market, are exempt from Federal and most State taxes because they are member-owned, democratically operated, not-for-profit organizations generally managed by volunteer boards of directors and because they have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means.

"(5) Improved credit union safety and soundness provisions will enhance the public benefit that citizens receive from these cooperative financial services institutions."

TRANSFER OF FUNCTIONS

Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Transfer of functions of Farm Credit Administration and Governor thereof to Bureau of Farm Credit Unions and Director thereof under jurisdiction of Federal Security Agency by act June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091, and abolishment of Agency and transfer of its functions to Department of Health, Education, and Welfare by Reorg. Plan No. 1 of 1953, §5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 632, see section 1752a of this title, and notes thereunder.

Functions of Farm Credit Administration and Governor thereof under this chapter, together with functions of Secretary of Agriculture with respect thereto, transferred to Federal Deposit Insurance Corporation by Reorg. Plan No. 1 of 1947, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952, set out in the Appendix to Title 5, Government Organization and Employees. A similar transfer of functions for duration of World War II was effected by Ex. Ord. No. 9148, Apr. 27, 1942, 7 F.R. 3145.

Farm Credit Administration transferred to Department of Agriculture by Reorg. Plan No. I of 1939, §401, eff. July 1, 1939, 4 F.R. 2730, 53 Stat. 1429, set out in the Appendix to Title 5.

§1751a. Omitted

EDITORIAL NOTES

CODIFICATION

Section, act June 29, 1948, ch. 711, §2, 62 Stat. 1091, related to establishment of Bureau of Federal Credit Unions. See section 1752a of this title.

SUBCHAPTER I—GENERAL PROVISIONS

§1752. Definitions

As used in this chapter—

(1) the term "Federal credit union" means a cooperative association organized in accordance with the provisions of this chapter for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes;

(2) the term "Chairman" means the Chairman of the National Credit Union Administration Board;

(3) the term "Administration" means the National Credit Union Administration;

(4) the term "Board" means the National Credit Union Administration Board;

(5) The terms "member account" and "account" mean a share, share certificate, or share draft account of a member of a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member, and, in the case of a credit union serving predominantly low-income members (as defined by the Board), such terms (when referring to the account of a nonmember served by such credit union) mean a share, share certificate, or share draft account of such nonmember which is of a type approved by the Board and evidences money or its equivalent received or held by such credit union in the usual course of business and for which it has given or is obligated to give credit to the account of such nonmember, and such terms mean share, share certificate, or share draft account of nonmember credit unions and nonmember units of Federal, State, or local governments and political subdivisions thereof enumerated in section 1787 of this title, and such terms mean custodial accounts established for loans sold in whole or in part pursuant to section 1757(13) of this title: *Provided*, That for purposes of insured State credit unions, reference in this paragraph to "share", "share certificate", or "share draft", accounts includes, as determined by the Board, the equivalent of such accounts under State law;

(6) The terms "State credit union" and "State-chartered credit union" mean a credit union organized and operated according to the laws of any State, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, which laws provide for the organization of credit unions similar in principle and objectives to Federal credit unions;

(7) The term "insured credit union" means any credit union the member accounts of which are insured in accordance with the provisions of subchapter II of this chapter, and the term "noninsured credit union" means any credit union the member accounts of which are not so insured;

(8) The term "Fund" means the National Credit Union Share Insurance Fund; and

(9) The term "branch" includes any branch credit union, branch office, branch agency, additional office, or any branch place of business located in any State of the United States, the District of Columbia, the several territories, including the trust territories, and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, at which member accounts are established or money lent. The term "branch" also includes a suboffice, operated by a Federal credit union or by a credit union authorized by the Department of Defense, located on an American military installation in a foreign country or in the trust territories of the United States.

(June 26, 1934, ch. 750, title I, §101, formerly §2, 48 Stat. 1216; 1947 Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 628; Pub. L. 91-206, §1, Mar. 10, 1970, 84 Stat. 49, renumbered title I, §101, and amended Pub. L. 91-468, §§1(2), 2, Oct. 19, 1970, 84 Stat. 994, 1015; Pub. L. 95-22, title III, §308, Apr. 19, 1977, 91 Stat. 52; Pub. L. 95-630, title V, §§502(a), (b), 503, Nov. 10, 1978, 92 Stat. 3681; Pub. L. 96-161, title I, §103(a), Dec. 28, 1979, 93 Stat. 1233; Pub. L. 96-221, title III, §§305(a), 307, Mar. 31, 1980, 94 Stat. 146, 147; Pub. L. 97-320, title V, §501, Oct. 15, 1982, 96 Stat. 1528; Pub. L. 109-351, title VII, §726(1), (2), Oct. 13, 2006, 120 Stat. 2002.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2006—Par. (3). Pub. L. 109-351, §726(1), struck out "and" after semicolon.

Par. (5). Pub. L. 109-351, §726(2), substituted "share draft account" for "share draft account account" in two places and for "share draft account accounts" before "of nonmember".

1982—Par. (5). Pub. L. 97-320 inserted ", and such terms mean custodial accounts established for loans

sold in whole or in part pursuant to section 1757(13) of this title" after "section 1787 of this title".

1980—Par. (5). Pub. L. 96–221, §§305(a), 307, inserted provisions respecting applicability to share draft accounts substantially similar to provisions added by Pub. L. 96–161, and repealed the amendment made by Pub. L. 96–161. See Repeals and Effective Date of 1980 Amendment notes below.

Par. (10). Pub. L. 96–221, §307, struck out par. (10) which defined "share draft account". See Repeals and Effective Date of 1980 Amendment notes below.

1979—Par. (5). Pub. L. 96–161, §103(a)(1), inserted ", and such term also includes a share draft account" after "the equivalent of such accounts under State law".

Par. (10). Pub. L. 96–161, §103(a)(2)–(4), added par. (10).

1978—Par. (2). Pub. L. 95–630, §502(a)(1), substituted provisions defining "Chairman" for provisions defining "Administrator".

Par. (4). Pub. L. 95–630, §502(a)(2), inserted "Administration" after "National Credit Union".

Par. (5). Pub. L. 95–630, §§502(b), 503(a), (b), redesignated par. (4), defining "member account" and "account", as (5) and substituted "share or share certificate" for "share, share certificate, or share deposit" in two places; "Board" for "Administrator" wherever appearing; "share or share certificate accounts" for "those accounts"; and "enumerated in section 1787 of this title: *Provided*, That for purposes of State credit unions, reference in this paragraph to 'share' or 'share certificate' accounts includes, as determined by the Board, the equivalent of such accounts under State law;" for "in which payments are received by a credit union pursuant to section 1757(6) of this title;".

Pars. (6) to (8). Pub. L. 95–630, §503(a), redesignated former pars. (5) to (7) as (6) to (8). Former par. (8) redesignated (9).

Par. (9). Pub. L. 95–630, §503(a), (c), redesignated former par. (8) as (9), inserted ", including the trust territories," after "several territories", and inserted provision that term "branch" also includes a suboffice, operated by a Federal credit union or by a credit union authorized by the Department of Defense, located on an American military installation in a foreign country or in the trust territories of the United States.

1977—Par. (4). Pub. L. 95–22 inserted provision that such terms mean those accounts of nonmember credit unions and nonmember units of Federal, State, or local governments and political subdivisions thereof in which payments are received by a credit union pursuant to section 1757(6) of this title.

1970—Par. (2). Pub. L. 91–206 substituting "Administrator" as meaning Administrator of the National Credit Union Administration for "Bureau" as meaning the Bureau of Federal Credit Unions.

Par. (3). Pub. L. 91–206 substituted "Administration" as meaning the National Credit Union Administration for "Director" as meaning Director of the Bureau of Federal Credit Unions.

Par. (4). Pub. L. 91–206 added par. (4).

Pars. (4) to (8). Pub. L. 91–468, §2, added pars. (4) to (8).

1959—Pub. L. 86–354 designated the terms defined as subsecs. (1) to (3).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective at close of Mar. 31, 1980, see section 306 of Pub. L. 96–221, set out as a note under section 1464 of this title.

EFFECTIVE AND TERMINATION DATES OF 1979 AMENDMENT

Amendment by Pub. L. 96–161 effective Dec. 31, 1979, with that amendment to remain in effect until the close of Mar. 31, 1980, see section 104 of Pub. L. 96–161, formerly set out as a note under section 371a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–630, title V, §509, Nov. 10, 1978, 92 Stat. 3683, provided that: "The amendments made by this title [amending this section, sections 1753 to 1756, 1757 to 1759, 1761 to 1763, 1766, 1767, 1771, 1772a, and 1781 to 1789 of this title, and sections 5108, 5314, and 5315 of Title 5, Government Organization and Employees] take effect upon the effective date of this Act [see Effective Date note under section 375b of this title], except that the functions of the Administrator of the National Credit Union Administration under the provisions of the Federal Credit Union Act [this chapter], as in effect on the date preceding the date of enactment of this title [Nov. 10, 1978], shall continue to be performed by him in accordance with such provisions until such time as all the members of the National Credit Union Administration Board, established

under the amendments made by this title, take office. All rules, regulations, policies, and procedures of the Administrator in effect on the date of enactment of this title shall remain in effect until amended, superseded, or repealed."

REPEALS

Amendment by section 103 of Pub. L. 96-161, cited as a credit to this section, was repealed at the close of Mar. 31, 1980, by section 307 of Pub. L. 96-221, and substantially identical provisions were enacted by section 305 of Pub. L. 96-221, such amendments to take effect at the close of Mar. 31, 1980.

EXECUTIVE DOCUMENTS

EX. ORD. NO. 13816. REVISING THE SEAL FOR THE NATIONAL CREDIT UNION ADMINISTRATION

Ex. Ord. No. 13816, Dec. 8, 2017, 82 F.R. 58701, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Revision.* (a) The National Credit Union Administration Board has caused to be made, and has recommended approval of, a new seal of office for the National Credit Union Administration (NCUA), the design of which accompanies and is hereby made a part of this order [not set out in the Code], and which is described as follows:

(i) The eagle overlaid by the shield conveys the NCUA's role as an agency of the Federal Government. The text, "NCUA," in white on a blue background on the crest of the shield is the core of the sign that federally insured credit unions are required to display.

(ii) The three stars above the eagle represent the NCUA's three-member Board, appointed by the President of the United States by and with the advice and consent of the Senate.

(iii) The oak branch the eagle is holding in its left talon symbolizes the NCUA's strength, honor, and longevity in carrying out its mission of promoting confidence in the national system of cooperative credit.

(iv) The olive branch the eagle is holding in its right talon symbolizes the peace and prosperity facilitated by the economic growth and access to affordable financial services that the Nation's credit unions have long provided to millions of Americans.

(v) The upper portion of the circle that forms the border of the seal sets forth the agency's title, "National Credit Union Administration." The date "1934" in the lower portion of the circle reflects the creation of the Federal credit union system by the Congress in 1934 and the long unbroken line of Federal credit union regulation that evolved into the NCUA.

(b) This seal is of suitable design and appropriate for adoption as the official seal of the NCUA.

(c) I hereby approve this seal as the official seal of the NCUA.

SEC. 2. *Revocation.* Executive Order 11580 of January 20, 1971 (Establishing a Seal for the National Credit Union Administration), as amended, is hereby revoked.

SEC. 3. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§1752a. National Credit Union Administration

(a) Establishment; management under National Credit Union Administration Board

There is established in the executive branch of the Government an independent agency to be known as the National Credit Union Administration. The Administration shall be under the management of a National Credit Union Administration Board.

(b) Membership and appointment of Board

(1) In general

The Board shall consist of three members, who are broadly representative of the public interest, appointed by the President, by and with the advice and consent of the Senate. In appointing the members of the Board, the President shall designate the Chairman. Not more than two members of the Board shall be members of the same political party.

(2) Appointment criteria

(A) Experience in financial services

In considering appointments to the Board under paragraph (1), the President shall give consideration to individuals who, by virtue of their education, training, or experience relating to a broad range of financial services, financial services regulation, or financial policy, are especially qualified to serve on the Board.

(B) Limit on appointment of credit union officers

Not more than one member of the Board may be appointed to the Board from among individuals who, at the time of the appointment, are, or have recently been, involved with any insured credit union as a committee member, director, officer, employee, or other institution-affiliated party.

(c) Term of office

The term of office of each member of the Board shall be six years, except that the terms of the two members, other than the Chairman, initially appointed shall expire one upon the expiration of two years after the date of appointment, and the other upon the expiration of four years after the date of appointment. Board members shall not be appointed to succeed themselves except the initial members appointed for less than a six-year term may be reappointed for a full six-year term and future members appointed to fill unexpired terms may be reappointed for a full six-year term. Any Board member may continue to serve as such after the expiration of said member's term until a successor has qualified.

(d) Management of Administration vested in Board; adoption of rules; quorum; report to President and Congress

The management of the Administration shall be vested in the Board. The Board shall adopt such rules as it sees fit for the transaction of its business and shall keep permanent and complete records and minutes of its acts and proceedings. A majority of the Board shall constitute a quorum. Not later than April 1 of each calendar year, and at such other times as the Congress shall determine, the Board shall make a report to the President and to the Congress. Such a report shall summarize the operations of the Administration and set forth such information as is necessary for the Congress to review the financial program approved by the Board.

(e) Functions of Chairman

The Chairman of the Board shall be the spokesman for the Board and shall represent the Board and the National Credit Union Administration in its official relations with other branches of the Government. The Chairman shall determine each Board member's area of responsibility and shall review such assignments biennially. It shall be the Chairman's responsibility to direct the implementation of the adopted policies and regulations of the Board.

(f) Audit by Government Accountability Office

The financial transactions of the Administration shall be subject to audit by the Government Accountability Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the Administration are kept.

(June 26, 1934, ch. 750, title I, §102, formerly §3, as added Pub. L. 86-354, §1, Sept. 22, 1959, 73

Stat. 628; amended Pub. L. 91–206, §3, Mar. 10, 1970, 84 Stat. 49; renumbered title I, §102, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–630, title V, §501, Nov. 10, 1978, 92 Stat. 3680; Pub. L. 97–320, title V, §502, Oct. 15, 1982, 96 Stat. 1528; Pub. L. 105–219, title II, §204, Aug. 7, 1998, 112 Stat. 922; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

EDITORIAL NOTES

PRIOR PROVISIONS

Section 2 of act June 29, 1948, ch. 711, 62 Stat. 1091, which was formerly classified to section 1751a of this title, provided for the establishment in the Federal Security Agency of a Bureau of Federal Credit Unions, which were under the supervision of a Director appointed by the Federal Security Administrator. The Bureau of Federal Credit Unions and the Director thereof were under the general direction and supervision of the Federal Security Administrator. The functions, powers, and duties of the Farm Credit Administration under the Federal Credit Union Act, as amended [this chapter], were exercised by the Bureau of Federal Credit Unions. The functions, powers, and duties of the Governor of the Farm Credit Administration under the Federal Credit Union Act, as amended [this chapter], were exercised by the Director of the Bureau of Federal Credit Unions.

Section 1 of act June 29, 1948 transferred to the Federal Security Agency all functions, powers, and duties of the Farm Credit Administration and of the Governor thereof under the Federal Credit Union Act, as amended [this chapter], together with the functions of the Secretary of Agriculture with respect thereto, which were transferred to the Federal Deposit Insurance Corporation by Reorganization Plan Numbered 1 of 1947, part IV, section 401 [set out in the Appendix to Title 5, Government Organization and Employees].

Section 3 of act June 29, 1948 transferred to the Federal Security Agency, to be used in the administration of the functions, transferred, (a) all property, including office equipment, transferred to the Federal Deposit Insurance Corporation pursuant to Executive Order 9148 of April 27, 1942 [see note under section 1751 of this title], and in use on the effective date of this Act [see section 5 of act June 29, 1948, set out as a note below]; (b) all property, including office equipment, purchased by the Corporation for use exclusively in connection with the administration of the Federal Credit Union Act, as amended [this chapter], the cost of which had been charged to such functions and which were in use on the effective date of this Act; (c) all records and files pertaining exclusively to the supervision of Federal Credit Unions; and (d) all personnel employed primarily in the administration of the Federal Credit Union Act, as amended [this chapter], on the effective date of this Act.

Section 4 of act June 29, 1948 transferred all funds allocated, specifically or otherwise, in the budget of the Federal Deposit Insurance Corporation for the administration of the Federal Credit Union Act, as amended [this chapter], during the fiscal year ending June 30, 1949, which were unexpended on the effective date of this Act [see section 5 of act June 29, 1948, set out as a note below], to the Federal Security Agency for use in the administration of the Federal Credit Union Act, as amended [this chapter]. The Corporation was to be reimbursed for the funds so transferred and for all other funds expended by it prior to the effective date of this Act in the administration of the Federal Credit Union Act, as amended [this chapter], in excess of fees from Federal Credit unions received by the Corporation, by deducting such amounts from the first moneys payable to the Secretary of the Treasury on account of the retirement of the stock of the Federal Deposit Insurance Corporation owned by the United States, and the Corporation was to have a charge on such stock for such amounts.

Section 5 of act June 29, 1948 provided that the Act was to become effective on the thirtieth day following the date of enactment.

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

1998—Subsec. (b). Pub. L. 105–219 inserted heading, designated existing provisions as par. (1), and added par. (2).

1982—Subsec. (f). Pub. L. 97–320 struck out "on a calendar year basis" after "subject to audit".

1978—Pub. L. 95–630 generally revised section to eliminate the position of Administrator and to vest the management of the National Credit Union Administration in the National Credit Union Administration Board.

1970—Pub. L. 91–206 designated existing provisions as subsec. (a), substituted provisions establishing an independent agency known as the National Credit Union Administration and an Administrator of such National Credit Union Administration for provisions establishing a Bureau of Federal Credit Unions under the

supervision of a Director, which Director was appointed by, and, under the general direction and supervision of, the Secretary of Health, Education, and Welfare, and added subsecs. (b) to (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

TRANSFER OF FUNCTIONS

Pub. L. 91-206, §6, Mar. 10, 1970, 84 Stat. 51, provided that:

"(a) All functions, property, records, and personnel of the Bureau of Federal Credit Unions are transferred to the National Credit Union Administration created by this Act [which generally amended this chapter].

"(b) The Director of the Bureau of Federal Credit Unions in office on the date of enactment of this Act [Mar. 10, 1970] shall serve as acting Administrator of the National Credit Union Administration pending the appointment of an Administrator in accordance with section 3 of the Federal Credit Union Act as amended by this Act [this section]."

STUDY AND REPORT ON DIFFERING REGULATORY TREATMENT

Pub. L. 105-219, title IV, §401, Aug. 7, 1998, 112 Stat. 934, required the Secretary to conduct a study of the differences between credit unions and other federally insured financial institutions, and the potential effects of the application of Federal laws, including Federal tax laws, on credit unions in the same manner as those laws are applied to other federally insured financial institutions, and to report to Congress on the results of the study by 1 year after Aug. 7, 1998.

STUDY OF CORPORATE CREDIT UNIONS

Pub. L. 104-208, div. A, title II, §2606, Sept. 30, 1996, 110 Stat. 3009-473, directed the Secretary of the Treasury to conduct a study and evaluation of the oversight and supervisory practices of the National Credit Union Administration concerning the National Credit Union Share Insurance Fund, including analysis of expenses, Fund administration, the 10 largest U.S. corporate credit unions, and Administration supervision and regulations, and required the Secretary, not later than 12 months after Sept. 30, 1996, to submit to Congress a report that includes the results of the study and recommendations.

STUDY OF CREDIT UNION SYSTEM BY GAO

Pub. L. 101-73, title XII, §1201, Aug. 9, 1989, 103 Stat. 519, directed Comptroller General of the United States to conduct a comprehensive study of Nation's credit union system and before the close of the 18-month period beginning on Aug. 9, 1989, to submit to Committee on Banking, Finance and Urban Affairs of House of Representatives and Committee on Banking, Housing, and Urban Affairs of Senate a final report containing a detailed statement of findings and conclusions, including recommendations for such administrative and legislative action as Comptroller General deemed advisable.

FEDERALLY CHARTERED CENTRAL CREDIT UNIONS; REPORT TO CONGRESS

Pub. L. 86-354, §3, Sept. 22, 1959, 73 Stat. 639, directed Director of Bureau of Federal Credit Unions to make a study of desirability of providing for federally chartered central credit unions and to submit to Secretary of Health, Education, and Welfare, for transmission to Congress on or before Apr. 15, 1960, a report of results thereof and such recommendations for legislation thereon as Director deemed appropriate.

§1753. Federal credit union organization

Any seven or more natural persons who desire to form a Federal credit union shall each subscribe either individually or collectively before some officer competent to administer oaths an organization certificate in duplicate which shall specifically state:

- (1) the name of the association;
- (2) the location of the proposed Federal credit union and the territory in which it will operate;
- (3) the names and addresses of the subscribers to the certificate and the number of shares subscribed by each;
- (4) the initial par value of the shares;

- (5) the proposed field of membership, specified in detail;
- (6) the term of the existence of the corporation, which may be perpetual; and
- (7) the fact that the certificate is made to enable such persons to avail themselves of the advantages of this chapter.

Such organization certificate may also contain any provisions approved by the Board for the management of the business of the association and for the conduct of its affairs and relative to the powers of its directors, officers, or stockholders.

(June 26, 1934, ch. 750, title I, §103, formerly §3, 48 Stat. 1217; 1947 Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; renumbered §4 and amended Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 628; Pub. L. 91-206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §103, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97-320, title V, §§503, 504, Oct. 15, 1982, 96 Stat. 1528.)

EDITORIAL NOTES

AMENDMENTS

1982—Pub. L. 97-320, §503, substituted "each subscribe either individually or collectively" for "subscribe".

Par. (4). Pub. L. 97-320, §504, substituted "the initial par value of the shares" for "the par value of the shares, which shall be \$5 each".

1978—Pub. L. 95-630 substituted "Board" for "Administrator".

1970—Pub. L. 91-206 substituted "Administrator" for "Director".

1959—Pub. L. 86-354 changed "The" to "the" in subsecs. (1) to (7) and the period to a semicolon in subsecs. (1) to (6) and inserted "and" at end of subsec. (6).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Transfer of functions of Farm Credit Administration and Governor thereof, generally, see notes set out under section 1751 of this title.

Functions of Governor of Farm Credit Administration under this section transferred to Federal Deposit Insurance Corporation by Reorg. Plan No. 1 of 1947.

§1754. Approval of organization certificate

The organization certificate shall be presented to the Board for approval. Before any organization certificate is approved, an appropriate investigation shall be made for the purpose of determining (1) whether the organization certificate conforms to the provisions of this chapter; (2) the general character and fitness of the subscribers thereto; and (3) the economic advisability of establishing the proposed Federal credit union. Upon approval of such organization certificate by the Board it shall be the charter of the corporation, and one of the originals thereof shall be delivered to the corporation after the payment of the fee required therefor. Upon such approval the Federal credit union shall be a body corporate and as such, subject to the limitations herein contained, shall be vested with all of the powers and charged with all of the liabilities conferred and imposed by this chapter upon corporations organized hereunder.

(June 26, 1934, ch. 750, title I, §104, formerly §4, 48 Stat. 1217; 1947 Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; renumbered §5 and amended Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 629; Pub. L. 91-206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §104, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681.)

EDITORIAL NOTES

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator" in two places.

1970—Pub. L. 91-206 substituted "Administrator" for "Director" in two places.

1959—Pub. L. 86-354 substituted "The" for "Any such" in first sentence and transferred second sentence to make it last sentence.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Transfer of functions of Farm Credit Administration and Governor thereof, generally, see notes set out under section 1751 of this title.

Functions of Governor of Farm Credit Administration under this section transferred to Federal Deposit Insurance Corporation by Reorg. Plan No. 1 of 1947.

§1755. Fees

(a) Payment by Federal credit union to Administration

In accordance with rules prescribed by the Board, each Federal credit union shall pay to the Administration an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.

(b) Determinations of amount, assessment periods, and payment dates

The fee assessed under this section shall be determined according to a schedule, or schedules, or other method determined by the Board to be appropriate, which gives due consideration to the expenses of the Administration in carrying out its responsibilities under this chapter and to the ability of Federal credit unions to pay the fee. The Board shall, among other things, determine the periods for which the fee shall be assessed and the date or dates for the payment of the fee or increments thereof.

(c) Supervision charge exception; waiver of payment

If the annual operating fee is composed of separate charges, no supervision charge shall be payable by a Federal credit union, and the Board may waive payment of any or all other charges comprising the fee, with respect to the year in which its charter is issued, or in which final distribution is made in its liquidation or the charter is canceled.

(d) Payment into Treasury of United States

All operating fees shall be deposited with the Treasurer of the United States for the account of the Administration and may be expended by the Board to defray the expenses incurred in carrying out the provisions of this chapter including the examination and supervision of Federal credit unions.

(e) Investment of annual operating fees not needed for current operations

(1) Upon request of the Board, the Secretary of the Treasury shall invest and reinvest such portions of the annual operating fees deposited under subsection (d) as the Board determines are not needed for current operations.

(2) Such investments may be made only in interest bearing securities of the United States with maturities requested by the Board bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(3) All income derived from such investments and reinvestments shall be deposited to the account of the Administration described in subsection (d).

(June 26, 1934, ch. 750, title I, §105, formerly §5, 48 Stat. 1217; 1947 Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; Apr. 17, 1952, ch. 214, §1, 66 Stat. 63; renumbered §6 and amended Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 629; Pub. L. 91-206, §2(1), (3), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §105, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95-630, title V, §507, Nov. 10, 1978, 92 Stat. 3682; Pub. L. 97-320, title V, §505, Oct. 15, 1982, 96 Stat. 1528.)

EDITORIAL NOTES

AMENDMENTS

1982—Subsec. (e). Pub. L. 97-320 added subsec. (e).

1978—Pub. L. 95-630 substituted provisions relating to the payment of an operating fee by each Federal credit union to the Board for provisions relating to the payment of costs incident to the ascertainment of whether an organization certificate should be approved and costs upon approval by the subscriber of such certificate to the Administration and payment of a supervision fee by each Federal credit union to the Administration.

1970—Pub. L. 91-206 substituted "Administrator" for "Director" and "Administration" for "Bureau", wherever appearing.

1959—Pub. L. 86-354 incorporated in last sentence subject matter formerly contained in a proviso clause following table and authorized fees to be expended for supervisory expenses.

1952—Act Apr. 17, 1952, amended section, substituting a graduated scale of supervisory fees for the \$10 a year supervisory fee.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Act Apr. 17, 1952, ch. 214, §2, 66 Stat. 63, provided that: "The amendment by section 1 of this Act [amending this section] shall apply to supervision fees payable with respect to the calendar year 1952 and subsequent calendar years."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Transfer of functions of Farm Credit Administration and Governor thereof, generally, see notes set out under section 1751 of this title.

Functions of Governor of Farm Credit Administration under this section transferred to Federal Deposit Insurance Corporation by Reorg. Plan No. 1 of 1947.

§1756. Reports and examinations

Federal credit unions shall be under the supervision of the Board, and shall make financial reports to it as and when it may require, but at least annually. Each Federal credit union shall be subject to examination by, and for this purpose shall make its books and records accessible to, any person designated by the Board.

(June 26, 1934, ch. 750, title I, §106, formerly §6, 48 Stat. 1218; Dec. 6, 1937, ch. 3, §1, 51 Stat. 4; 1947 Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; renumbered §7 and amended Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 629; Pub. L. 91-206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §106, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95-630, title V, §508, Nov. 10, 1978, 92 Stat. 3683.)

EDITORIAL NOTES

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator" in two places and "reports to it as and when it" for "reports to him as and when he" and struck out provisions relating to the payment of an examination fee by Federal credit unions and the deposit of such fee to the credit of the special fund created by section 1755 of this title.

1970—Pub. L. 91-206 substituted "Administrator" for "Director" in three places.

1959—Pub. L. 86-354 provided for the making of reports to the Director as and when he may require.

1937—Act Dec. 6, 1937, inserted "giving due consideration to the time and expense incident to such examinations, and to the ability of Federal credit unions to pay such fees" and struck out proviso relating to conditions relieving certain unions from payment of examination fee.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Transfer of functions of Farm Credit Administration and Governor thereof, generally, see notes set out under section 1751 of this title.

Functions of Governor of Farm Credit Administration under this section transferred to Federal Deposit Insurance Corporation by Reorg. Plan No. 1 of 1947.

§1756a. Omitted

EDITORIAL NOTES

CODIFICATION

Section, act July 22, 1942, ch. 516, 56 Stat. 700, which authorized reimbursement of Farm Credit Administration personnel for use of private automobiles for examining, supervising, and servicing Federal credit unions, was from the Department of Agriculture Appropriation Act, 1943, and was not repeated in subsequent appropriation acts. Similar provisions were contained in act July 1, 1941, ch. 267, 55 Stat. 444, the Department of Agriculture Appropriation Act, 1942.

§1757. Powers

A Federal credit union shall have succession in its corporate name during its existence and shall have power—

(1) to make contracts;
(2) to sue and be sued;
(3) to adopt and use a common seal and alter the same at pleasure;
(4) to purchase, hold, and dispose of property necessary or incidental to its operations;
(5) to make loans, the maturities of which shall not exceed 15 years, except as otherwise provided herein, and extend lines of credit to its members, to other credit unions, and to credit union organizations and to participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with the following:

(A) Loans to members shall be made in conformity with criteria established by the board of directors: *Provided, That—*

(i) a residential real estate loan on a one-to-four-family dwelling, including an individual cooperative unit, that is or will be the principal residence of a credit union member, and which is secured by a first lien upon such dwelling, may have a maturity not exceeding thirty years or such other limits as shall be set by the National Credit Union Administration Board (except that a loan on an individual cooperative unit shall be adequately secured as defined by the Board), subject to the rules and regulations of the Board;

(ii) a loan to finance the purchase of a mobile home, which shall be secured by a first lien on such mobile home, to be used by the credit union member as his residence, a loan for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member, or a second mortgage loan secured by a residential dwelling which is the residence of a credit union member, shall have a maturity not to exceed 15 years or any longer term which the Board may allow;

(iii) a loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the Federal Government, a State government, or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance, guarantee, or commitment is provided;

(iv) a loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan which exceeds \$20,000 plus pledged shares, be approved by the board of directors;

(v) loans to other members for which directors or members of the supervisory or credit committee act as guarantor or endorser be approved by the board of directors when such loans standing alone or when added to any outstanding loan or loans of the guarantor or endorser exceeds \$20,000;

(vi) the rate of interest may not exceed 15 per centum per annum on the unpaid balance inclusive of all finance charges, except that the Board may establish—

(I) after consultation with the appropriate committees of the Congress, the Department of Treasury, and the Federal financial institution regulatory agencies, an interest rate ceiling exceeding such 15 per centum per annum rate, for periods not to exceed 18 months, if it determines that money market interest rates have risen over the preceding six-month period and that prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in liquidity, capital, earnings, and growth; and

(II) a higher interest rate ceiling for Agent members of the Central Liquidity Facility in carrying out the provisions of subchapter III for such periods as the Board may authorize;

(vii) the taking, receiving, reserving, or charging of a rate of interest greater than is allowed by this paragraph, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back from the credit union taking or receiving the same, in an action in the nature of an action of debt, the entire amount of interest paid; but such action must be commenced within two years from the time the usurious collection was made;

(viii) a borrower may repay his loan, prior to maturity in whole or in part on any business day without penalty, except that on a first or second mortgage loan a Federal credit union may require that any partial prepayments (I) be made on the date monthly installments are due, and (II) be in the amount of that part of one or more monthly installments which would be applicable to principal;

(ix) loans shall be paid or amortized in accordance with rules and regulations prescribed by the Board after taking into account the needs or conditions of the borrowers, the amounts and duration of the loans, the interests of the members and the credit unions, and such other factors as the Board deems relevant; ¹

(x) loans must be approved by the credit committee or a loan officer, but no loan may be made to any member if, upon the making of that loan, the member would be indebted to the Federal credit union upon loans made to him in an aggregate amount which would exceed 10 per centum of the credit union's unimpaired capital and surplus.

(B) A self-replenishing line of credit to a borrower may be established to a stated maximum amount on certain terms and conditions which may be different from the terms and conditions established for another borrower.

(C) Loans to other credit unions shall be approved by the board of directors.

(D) Loans to credit union organizations shall be approved by the board of directors and shall not exceed 1 per centum of the paid-in and unimpaired capital and surplus of the credit union. A credit union organization means any organization as determined by the Board, which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve.

(E) Participation loans with other credit unions, credit union organizations, or financial organizations shall be in accordance with written policies of the board of directors: *Provided*, That a credit union which originates a loan for which participation arrangements are made in accordance with this subsection shall retain an interest of at least 10 per centum of the face amount of the loan;

(6) to receive from its members, from other credit unions, from an officer, employee, or agent of those nonmember units of Federal, Indian tribal, State, or local governments and political subdivisions thereof enumerated in section 1787 of this title and in the manner so prescribed, from the Central Liquidity Facility, and from nonmembers in the case of credit unions serving predominately low-income members (as defined by the Board) payments, representing equity, on—

(A) shares which may be issued at varying dividend rates;

(B) share certificates which may be issued at varying dividend rates and maturities; and

(C) share draft accounts authorized under section 1785(f) of this title;

subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the Board;

(7) to invest its funds (A) in loans exclusively to members; (B) in obligations of the United States of America, or securities fully guaranteed as to principal and interest thereby; (C) in accordance with rules and regulations prescribed by the Board, in loans to other credit unions in the total amount not exceeding 25 per centum of its paid-in and unimpaired capital and surplus; (D) in shares or accounts of savings and loan associations or mutual savings banks, the accounts of which are insured by the Federal Deposit Insurance Corporation; (E) in obligations issued by banks for cooperatives, Federal land banks, Federal intermediate credit banks, Federal home loan banks, the Federal Housing Finance Board, or any corporation designated in section 9101(3) of title 31 as a wholly owned Government corporation; or in obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National Mortgage Association; or in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home

Loan Mortgage Corporation pursuant to section 1454 or 1455 of this title; or in obligations or other instruments or securities of the Student Loan Marketing Association; or in obligations, participations, securities, or other instruments of, or issued by, or fully guaranteed as to principal and interest by any other agency of the United States and a Federal credit union may issue and sell securities which are guaranteed pursuant to section 1721(g) of this title; (F) in participation certificates evidencing beneficial interests in obligations, or in the right to receive interest and principal collections therefrom, which obligations have been subjected by one or more Government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States (or the head thereof) has been named to act as trustee; (G) in shares or deposits of any central credit union in which such investments are specifically authorized by the board of directors of the Federal credit union making the investment; (H) in shares, share certificates, or share deposits of federally insured credit unions; (I) in the shares, stocks, or obligations of any other organization, providing services which are associated with the routine operations of credit unions, up to 1 per centum of the total paid in and unimpaired capital and surplus of the credit union with the approval of the Board: *Provided, however,* That such authority does not include the power to acquire control directly or indirectly, of another financial institution, nor invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility or any other similar organization, corporation, or association, except as otherwise expressly provided by this chapter; (J) in the capital stock of the National Credit Union Central Liquidity Facility; (K) investments in obligations of, or issued by, any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision), except that no credit union may invest more than 10 per centum of its unimpaired capital and surplus in the obligations of any one issuer (exclusive of general obligations of the issuer);

(8) to make deposits in national banks and in State banks, trust companies, and mutual savings banks operating in accordance with the laws of the State in which the Federal credit union does business, or in banks or institutions the accounts of which are insured by the Federal Deposit Insurance Corporation, and for Federal credit unions or credit unions authorized by the Department of Defense operating suboffices on American military installations in foreign countries or trust territories of the United States to maintain demand deposit accounts in banks located in those countries or trust territories, subject to such regulations as may be issued by the Board and provided such banks are correspondents of banks described in this paragraph;

(9) to borrow, in accordance with such rules and regulations as may be prescribed by the Board, from any source, in an aggregate amount not exceeding, except as authorized by the Board in carrying out the provisions of subchapter III, 50 per centum of its paid-in and unimpaired capital and surplus: *Provided,* That any Federal credit union may discount with or sell to any Federal intermediate credit bank any eligible obligations up to the amount of its paid-in and unimpaired capital;

(10) to levy late charges, in accordance with the bylaws, for failure of members to meet promptly their obligations to the Federal credit union;

(11) to impress and enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him and any dues or charges payable by him;

(12) in accordance with regulations prescribed by the Board—

(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers and remittance transfers, as defined in section 1693o-1 of title 15); and

(B) to cash checks and money orders for persons in the field of membership for a fee;

(13) in accordance with rules and regulations prescribed by the Board, to purchase, sell, pledge, or discount or otherwise receive or dispose of, in whole or in part, any eligible obligations (as defined by the Board) of its members and to purchase from any liquidating credit union notes made by individual members of the liquidating credit union at such prices as may be agreed upon

by the board of directors of the liquidating credit union and the board of directors of the purchasing credit union, but no purchase may be made under authority of this paragraph if, upon the making of that purchase, the aggregate of the unpaid balances of notes purchased under authority of this paragraph would exceed 5 per centum of the unimpaired capital and surplus of the credit union;

(14) to sell all or a part of its assets to another credit union, to purchase all or part of the assets of another credit union and to assume the liabilities of the selling credit union and those of its members subject to regulations of the Board;

(15) to invest in securities that—

(A) are offered and sold pursuant to section 77d(5) of title 15; ²

(B) are mortgage related securities (as that term is defined in section 78c(a)(41) of title 15), subject to such regulations as the Board may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both; or

(C) are small business related securities (as defined in section 78c(a)(53) of title 15), subject to such regulations as the Board may prescribe, including regulations prescribing the minimum size of the issue (at the time of the initial distribution), the minimum aggregate sales price, or both;

(16) subject to such regulations as the Board may prescribe, to provide technical assistance to credit unions in Poland and Hungary; and

(17) to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

(June 26, 1934, ch. 750, title I, §107, formerly §7, 48 Stat. 1218; Dec. 6, 1937, ch. 3, §2, 51 Stat. 4; July 31, 1946, ch. 711, §1, 60 Stat. 744; 1947 Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; Oct. 25, 1949, ch. 713, §1, 63 Stat. 890; May 13, 1952, ch. 264, 66 Stat. 70; renumbered §8 and amended Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 630; Pub. L. 88-353, §1, July 2, 1964, 78 Stat. 269; Pub. L. 89-429, §7, May 24, 1966, 80 Stat. 167; Pub. L. 90-44, §§2, 3, July 3, 1967, 81 Stat. 110, 111; Pub. L. 90-375, §1(1)-(3), July 5, 1968, 82 Stat. 284; Pub. L. 90-448, title VIII, §807(n), Aug. 1, 1968, 82 Stat. 545; Pub. L. 91-206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §107, and amended Pub. L. 91-468, §§1(2), 10, Oct. 19, 1970, 84 Stat. 994, 1017; Pub. L. 92-318, title I, §133(c)(4), June 23, 1972, 86 Stat. 270; Pub. L. 93-383, title VII, §721, title VIII, §805(c)(5), Aug. 22, 1974, 88 Stat. 719, 727; Pub. L. 93-495, title I, §101(d), Oct. 28, 1974, 88 Stat. 1502; Pub. L. 93-569, §6, Dec. 31, 1974, 88 Stat. 1866; Pub. L. 95-22, title III, §§302, 303, Apr. 19, 1977, 91 Stat. 49, 51; Pub. L. 95-630, title V, §502(b), title XVIII, §1803, Nov. 10, 1978, 92 Stat. 3681, 3723; Pub. L. 96-153, title III, §323(d), Dec. 21, 1979, 93 Stat. 1120; Pub. L. 96-161, title I, §103(b), Dec. 28, 1979, 93 Stat. 1234; Pub. L. 96-221, title III, §§305(b), 307, 309(a)(1), 310, Mar. 31, 1980, 94 Stat. 146-149; Pub. L. 97-320, title V, §§506-514, 516-518, Oct. 15, 1982, 96 Stat. 1528-1530; Pub. L. 97-457, §§25, 26, Jan. 12, 1983, 96 Stat. 2510; Pub. L. 98-440, title I, §105(b), Oct. 3, 1984, 98 Stat. 1691; Pub. L. 98-479, title II, §206, Oct. 17, 1984, 98 Stat. 2234; Pub. L. 100-86, title VII, §§702, 703, Aug. 10, 1987, 101 Stat. 652; Pub. L. 101-179, title II, §206(b), Nov. 28, 1989, 103 Stat. 1311; Pub. L. 103-325, title II, §206(b), Sept. 23, 1994, 108 Stat. 2199; Pub. L. 104-208, div. A, title II, §2306, Sept. 30, 1996, 110 Stat. 3009-426; Pub. L. 109-351, title V, §§502, 503, title VII, §726(3)-(8), Oct. 13, 2006, 120 Stat. 1975, 2002; Pub. L. 111-203, title III, §362(1), title X, §1073(d), July 21, 2010, 124 Stat. 1549, 2066.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 77d(5) of title 15, referred to in par. (15)(A), was redesignated section 77d(a)(5) of Title 15, Commerce and Trade, by Pub. L. 112-106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

CODIFICATION

In par. (7), "section 9101(3) of title 31" substituted for "section 101 of the Government Corporation Control Act [31 U.S.C. 846]" on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2010—Par. (8). Pub. L. 111-203, §362(1), struck out "or the Federal Savings and Loan Insurance Corporation" after "Federal Deposit Insurance Corporation".

Par. (12). Pub. L. 111-203, §1073(d), amended par. (12) generally. Prior to amendment, par. (12) read as follows: "in accordance with regulations prescribed by the Board—

"(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers); and

"(B) to cash checks and money orders and receive international and domestic electronic fund transfers for persons in the field of membership for a fee;"

2006—Par. (5). Pub. L. 109-351, §502, substituted "to make loans, the maturities of which shall not exceed 15 years," for "to make loans, the maturities of which shall not exceed twelve years" in introductory provisions.

Par. (5)(E). Pub. L. 109-351, §726(3), substituted semicolon for period at end.

Par. (6). Pub. L. 109-351, §726(4), substituted semicolon for period at end.

Par. (7). Pub. L. 109-351, §726(4), substituted semicolon for period at end.

Par. (7)(D). Pub. L. 109-351, §726(5), struck out "the Federal Savings and Loan Insurance Corporation or" before "the Federal Deposit Insurance Corporation".

Par. (7)(E). Pub. L. 109-351, §726(6), substituted "the Federal Housing Finance Board," for "the Federal Home Loan Bank Board,".

Par. (9). Pub. L. 109-351, §726(7), made technical amendment to reference in original act which appears in text as reference to subchapter III.

Par. (12). Pub. L. 109-351, §503, amended par. (12) generally. Prior to amendment, par. (12) read as follows: "in accordance with rules and regulations prescribed by the Board, to sell to members negotiable checks (including travelers checks), money orders, and other similar money transfer instruments, and to cash checks and money orders for members, for a fee;"

Par. (13). Pub. L. 109-351, §726(8), struck out "and" after semicolon at end.

1996—Par. (5)(A)(iv), (v). Pub. L. 104-208 substituted "\$20,000" for "\$10,000".

1994—Par. (15)(C). Pub. L. 103-325 added subpar. (C).

1989—Pars. (16), (17). Pub. L. 101-179 added par. (16) and redesignated former par. (16) as (17).

1987—Par. (5)(A)(ii). Pub. L. 100-86, §702, substituted "15 years or any longer term which the Board may allow" for "fifteen years unless such loan is insured or guaranteed as provided in subparagraph (iii)".

Par. (6). Pub. L. 100-86, §703, inserted ", representing equity," after "payments".

1984—Par. (5)(A)(ii). Pub. L. 98-479 inserted "a loan for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member,".

Pars. (15), (16). Pub. L. 98-440, §105(b), added par. (15) and redesignated former par. (15) as (16).

1983—Par. (5)(A)(i). Pub. L. 97-457, §25, substituted "Administration" for "Association" after "National Credit Union".

Par. (7)(K). Pub. L. 97-457, §26, redesignated cl. (L) as (K) and substituted a period for "; and" at end.

1982—Par. (5)(A)(i). Pub. L. 97-320, §§507-509, substituted "on" for "which is made to finance the acquisition of" after "real estate loan" and "that is or will be" for "for" after "cooperative unit," struck out "the sales price of which is not more than 150 per centum of the median sales price of residential real property situated in the geographical area (as determined by the board of directors) in which the property is located," after "credit union member", and inserted "or such other limits as shall be set by the National Credit Union Association Board" after "not exceeding thirty years".

Par. (5)(A)(ii). Pub. L. 97-320, §510, substituted "or a second mortgage loan secured by a residential dwelling" for "or for the repair, alteration, or improvement of a residential dwelling".

Par. (5)(A)(iii). Pub. L. 97-320, §511, inserted ", or with advance commitment to purchase the loan by," and substituted "insurance, guarantee, or commitment" for "insurance or guarantee".

Par. (5)(A)(iv), (v). Pub. L. 97-320, §512, substituted "\$10,000" for "\$5,000".

Par. (5)(A)(viii). Pub. L. 97-320, §513, inserted condition relating to partial prepayments of first or second mortgage loans.

Par. (5)(A)(x). Pub. L. 97-320, §506, added cl. (x).

Par. (7)(E). Pub. L. 97-320, §516, inserted provisions relating to instruments issued or guaranteed by any other agency of the United States, and that a Federal Credit Union may issue and sell securities which are guaranteed pursuant to section 1721(g) of this title.

Par. (7)(L). Pub. L. 97-320, §514, added cl. (L).

Par. (8). Pub. L. 97-320, §517, inserted "or in banks or institutions the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation," after "in which the Federal Credit Union does business,".

Par. (12). Pub. L. 97-320, §518, substituted ", money orders, and other similar money transfer instruments" for "and money orders", and struck out "which does not exceed the direct and indirect costs incident to providing such service" after "for a fee".

1980—Par. (5)(A)(i). Pub. L. 96-221, §309(a)(1), inserted provisions relating to an individual cooperative unit.

Par. (5)(A)(vi). Pub. L. 96-221, §310, substituted provisions setting forth maximum interest rate of 15 per centum per annum, subject to specified exceptions, for provisions setting forth a maximum interest rate of 1 per centum per month.

Par. (6). Pub. L. 96-221, §§305(b), 307, revised existing provisions respecting credit unions serving predominately low-income members including provisions added by Pub. L. 96-161, and repealed the amendment made by Pub. L. 96-161. See Repeals and Effective Date of 1980 Amendment notes below.

1979—Par. (6). Pub. L. 96-161 inserted ", and to issue, deal in, and accept share drafts as orders of withdrawal against shares, subject to such terms, rates, and conditions as may be prescribed by the Board" after "within limitations prescribed by the Board".

Pub. L. 96-153 substituted "Federal, Indian tribal, State" for "Federal, State".

1978—Par. (5). Pub. L. 95-630, §502(b), substituted "Board" for "Administrator" wherever appearing.

Par. (6). Pub. L. 95-630, §§502(b), 1803(a), inserted "from the Central Liquidity Facility," after "in the manner so prescribed," and substituted "Board" for "Administrator" in two places.

Par. (7). Pub. L. 95-630, §§502(b), 1803(b), substituted "Board" for "Administrator" wherever appearing and added cl. (J).

Par. (8). Pub. L. 95-630, §502(b), substituted "Board" for "Administrator".

Par. (9). Pub. L. 95-630, §§502(b), 1803(c), substituted "Board" for "Administrator" and inserted ", except as authorized by the Board in carrying out the provisions of subchapter III," after "amount not exceeding".

Pars. (12) to (14). Pub. L. 95-630, §502(b), substituted "Board" for "Administrator" wherever appearing.

1977—Par. (5). Pub. L. 95-22, §302(a), among other changes, inserted provisions permitting Federal credit unions to establish lines of credit for their members, to raise the maximum loan maturity for most loans to twelve years, and to make loans secured by a first lien and made for the purchase of a one-to-four-family dwelling for the principal residence of a credit union member.

Par. (6). Pub. L. 95-22, §§302(b), 303(a), redesignated par. (7) as (6) and substituted reference to payments on shares which may be issued at varying dividend rates and payments on share certificates which may be issued at varying dividend rates and maturities, subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the Administrator for reference to payments on shares, share certificates, or share deposits. Former par. (6), relating to the power of Federal credit unions to make loans to its own directors and to its own supervisory credit committee, was struck out.

Par. (7). Pub. L. 95-22, §303(b), redesignated par. (8) as (7) and added subpar. (I). Former par. (7) redesignated (6).

Pars. (8) to (12). Pub. L. 95-22, §303(c), redesignated pars. (9) to (13) as (8) to (12), respectively. Former par. (8) redesignated (7).

Par. (13). Pub. L. 95-22, §303(c), (d), redesignated par. (14) as (13) and inserted reference to purchase, sell, pledge, or discount or otherwise receive or dispose of, in whole or in part, any eligible obligations (as defined by the Administrator) of its members. Former par. (13) redesignated (12).

Par. (14). Pub. L. 95-22, §303(e), added par. (14).

1974—Par. (5). Pub. L. 93-569 inserted "except that loans made in accordance with section 1703(b) of this title and section 1819 of title 38, may be for the maturities specified therein," after "ten years".

Par. (6). Pub. L. 93-383, §721(a), substituted provisions relating to approval of loans by the board of directors for provisions requiring annual reports to the Administrator with respect to loans and setting forth conditions for the making of loans.

Par. (7). Pub. L. 93-495 inserted provisions relating to receipt of payments of shares, etc., from officers, employees, or agents of nonmember units of Federal, State, or local governments and political subdivisions enumerated in section 1787 of this title.

Par. (8)(E). Pub. L. 93-383, §805(c)(5), inserted reference to mortgages, obligations, or other securities sold

by the Federal Home Loan Mortgage Corporation pursuant to section 1454 or 1455 of this title.

Par. (9). Pub. L. 93-383, §721(b), inserted provisions relating to Federal credit unions or credit unions authorized by the Department of Defense.

1972—Par. (8)(E). Pub. L. 92-318 authorized investments in obligations or other instruments or securities of the Student Loan Marketing Association.

1970—Pars. (5), (6), (8), (10), (13), (14), Pub. L. 91-206 substituted "Administrator" for "Director" wherever appearing.

Par. (7). Pub. L. 91-468, §10(1), permitted a Federal credit union to not only receive from members but also from other federally insured credit unions, payments on shares as well as share certificates or share deposits and, in the case of credit unions serving predominantly low-income members, to receive payments on shares, share certificates or share deposits from nonmembers.

Par. (8). Pub. L. 91-468, §10(2), authorized a Federal credit union to invest in shares, share certificates or share deposits of federally insured credit unions.

1968—Par. (5). Pub. L. 90-375, §1(1), substituted provisions authorizing Federal credit unions to make unsecured loans with maturities not exceeding five years, and secured loans with maturities not exceeding ten years for provisions authorizing federal credit unions to make loans with maturities not exceeding five years.

Par. (8). Pub. L. 90-448 authorized investments in obligations, participations, or other instruments of or issued by, or guaranteed as to principal and interest by, the Government National Mortgage Association.

Pub. L. 90-375, §1(2), added cl. (G).

Pars. (14), (15). Pub. L. 90-375, §1(3), added par. (14) and redesignated former par. (14) as (15).

1967—Par. (5). Pub. L. 90-44, §2(1), substituted "may be made except as authorized under paragraph (6) of this section" for "shall exceed the amount of his holdings in the Federal Credit Union as represented by shares thereof plus the total unencumbered and unpledged shareholdings in the Federal Credit Union of any member pledged as security for the obligation of such director or committee member".

Pars. (6), (7). Pub. L. 90-44, §2(3), added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively.

Pars. (8) to (14). Pub. L. 90-44, §§2(2), (3), redesignated former par. (7) as (8), authorized in cl. (D) investment of funds in shares or accounts of mutual savings banks, the accounts of which are insured by the Federal Deposit Insurance Corporation, and redesignated former pars. (8) to (13) as (9) to (14), respectively.

1966—Par. (7). Pub. L. 89-429 expanded list of possible areas of investment of funds by Federal credit unions to include obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association and participation certificates evidencing beneficial interests in obligations, or in the right to receive interest and principal collections therefrom, which obligations have been subjected by one or more Government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States (or the head thereof) has been named to act as trustee.

1964—Par. (7)(E). Pub. L. 88-353 added cl. (E).

1959—Pub. L. 86-354 made numerous capitalization, punctuation and phraseological changes throughout text; increased maturities limits for loans from three to five years, authorized approval of loans by a loan officer and authorized loans in an amount which shall include total unencumbered and unpledged shareholdings in the Federal credit union of any member pledged as security for the obligation of the director or committee member, provided for payment and amortization of loans, redesignated provisions (a) to (d) as (A) to (D) in par. (7), substituted "levy late charges" for "fine members" and inserted "of members" in par. (10), substituted "charges" for "fines" in par. (11), added par. (12); and redesignated former par. (12) as par. (13).

1952—Par. (7)(d). Act May 13, 1952, authorized investment of funds in shares or accounts of any other institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation.

1949—Par. (5). Act Oct. 25, 1949, increased from 2 years to 3 years the limit for maturity of loans.

1946—Par. (5). Act July 31, 1946, inserted last two sentences to provide for the forfeiture of the entire amount of interest reserved and for the recovery of the entire amount of interest paid for the violation of the interest limitation.

1937—Par. (7)(c), (d). Act Dec. 6, 1937, added cls. (c) and (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 362(1) of Pub. L. 111-203 effective on the transfer date, see section 351 of Pub. L.

111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 1073(d) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 305(b) of Pub. L. 96–221 effective at close of Mar. 31, 1980, see section 306 of Pub. L. 96–221, set out as a note under section 1464 of this title.

EFFECTIVE AND TERMINATION DATES OF 1979 AMENDMENTS

Amendment by Pub. L. 96–161 effective Dec. 31, 1979, with that amendment to remain in effect until the close of Mar. 31, 1980, see section 104 of Pub. L. 96–161, formerly set out as a note under section 371a of this title.

Pub. L. 96–153, title III, §323(e), Dec. 21, 1979, 93 Stat. 1120, provided that: "The amendments made by subsections (a) through (d) [amending this section and sections 1728, 1787, and 1821 of this title] are not applicable to any claim arising out of the closing of a bank, savings and loan association, or credit union prior to the date of enactment of this Act [Dec. 21, 1979], but shall be applicable to any such claim arising on or after such date."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 502(b) of Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

Amendment by section 1803 of Pub. L. 95–630 effective Oct. 1, 1979, see section 1806 of Pub. L. 95–630, set out as an Effective Date note under section 1795 of this title.

EFFECTIVE DATE OF 1974 AMENDMENTS

Amendment by Pub. L. 93–569 effective Dec. 31, 1974, see section 10 of Pub. L. 93–569, set out as a note under section 3702 of Title 38, Veterans' Benefits.

Amendment by Pub. L. 93–495 effective on 30th day beginning after Oct. 28, 1974, see section 101(g) of Pub. L. 93–495, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by title VIII of Pub. L. 90–448, see section 808 of Pub. L. 90–448, set out as a note under section 1716b of this title.

REPEALS

Amendment by section 103 of Pub. L. 96–161, cited as a credit to this section, was repealed at the close of Mar. 31, 1980, by section 307 of Pub. L. 96–221, and substantially identical provisions were enacted by section 305 of Pub. L. 96–221, such amendments to take effect at the close of Mar. 31, 1980.

¹ *So in original. Probably should be followed by "and".*

² *See References in Text note below.*

§1757a. Limitation on member business loans

(a) In general

On and after August 7, 1998, no insured credit union may make any member business loan that would result in a total amount of such loans outstanding at that credit union at any one time equal to more than the lesser of—

- (1) 1.75 times the actual net worth of the credit union; or
- (2) 1.75 times the minimum net worth required under section 1790d(c)(1)(A) of this title for a credit union to be well capitalized.

(b) Exceptions

Subsection (a) does not apply in the case of—

- (1) an insured credit union chartered for the purpose of making, or that has a history of

primarily making, member business loans to its members, as determined by the Board; or

(2) an insured credit union that—

(A) serves predominantly low-income members, as defined by the Board; or

(B) is a community development financial institution, as defined in section 4702 of this title.

(c) Definitions

As used in this section—

(1) the term "member business loan"—

(A) means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate or other business investment property or venture, or agricultural purpose; and

(B) does not include an extension of credit—

(i) that is fully secured by a lien on a 1- to 4-family dwelling;

(ii) that is fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions;

(iii) that is described in subparagraph (A), if it was made to a borrower or an associated member that has a total of all such extensions of credit in an amount equal to less than \$50,000;

(iv) the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency of the Federal Government or of a State, or any political subdivision thereof; or

(v) that is granted by a corporate credit union (as that term is defined by the Board) to another credit union.

(2) the term "net worth"—

(A) with respect to any insured credit union, means the credit union's retained earnings balance, as determined under generally accepted accounting principles; and

(B) with respect to a credit union that serves predominantly low-income members, as defined by the Board, includes secondary capital accounts that are—

(i) uninsured; and

(ii) subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and the Fund; and

(3) the term "associated member" means any member having a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower.

(d) Effect on existing loans

An insured credit union that has, on August 7, 1998, a total amount of outstanding member business loans that exceeds the amount permitted under subsection (a) shall, not later than 3 years after August 7, 1998, reduce the total amount of outstanding member business loans to an amount that is not greater than the amount permitted under subsection (a).

(e) Consultation and cooperation with State credit union supervisors

In implementing this section, the Board shall consult and seek to work cooperatively with State officials having jurisdiction over State-chartered insured credit unions.

(June 26, 1934, ch. 750, title I, §107A, as added Pub. L. 105–219, title II, §203(a), Aug. 7, 1998, 112 Stat. 920; amended Pub. L. 115–174, title I, §105(a), May 24, 2018, 132 Stat. 1301.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (c)(1)(B)(i). Pub. L. 115–174 struck out "that is the primary residence of a member" after "dwelling".

STATUTORY NOTES AND RELATED SUBSIDIARIES

RULE OF CONSTRUCTION

Pub. L. 115–174, title I, §105(b), May 24, 2018, 132 Stat. 1301, provided that: "Nothing in this section [amending this section] or the amendment made by this section shall preclude the National Credit Union Administration from treating an extension of credit that is fully secured by a lien on a 1- to 4-family dwelling that is not the primary residence of a member as a member business loan for purposes other than the member business loan limitation requirements under section 107A of the Federal Credit Union Act (12 U.S.C. 1757a)."

STUDY AND REPORT

Pub. L. 105–219, title II, §203(b), Aug. 7, 1998, 112 Stat. 922, required the Secretary to conduct a study of member business lending by insured credit unions, with a final report to be sent to Congress not later than 12 months after Aug. 7, 1998.

§1758. Bylaws

In order to simplify the organization of Federal credit unions the Board shall from time to time cause to be prepared a form of organization certificate and a form of bylaws, consistent with this chapter, which shall be used by Federal credit union incorporators, and shall be supplied to them on request. At the time of presenting the organization certificate the incorporators shall also submit proposed bylaws to the Board for its approval.

(June 26, 1934, ch. 750, title I, §108, formerly §8, 48 Stat. 1219; 1947 Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; renumbered §9 and amended Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 631; Pub. L. 91–206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §108, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681.)

EDITORIAL NOTES

AMENDMENTS

1978—Pub. L. 95–630 substituted "Board" for "Administrator" in two places, and "its approval" for "his approval".

1970—Pub. L. 91–206 substituted "Administrator" for "Director" in two places.

1959—Pub. L. 86–354 substituted "from time to time" for ", upon the passage of this Act,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Transfer of functions of Farm Credit Administration and Governor thereof, generally, see notes set out under section 1751 of this title.

Functions of Governor of Farm Credit Administration under this section transferred to Federal Deposit Insurance Corporation by Reorg. Plan No. 1 of 1947.

§1759. Membership

(a) In general

Subject to subsection (b), Federal credit union membership shall consist of the incorporators and

such other persons and incorporated and unincorporated organizations, to the extent permitted by rules and regulations prescribed by the Board, as may be elected to membership and as such shall each, subscribe to at least one share of its stock and pay the initial installment thereon and a uniform entrance fee if required by the board of directors. Shares may be issued in joint tenancy with right of survivorship with any persons designated by the credit union member, but no joint tenant shall be permitted to vote, obtain loans, or hold office, unless he is within the field of membership and is a qualified member.

(b) Membership field

Subject to the other provisions of this section, the membership of any Federal credit union shall be limited to the membership described in one of the following categories:

(1) Single common-bond credit union

One group that has a common bond of occupation or association.

(2) Multiple common-bond credit union

More than one group—

(A) each of which has (within the group) a common bond of occupation or association; and

(B) the number of members, each of which (at the time the group is first included within the field of membership of a credit union described in this paragraph) does not exceed any numerical limitation applicable under subsection (d).

(3) Community credit union

Persons or organizations within a well-defined local community, neighborhood, or rural district.

(c) Exceptions

(1) Grandfathered members and groups

(A) In general

Notwithstanding subsection (b)—

(i) any person or organization that is a member of any Federal credit union as of August 7, 1998, may remain a member of the credit union after August 7, 1998; and

(ii) a member of any group whose members constituted a portion of the membership of any Federal credit union as of August 7, 1998, shall continue to be eligible to become a member of that credit union, by virtue of membership in that group, after August 7, 1998.

(B) Successors

If the common bond of any group referred to in subparagraph (A) is defined by any particular organization or business entity, subparagraph (A) shall continue to apply with respect to any successor to the organization or entity.

(2) Exception for underserved areas

Notwithstanding subsection (b), in the case of a Federal credit union, the field of membership category of which is described in subsection (b)(2), the Board may allow the membership of the credit union to include any person or organization within a local community, neighborhood, or rural district if—

(A) the Board determines that the local community, neighborhood, or rural district—

(i) is an "investment area", as defined in section 4702(16) of this title, and meets such additional requirements as the Board may impose; and

(ii) is underserved, based on data of the Board and the Federal banking agencies (as defined in section 1813 of this title), by other depository institutions (as defined in section 461(b)(1)(A) of this title); and

(B) the credit union establishes and maintains an office or facility in the local community, neighborhood, or rural district at which credit union services are available.

(d) Multiple common-bond credit union group requirements

(1) Numerical limitation

Except as provided in paragraph (2), only a group with fewer than 3,000 members shall be eligible to be included in the field of membership category of a credit union described in subsection (b)(2).

(2) Exceptions

In the case of any Federal credit union, the field of membership category of which is described in subsection (b)(2), the numerical limitation in paragraph (1) of this subsection shall not apply with respect to—

(A) any group that the Board determines, in writing and in accordance with the guidelines and regulations issued under paragraph (3), could not feasibly or reasonably establish a new single common-bond credit union, the field of membership category of which is described in subsection (b)(1) because—

(i) the group lacks sufficient volunteer and other resources to support the efficient and effective operation of a credit union;

(ii) the group does not meet the criteria that the Board has determined to be important for the likelihood of success in establishing and managing a new credit union, including demographic characteristics such as geographical location of members, diversity of ages and income levels, and other factors that may affect the financial viability and stability of a credit union; or

(iii) the group would be unlikely to operate a safe and sound credit union;

(B) any group transferred from another credit union—

(i) in connection with a merger or consolidation recommended by the Board or any appropriate State credit union supervisor based on safety and soundness concerns with respect to that other credit union; or

(ii) by the Board in the Board's capacity as conservator or liquidating agent with respect to that other credit union; or

(C) any group transferred in connection with a voluntary merger, having received conditional approval by the Administration of the merger application prior to October 25, 1996, but not having consummated the merger prior to October 25, 1996, if the merger is consummated not later than 180 days after August 7, 1998.

(3) Regulations and guidelines

The Board shall issue guidelines or regulations, after notice and opportunity for comment, setting forth the criteria that the Board will apply in determining under this subsection whether or not an additional group may be included within the field of membership category of an existing credit union described in subsection (b)(2).

(e) Additional membership eligibility provisions

(1) Membership eligibility limited to immediate family or household members

No individual shall be eligible for membership in a credit union on the basis of the relationship of the individual to another person who is eligible for membership in the credit union, unless the individual is a member of the immediate family or household (as those terms are defined by the Board, by regulation) of the other person.

(2) Retention of membership

Except as provided in section 1764 of this title, once a person becomes a member of a credit union in accordance with this subchapter, that person or organization may remain a member of that credit union until the person or organization chooses to withdraw from the membership of the credit union.

(f) Criteria for approval of expansion of multiple common-bond credit unions

(1) In general

The Board shall—

(A) encourage the formation of separately chartered credit unions instead of approving an application to include an additional group within the field of membership of an existing credit union whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union; and

(B) if the formation of a separate credit union by the group is not practicable or consistent with the standards referred to in subparagraph (A), require the inclusion of the group in the field of membership of a credit union that is within reasonable proximity to the location of the group whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union.

(2) Approval criteria

The Board may not approve any application by a Federal credit union, the field of membership category of which is described in subsection (b)(2) to include any additional group within the field of membership of the credit union (or an application by a Federal credit union described in subsection (b)(1) to include an additional group and become a credit union described in subsection (b)(2)), unless the Board determines, in writing, that—

(A) the credit union has not engaged in any unsafe or unsound practice (as defined in section 1786(b) of this title) that is material during the 1-year period preceding the date of filing of the application;

(B) the credit union is adequately capitalized;

(C) the credit union has the administrative capability to serve the proposed membership group and the financial resources to meet the need for additional staff and assets to serve the new membership group;

(D) any potential harm that the expansion of the field of membership of the credit union may have on any other insured credit union and its members is clearly outweighed in the public interest by the probable beneficial effect of the expansion in meeting the convenience and needs of the members of the group proposed to be included in the field of membership; and

(E) the credit union has met such additional requirements as the Board may prescribe, by regulation.

(g) Regulations required for community credit unions

(1) Definition of well-defined local community, neighborhood, or rural district

The Board shall prescribe, by regulation, a definition for the term "well-defined local community, neighborhood, or rural district" for purposes of—

(A) making any determination with regard to the field of membership of a credit union described in subsection (b)(3); and

(B) establishing the criteria applicable with respect to any such determination.

(2) Scope of application

The definition prescribed by the Board under paragraph (1) shall apply with respect to any application to form a new credit union, or to alter or expand the field of membership of an existing credit union, that is filed with the Board after August 7, 1998.

(June 26, 1934, ch. 750, title I, §109, formerly §9, 48 Stat. 1219; July 31, 1946, ch. 711, §2, 60 Stat. 744; 1947 Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; renumbered §10 and amended Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 631; Pub. L. 91-206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §109, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 93-383, title VII, §722, Aug. 22, 1974, 88 Stat. 719; Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 105-219, title I, §§101-103, Aug. 7, 1998, 112 Stat. 914-917; Pub. L. 109-351, title VII, §726(9), Oct. 13, 2006, 120 Stat. 2002.)

EDITORIAL NOTES

AMENDMENTS

2006—Subsec. (c)(2)(A)(i). Pub. L. 109–351 made technical amendment to reference in original act which appears in text as reference to section 4702(16) of this title.

1998—Subsec. (a). Pub. L. 105–219, §101(1)(A), designated existing provisions as subsec. (a) and inserted heading and "Subject to subsection (b)," before "Federal credit union membership shall consist of".

Pub. L. 105–219, §101(1)(B), which directed the amendment of subsec. (a) by striking out ", except that Federal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district" after "directors", was executed by striking out such language which began with a semicolon rather than a comma after "directors" to reflect the probable intent of Congress.

Subsecs. (b) to (e). Pub. L. 105–219, §101(2), added subsecs. (b) to (e).

Subsec. (f). Pub. L. 105–219, §102, added subsec. (f).

Subsec. (g). Pub. L. 105–219, §103, added subsec. (g).

1978—Pub. L. 95–630 substituted "Board" for "Administrator".

1974—Pub. L. 93–383 substituted "a uniform entrance fee if required by the board of directors" for "the entrance fee".

1970—Pub. L. 91–206 substituted "Administrator" for "Director".

1959—Pub. L. 86–354 substituted "persons" for "person" before "designated".

1946—Act July 31, 1946, inserted sentence at end permitting a Federal credit union to issue shares in joint tenancy with a right of survivorship.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

REPORT AND CONGRESSIONAL REVIEW REQUIREMENT FOR CERTAIN REGULATIONS

Pub. L. 105–219, title II, §205, Aug. 7, 1998, 112 Stat. 923, provided that: "A regulation prescribed by the Board [National Credit Union Administration Board] shall be treated as a major rule for purposes of chapter 8 of title 5, United States Code, if the regulation defines, or amends the definition of—

"(1) the term 'immediate family or household' for purposes of section 109(e)(1) of the Federal Credit Union Act [12 U.S.C. 1759(e)(1)] (as added by section 101 of this Act); or

"(2) the term 'well-defined local community, neighborhood, or rural district' for purposes of section 109(g) of the Federal Credit Union Act (as added by section 103 of this Act)."

§1760. Members' meetings

The fiscal year of all Federal credit unions shall end December 31. The annual meeting of each Federal credit union shall be held at such place as its bylaws shall prescribe. Special meetings may be held in the manner indicated in the bylaws. No member shall be entitled to vote by proxy, but a member other than a natural person may vote through an agent designated for the purpose.

Irrespective of the number of shares held, no member shall have more than one vote.

(June 26, 1934, ch. 750, title I, §110, formerly §10, 48 Stat. 1219; renumbered §11, Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 631; amended Pub. L. 88–150, §1, Oct. 17, 1963, 77 Stat. 270; renumbered title I, §110, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 97–320, title V, §519, Oct. 15, 1982, 96 Stat. 1531.)

EDITORIAL NOTES

AMENDMENTS

1982—Pub. L. 97–320 struck out "at such time during the following January, February, or March and" after "shall be held", and "by him" after "shares held".

1963—Pub. L. 88-150 substituted "during the following January, February, or March" for "during the month of the following January".

§1761. Management

(a) Board of directors, credit committee, and supervisory committee; election to board

The management of a Federal credit union shall be by a board of directors, a supervisory committee, and where the bylaws so provide, a credit committee. The board shall consist of an odd number of directors, at least five in number, to be elected annually by and from the members as the bylaws provide. Any vacancy occurring on the board shall be filled until the next annual election by appointment by the remainder of the directors.

(b) Membership on supervisory committee; names and addresses of officers and committee members

The supervisory committee shall be appointed by the board of directors and shall consist of not less than three members nor more than five members, one of whom may be a director other than the compensated officer of the board. A record of the names and addresses of the executive officers, members of the supervisory committee, credit committee, and loan officers, shall be filed with the Administration within ten days after their election or appointment.

(c) Compensation

No member of the board or of any other committee shall, as such, be compensated, except that reasonable health, accident, similar insurance protection, and the reimbursement of reasonable expenses incurred in the execution of the duties of the position shall not be considered compensation.

(June 26, 1934, ch. 750, title I, §111, formerly §11, 48 Stat. 1219; June 15, 1940, ch. 366, 54 Stat. 398; July 31, 1946, ch. 711, §§3-6, 60 Stat. 745; 1947 Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; Oct. 25, 1949, ch. 713, §2, 63 Stat. 890; June 30, 1954, ch. 426, §1, 68 Stat. 335; Aug. 24, 1954, ch. 905, §§1, 2, 68 Stat. 792; renumbered §12 and amended Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 632; Pub. L. 88-353, §2, July 2, 1964, 78 Stat. 269; Pub. L. 91-206, §2(3), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §111, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 93-495, title I, §116, Oct. 28, 1974, 88 Stat. 1507; Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97-320, title V, §520, Oct. 15, 1982, 96 Stat. 1531.)

EDITORIAL NOTES

AMENDMENTS

1982—Pub. L. 97-320 substituted provisions divided into subsecs. (a), (b), and (c) relating to the management of a Federal credit union, including the board of directors, credit and supervisory committees, and the matter of their compensation, for provisions which read as follows: "The business affairs of a Federal credit union shall be managed by a board of not less than five directors, and a credit committee of not less than three members, all to be elected at the annual members' meeting by and from the members, and by a supervisory committee of not less than three members nor more than five members, one of whom may be a director other than the treasurer, to be appointed by the board. Any vacancy occurring in the supervisory committee shall be filled in the same manner as original appointments to such committee. All members of the board and of such committees shall hold office for such terms, respectively, as the bylaws may provide. A record of the names and addresses of the members of the board and such committees and of the officers of the credit union shall be filed with the Administration within ten days after their election or appointment. No member of the board or of either such committee shall, as such, be compensated: *Provided, however,* That reasonable health, accident, and similar insurance protection shall not be considered compensation under regulations promulgated by the Board."

1978—Pub. L. 95-630 substituted "Board" for "Administrator".

1974—Pub. L. 93-495 inserted proviso relating to compensation in the form of health, accident, and similar insurance protection.

1970—Pub. L. 91–206 substituted "Administration" for "Bureau".

1964—Pub. L. 88–353 increased size of supervisory committee from three members to not less than three members nor more than five members.

1959—Pub. L. 86–354 provided for appointment instead of election of members of supervisory committee and for filling of vacancies in such committee, and struck out former subsecs. (b) to (e) relating to officers, directors, credit committee and supervisory committee. See sections 1761a to 1761d of this title, respectively.

1954—Subsecs. (b), (c). Act Aug. 24, 1954, provided express authority for the Director of the Bureau of Federal Credit Unions to regulate the minimum amount and character of surety bonds for officers and employees.

Subsec. (c). Act June 30, 1954, inserted provision with respect to interest refunds.

1949—Subsec. (d). Act Oct. 25, 1949, substituted "\$400" for "\$300" wherever appearing.

1946—Subsec. (c). Act July 31, 1946, struck out "fix the amount and character of the surety bond required of any officer having custody of funds" and inserted "require any officer or employee having custody of or handling funds to give bond with good and sufficient surety in an amount and character to be determined, from time to time, by the board and authorize the payment of the premium or premiums therefor from the funds of the Federal credit union".

Subsec. (d). Act July 31, 1946, struck out requirement that notice of meeting of the credit committee must be given by the treasurer and increased the maximum amount of an unsecured loan to a member from \$100 to \$300.

Subsec. (e). Act July 31, 1946, inserted last sentence defining "passbook".

1940—Subsec. (d). Act June 15, 1940, substituted "\$100" for "\$50" in fourth sentence.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Transfer of functions of Farm Credit Administration and Governor thereof, generally, see notes set out under section 1751 of this title.

Functions of Governor of Farm Credit Administration under this section transferred to Federal Deposit Insurance Corporation by Reorg. Plan No. 1 of 1947.

§1761a. Officers of the board

At their first meeting after the annual meeting of the members, the directors shall elect from their number the board officers specified in the bylaws. Only one board officer may be compensated as an officer of the board and the bylaws shall specify such position as well as the specific duties of each of the board officers. The board shall elect from their number a financial officer who shall give adequate fidelity coverage in accordance with section 1761b(2) of this title.

(June 26, 1934, ch. 750, title I, §112, formerly §13, as added Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 632; amended Pub. L. 88–150, §2, Oct. 17, 1963, 77 Stat. 270; Pub. L. 91–206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §112, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97–320, title V, §521, Oct. 15, 1982, 96 Stat. 1531; Pub. L. 100–86, title VII, §704(a), Aug. 10, 1987, 101 Stat. 652.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 11(b) of act June 26, 1934, ch. 750, 48 Stat. 1219 (formerly classified to section 1761(b) of this title), prior to the amendment and

renumbering of act June 26, 1934, by Pub. L. 86-354.

AMENDMENTS

1987—Pub. L. 100-86 inserted third sentence and struck out former third sentence which read as follows: "The board shall elect from their number a financial officer who shall give bond with good and sufficient surety, in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the Board conditioned upon the faithful performance of the officer's trust."

1982—Pub. L. 97-320 substituted provisions relating to the officers of the board for provisions which read: "At their first meeting after the annual meeting of the members, the directors shall elect from their number a president, one or more vice presidents, a secretary, and a treasurer, who shall be the executive officers of the corporation. No executive officer, except the treasurer, shall be compensated as such. The offices of secretary and treasurer may be held by the same person. The duties of the officers shall be as determined by the bylaws. Before the treasurer shall enter upon his duties he shall give bond with good and sufficient surety, in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the Board, conditioned upon the faithful performance of his trust."

1978—Pub. L. 95-630 substituted "Board" for "Administrator".

1970—Pub. L. 91-206 substituted "Administrator" for "Director".

1963—Pub. L. 88-150 struck out ", except that the treasurer shall be the general manager of the corporation" after "bylaws" in fourth sentence.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

§1761b. Board of directors; meetings; powers and duties; executive committee; membership officers; membership application

The board of directors shall meet at least once a month and shall have the general direction and control of the affairs of the Federal credit union. Minutes of all meetings shall be kept. Among other things, the board of directors shall—

- (1) act upon applications for membership or appoint membership officers from among the members of the credit union, other than the board member paid as an officer, the financial board officer, any assistant to the paid officer of the board or to the financial officer, or any loan officer;
- (2) provide adequate fidelity coverage for officers and employees having custody of or handling funds according to regulations issued by the Board;
- (3) fill vacancies on the board of directors until successors elected at the next annual meeting have qualified;
- (4) if the bylaws provide for an elected credit committee, fill vacancies on the credit committee until successors elected at the next annual meeting have qualified;
- (5) appoint the members of the supervisory committee and, if the bylaws so provide, appoint the members of the credit committee;
- (6) have charge of investments including the right to designate an investment committee of not less than two to act on its behalf;
- (7) determine the maximum number of shares, share certificates, and share draft accounts, and the classes of shares, share certificates, and share draft accounts;
- (8) subject to any limitations of this subchapter,¹ determine the interest rates on loans, the security, and the maximum amount which may be loaned and provided in lines of credit;
- (9) authorize interest refunds to members of record at the close of business on the last day of any dividend period from income earned and received in proportion to the interest paid by them during that dividend period;
- (10) if the bylaws so provide, appoint one or more loan officers and delegate to these officers the power to approve or disapprove loans, lines of credit, or advances from lines of credit;

- (11) establish the par value of the share;
- (12) subject to the limitations of this subchapter and the bylaws of the credit union, provide for the hiring and compensation of officers and employees;
- (13) if the bylaws so provide, appoint an executive committee of not less than three directors to act on its behalf and any other committees to which it can delegate specific functions;
- (14) prescribe conditions and limitations for any committee which it appoints;
- (15) review at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting together with such other related information as it or the bylaws require;
- (16) provide for the furnishing of the written reasons for any denial of a membership application to the applicant upon the written request of the applicant;
- (17) in the absence of a credit committee, and upon the written request of a member, review a loan application denied by a loan officer;
- (18) declare the dividend rate to be paid on shares, share certificates, and share draft accounts pursuant to the terms and conditions of section 1763 of this title;
- (19) establish and maintain a system of internal controls consistent with the regulations of the Board;
- (20) establish lending policies; and
- (21) do all other things that are necessary and proper to carry out all the purposes and powers of the Federal credit union, subject to regulations issued by the Board.

(June 26, 1934, ch. 750, title I, §113, formerly §14, as added Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 632; amended Pub. L. 88-353, §3, July 2, 1964, 78 Stat. 269; Pub. L. 90-375, §1(4), July 5, 1968, 82 Stat. 284; Pub. L. 91-206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §113, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 93-383, title VII, §723, Aug. 22, 1974, 88 Stat. 719; Pub. L. 95-22, title III, §309, Apr. 19, 1977, 91 Stat. 53; Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97-320, title V, §522, Oct. 15, 1982, 96 Stat. 1532; Pub. L. 97-457, §28, Jan. 12, 1983, 96 Stat. 2510; Pub. L. 100-86, title VII, §§704(b), 705, Aug. 10, 1987, 101 Stat. 652.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in par. (8), probably should have been a reference to this title in the original, meaning title I of act June 26, 1934, ch. 750, which is classified generally to this subchapter.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 11(c) of act June 26, 1934, ch. 750, 48 Stat. 1219 (formerly classified to section 1761(c) of this title), prior to the amendment and renumbering of act June 26, 1934, by Pub. L. 86-354.

AMENDMENTS

1987—Par. (1). Pub. L. 100-86, §705, substituted "of the credit union" for "of the board of directors".

Par. (2). Pub. L. 100-86, §704(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "require any officer or employee having custody of or handling funds to give bond with good and sufficient surety in an amount and character in compliance with regulations of the Board, and authorize the payment of the premium or premiums therefor from the funds of the Federal credit union;"

1983—Pub. L. 97-457, §28(1), substituted "direction" for "directions" after "shall have the general".

Par. (2). Pub. L. 97-457, §28(2), substituted "union" for "unions" after "Federal credit".

Par. (9). Pub. L. 97-457, §28(3), inserted "by" after "interest paid".

Par. (15). Pub. L. 97-457, §28(4), substituted "meeting" for "meetings" after "previous monthly".

1982—Pub. L. 97-320, §522, substituted provisions relating to the board of directors, its meetings, powers, and duties, membership officers and membership applications, for provisions which read as follows: "The board of directors shall meet at least once a month and shall have the general direction and control of the affairs of the corporation. Minutes of all such meetings shall be kept. Among other things they shall act upon applications for membership; require any officer or employee having custody of or handling funds to give

bond with good and sufficient surety in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the Board, and authorize the payment of the premium or premiums therefor from the funds of the Federal credit union; fill vacancies in the board and in the credit committee until successors elected at the next annual meeting have qualified; have charge of investments other than loans to members, except that the board may designate a committee of not less than two to act as an investment committee, such investment committee to have charge of making investments under rules and procedures established by the board of directors; determine from time to time the maximum number of shares and share certificates and the classes of shares and share certificates that may be held; subject to the limitations of this chapter, determine the interest rates on loans, the security, and the maximum amount which may be loaned or provided in lines of credit; subject to such regulations as may be issued by the Board, authorized an interest refund to members of record at the close of business on the last day of any dividend period in proportion to the interest paid by them during that dividend period; and provide for compensation of necessary clerical and auditing assistance requested by the supervisory committee, and of loan officers appointed by the credit committee. The board may appoint an executive committee of not less than three directors to exercise such authority as may be delegated to it subject to such conditions and limitations as may be prescribed by the board. Such executive committee or one or more membership officers appointed by the board from among the members of the credit union, other than the treasurer, an assistant treasurer, or a loan officer, may be authorized by the board to approve applications for membership under such conditions as the board may prescribe; except that such committee or membership officer so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or the board may require. If a membership application is denied, the reasons therefor shall be furnished in writing to the person whose application is denied, upon written request."

1978—Pub. L. 95–630 substituted "Board" for "Administrator" in two places.

1977—Pub. L. 95–22 substituted "and share certificates and the classes of shares and share certificates that may be held" for "that may be held by an individual" and ", the security, and the maximum amount which may be loaned or provided in lines of credit" for "and the maximum amount which may be loaned with or without security to any member".

1974—Pub. L. 93–383 inserted provisions authorizing designation of a committee of not less than two to act as an investment committee and provisions relating to denial of a membership application, substituted "one or more membership officers" for "a membership officer", and substituted provisions relating to exercise of authority by the executive committee for provisions setting forth specified functions of the executive committee.

1970—Pub. L. 91–206 substituted "Administrator" for "Director" in two places.

1968—Pub. L. 90–375 substituted "the purchase and sale of securities, the borrowing of funds, and the making of loans to other credit unions" for "the purchase and sale of securities or the making of loans to other credit unions, or both".

1964—Pub. L. 88–353 substituted "the last day of any dividend period in proportion to the interest paid by them during that dividend period" for "December 31 in proportion to the interest paid by them during that year".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

¹ [*See References in Text note below.*](#)

§1761c. Credit committee

(a) Members; meetings; lines of credit and approval of loans; delegation to loan officers

If the bylaws provide for a credit committee, then pursuant to the provisions of the bylaws, the board of directors may appoint or the members may elect a credit committee which shall consist of an odd number of members of the credit union, but which shall not include more than one loan

officer. The method used shall be set forth in the bylaws. The credit committee shall hold such meetings as the business of the Federal credit union may require, not less frequently than once a month, to consider applications for loans or lines of credit. Reasonable notice of such meetings shall be given to all members of the committee. Except for those loans or lines of credit required to be approved by the board of directors in section 1757(5) of this title, approval of an application shall be by majority of the committee who are present at the meeting at which it is considered provided that a majority of the full committee is present. The credit committee may appoint and delegate to loan officers the authority to approve applications.

(b) Review and reversal of loan refusals; review by board in lieu of committee; limitation on disbursements by loan officers

If the bylaws provide for a credit committee, all applications not approved by the loan officer shall be reviewed by the credit committee, and the approval of a majority of the members who are present at the meeting when such review is undertaken shall be required to reverse the loan officer's decision provided a majority of the full committee is present. If there is not a credit committee, a member shall have the right upon written request of review by the board of directors of a loan application which has been denied. No individual shall have authority to disburse funds of the Federal credit union with respect to any loan or line of credit for which the application has been approved by him in his capacity as a loan officer.

(June 26, 1934, ch. 750, title I, §114, formerly §15, as added Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 633; amended Pub. L. 88-353, §4, July 2, 1964, 78 Stat. 269; Pub. L. 90-188, §1, Dec. 13, 1967, 81 Stat. 567; Pub. L. 90-375, §1(5), July 5, 1968, 82 Stat. 284; Pub. L. 91-206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §114, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95-22, title III, §304, Apr. 19, 1977, 91 Stat. 51; Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97-320, title V, §523, Oct. 15, 1982, 96 Stat. 1533.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 11(d) of act June 26, 1934, ch. 750, 48 Stat. 1219 (formerly classified to section 1761(d) of this title), prior to the amendment and renumbering of act June 26, 1934 by Pub. L. 86-354.

AMENDMENTS

1982—Pub. L. 97-320 designated existing provisions as subsecs. (a) and (b), in subsec. (a) as so designated, inserted provisions relating to the membership of the committee and provisions requiring the majority of the full committee to be present for votes on lines of credit, struck out provision requiring each loan officer to report his action on an application in seven days of its filing, in subsec. (b) as so designated, inserted provisions relating to the number of members needed to reverse a loan officer's decision and provision for the case where there is no credit committee, and thereafter struck out provisions that not more than one member of the committee might be appointed as a loan officer, that applications for loans and lines of credit be made on forms prepared by such committee which set forth the security, if any, and such other data as required, that no loan may be made to any member if, upon the making of that loan, the member would have been indebted to the Federal credit union upon loans made to him in an aggregate amount which would exceed 10 per centum of the credit union's unimpaired capital and surplus, and that for the purposes of this section an assignment of shares or the endorsement of a note would be deemed security and, subject to such regulations as the Board prescribed, insurance obtained under title I of the National Housing Act [12 U.S.C. 1702 et seq.] would be deemed adequate security.

1978—Pub. L. 95-630 substituted "Board" for "Administrator".

1977—Pub. L. 95-22 substituted "loans and lines of credit" for "loans" in three places, "Except for those loans or lines of credit required to be approved by the board of directors in section 1757(5) of this title, approval of an application shall be" for "No loan shall be made unless it is approved", "application approved" for "loan approved", "applications not approved" for "loans not approved", and "with respect to any loan or line of credit for which the application" for "for any loan which" and struck out "the purpose for which the

loan is desired" after "which shall set forth", "\$200 or" after "amount which would exceed", "whichever is greater" after "capital and surplus", and provision relating to requirement that no unsecured loan be made to a member which would make the member indebted to the Federal credit union in excess of a specified amount.

1970—Pub. L. 91-206 substituted "Administrator" for "Director".

1968—Pub. L. 90-375 substituted provisions which increased the unsecured loan limit, in the case of a credit union whose unimpaired capital and surplus is less than \$8,000 to \$200, and, in the case of any other credit union to \$2,500 or 2½% of the unimpaired capital and surplus, whichever is less, for provisions which authorized credit unions to make unsecured loans of \$750 or 10% of their unimpaired capital and surplus, whichever is smaller.

1967—Pub. L. 90-188 struck out "up to the unsecured limit, or in excess of such limit if such excess is fully secured by unpledged shares" from end of provision that credit committees may appoint one or more loan officers, and delegate to him or them the power to approve loans.

1964—Pub. L. 88-353 inserted "and, subject to such regulations as the Director may prescribe, insurance obtained under title I of the National Housing Act shall be deemed adequate security".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as a note under section 1752 of this title.

§1761d. Supervisory committee; powers and duties; suspension of members; passbook

The supervisory committee shall make or cause to be made an annual audit and shall submit a report of that audit to the board of directors and a summary of the report to the members at the next annual meeting of the credit union; shall make or cause to be made such supplementary audits as it deems necessary or as may be ordered by the Board, and submit reports of the supplementary audits to the board of directors; may by a unanimous vote suspend any officer of the credit union or any member of the credit committee or of the board of directors, until the next members' meeting, which shall be held not less than seven or more than fourteen days after any such suspension, at which meeting any such suspension shall be acted upon by the members; and may call by a majority vote a special meeting of the members to consider any violations of this chapter, the charter, or the bylaws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized. Any member of the supervisory committee may be suspended by a majority vote of the board of directors. The members shall decide, at a meeting held not less than seven nor more than fourteen days after any such suspension, whether the suspended committee member shall be removed from or restored to the supervisory committee. The supervisory committee shall cause the passbooks and accounts of the members to be verified with the records of the treasurer from time to time, and not less frequently than once every two years. As used in this section, the term "passbook" shall include any book, statement of account, or other record approved by the Board for use by Federal credit unions.

(June 26, 1934, ch. 750, title I, §115, formerly §16, as added Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 633; amended Pub. L. 90-375, §1(6), (7), July 5, 1968, 82 Stat. 284, 285; Pub. L. 91-206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §115, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 93-383, title VII, §724, Aug. 22, 1974, 88 Stat. 719; Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 11(e) of act June 26, 1934, ch. 750, 48 Stat. 1219 (formerly classified to section 1761(e) of this title), prior to the amendment and

renumbering of act June 26, 1934 by Pub. L. 86-354.

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator".

1974—Pub. L. 93-383 substituted "an annual" for "a semiannual".

1970—Pub. L. 91-206 substituted "Administrator" for "Director" in two places.

1968—Pub. L. 90-375 substituted provisions which required a semiannual audit for provisions which required a quarterly examination of the affairs of a Federal credit union, including an audit of the books, authorized the making of such supplementary audits as deemed necessary by the supervisory committee or as ordered by the Director, eliminated the requirement of an annual audit, and provided that the suspension of any member of the supervisory committee be pursuant to a majority vote of the board of directors.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

§1762. Repealed. Pub. L. 105-219, title III, §301(g)(3), Aug. 7, 1998, 112 Stat. 931

Section, acts June 26, 1934, ch. 750, title I, §116, formerly §12, 48 Stat. 1221; Oct. 25, 1949, ch. 713, §3, 63 Stat. 890; renumbered §17 and amended Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 634; Pub. L. 91-206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §116, and amended Pub. L. 91-468, §1(2), 9, Oct. 19, 1970, 84 Stat. 994, 1017; Pub. L. 95-22, title III, §305, Apr. 19, 1977, 91 Stat. 52; Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681, related to requirement of reserves against losses and authorization of Board to decrease reserve requirement or to require special reserves. See section 1790d(e) of this title.

§1763. Dividends

At such intervals as the board of directors may authorize, and after provision for required reserves, the board of directors may declare a dividend to be paid at different rates on different types of shares, at different rates and maturity dates in the case of share certificates, and at different rates on different types of share draft accounts. Dividends credited may be accrued on various types of shares, share certificates, and share draft accounts as authorized by the board of directors. If the par value of a share exceeds \$5, dividends shall be paid on all funds in the regular share account once a full share has been purchased.

(June 26, 1934, ch. 750, title I, §117, formerly §13, 48 Stat. 1221; renumbered §18 and amended Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 634; Pub. L. 90-188, §2, Dec. 13, 1967, 81 Stat. 567; renumbered title I, §117, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 93-383, title VII, §725, Aug. 22, 1974, 88 Stat. 720; Pub. L. 95-22, title III, §310, Apr. 19, 1977, 91 Stat. 53; Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 96-221, title II, §207(b)(10), title III, §305(c), Mar. 31, 1980, 94 Stat. 144, 147; Pub. L. 97-320, title V, §524, Oct. 15, 1982, 96 Stat. 1534.)

EDITORIAL NOTES

AMENDMENTS

1982—Pub. L. 97-320 substituted "the board of directors may declare" for "the board may declare" and "Dividends credited" for "Dividend credit", and inserted provision that if the par value of a share exceeds \$5, dividends shall be paid on all funds in the regular share account once a full share has been published.

1980—Pub. L. 96-221, §207(b)(10), struck out " , pursuant to such regulations as may be issued by the Board," after "declare".

Pub. L. 96-221, §305(c), inserted provisions relating to share draft accounts.

1978—Pub. L. 95-630 substituted "Board" for "Administrator".

1977—Pub. L. 95–22 substituted "the board may declare, pursuant to such regulations as may be issued by the Administrator, a dividend to be paid at different rates on different types of shares and at different rates and maturity dates in the case of share certificates" for "the board of directors may declare a dividend to be paid from the remaining net earnings" and "accrued on various types of shares and share certificates" for "accrued on shares" and struck out provision that such dividends shall be paid on all paid-up shares outstanding at the end of the period for which the dividend is declared and provision that shares which become fully paid up during such dividend period and are outstanding at the close of the period shall be entitled to a proportional part of such dividend.

1974—Pub. L. 93–383 substituted "At such intervals as the board of directors may authorize" for "Annually, semiannually, or quarterly, as the bylaws may provide", and "Dividend credit may be accrued on shares as authorized by the board of directors" for "Dividend credit for a month may be accrued on shares which are or become fully paid up during the first ten days of that month".

1967—Pub. L. 90–188 inserted "or quarterly" after "semiannually" and substituted "ten" for "five".

1959—Pub. L. 86–354 authorized semiannual dividends, empowered the board of directors to declare them instead of only recommend them, and provided for dividend credit.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–221, title II, §207(b), Mar. 31, 1980, 94 Stat. 144, provided in part that the amendment made by that section is effective 6 years after Mar. 31, 1980.

Amendment by section 305(c) of Pub. L. 96–221 effective at close of Mar. 31, 1980, see section 306 of Pub. L. 96–221, set out as a note under section 1464 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§1764. Expulsion and withdrawal

(a) Expulsion by two-thirds vote

Except as provided in subsections (b) and (c) of this section, a member may be expelled by a two-thirds vote of the members of a Federal credit union present at a special meeting called for the purpose, but only after opportunity has been given to the member to be heard.

(b) Expulsion based on nonparticipation

The board of directors of a Federal credit union may, by majority vote of a quorum of directors, adopt and enforce a policy with respect to expulsion from membership based on nonparticipation by a member in the affairs of the credit union. In establishing its policy, the board should consider a member's failure to vote in annual credit union elections or failure to purchase shares from, obtain a loan from, or lend to the Federal credit union. If such a policy is adopted, written notice of the policy as adopted and the effective date of such policy shall be mailed to each member of the credit union at the member's current address appearing on the records of the credit union not less than thirty days prior to the effective date of such policy. In addition, each new member shall be provided written notice of any such policy prior to or upon applying for membership.

(c) Expulsion for cause

(1) In general

Except as provided in subsections (a) and (b) of this section, a member may be expelled for cause by a two-thirds vote of a quorum of the directors of the Federal credit union pursuant to a policy which the National Credit Union Administration Board shall adopt, pursuant to a rulemaking, not later than the end of the 18-month period following March 15, 2022.

(2) Distribution of policy to members

A Federal credit union may not expel a member pursuant to this subsection unless the Federal

credit union has provided, in written or electronic form, a copy of the policy adopted by the National Credit Union Administration Board under paragraph (1) to each member of the Federal credit union.

(3) Procedures

(A) Notification of pending expulsion

If a member will, subject to the policy adopted under paragraph (1), be subject to expulsion, the member shall be notified in advance of the expulsion, along with the reason for such expulsion. Such notice shall be provided in person, by mail to the member's address, or, if the member has elected to receive electronic communications from the Federal credit union, may be provided electronically.

(B) Right to a hearing

(i) In general

A member shall have 60 days from the date of receipt of a notification under subparagraph (A) to request a hearing from the board of directors of the Federal credit union.

(ii) Expulsion if no hearing

If a member does not request a hearing during the 60-day period described under clause (i), the member shall be expelled after the end of the 60-day period.

(C) Hearing; vote on expulsion

If a member requests a hearing during the 60-day period described under subparagraph (B)(i)—

(i) the board of directors of the Federal credit union shall provide the member with a hearing; and

(ii) after such hearing, the board of directors of the Federal credit union shall hold a vote in a timely manner on expelling the member.

(D) Notice of expulsion

If a member is expelled under subparagraph (B)(ii) or (C)(ii), notice of the expulsion of the member shall be provided to the member in person, by mail to the member's address, in written form or, if the member has elected to receive electronic communications from the Federal credit union, may be provided electronically.

(4) Reinstatement

(A) In general

A member expelled under this subsection—

(i) shall be given an opportunity to request reinstatement of membership; and

(ii) may be reinstated by either—

(I) a majority vote of a quorum of the directors of the Federal credit union; or

(II) a majority vote of the members of the Federal credit union present at a meeting.

(B) Rule of construction

Nothing in this paragraph may be construed to require that an expelled member be allowed to attend the meeting described in subparagraph (A)(ii) in person.

(5) Cause defined

In this subsection, the term "cause" means—

(A) a substantial or repeated violation of the membership agreement of the Federal credit union;

(B) a substantial or repeated disruption, including dangerous or abusive behavior (as defined by the National Credit Union Administration Board pursuant to a rulemaking), to the operations of a Federal credit union; or

(C) fraud, attempted fraud, or other illegal conduct that a member has been convicted of in

relation to the Federal credit union, including the Federal credit union's employees conducting business on behalf of the Federal credit union.

(d) Liability to credit union

Withdrawal or expulsion of a member pursuant to subsection (a), (b), or (c) of this section shall not operate to relieve the member from liability to the Federal credit union. The amount to be paid a withdrawing or expelled member by a Federal credit union shall be determined and paid in a manner specified in the bylaws.

(e) No authority to expel classes of members

An expulsion of a member pursuant to this section shall be done individually, on a case-by-case basis, and neither the Board nor any Federal credit union may expel a class of members.

(June 26, 1934, ch. 750, title I, §118, formerly §14, 48 Stat. 1221; renumbered §19, Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 634; renumbered title I, §118, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 97-320, title V, §525, Oct. 15, 1982, 96 Stat. 1534; Pub. L. 100-86, title VII, §706, Aug. 10, 1987, 101 Stat. 653; Pub. L. 117-103, div. T, §102, Mar. 15, 2022, 136 Stat. 824.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (a). Pub. L. 117-103, §102(1), substituted "subsections (b) and (c)" for "subsection (b)" and "to the member" for "him".

Subsec. (c). Pub. L. 117-103, §102(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 117-103, §102(2), (4), redesignated subsec. (c) as (d) and substituted "subsection (a), (b), or (c)" for "either subsection (a) or (b)" and "the member" for "him".

Subsec. (e). Pub. L. 117-103, §102(5), added subsec. (e).

1987—Subsec. (a). Pub. L. 100-86, §706(1), substituted "Except as provided in" for "Subject to".

Subsec. (b). Pub. L. 100-86, §706(2), inserted "and enforce" after "adopt".

1982—Pub. L. 97-320 designated existing provisions as subsecs. (a) and (c) and added subsec. (b).

§1765. Minors

Shares may be issued in the name of a minor or in trust, subject to such conditions as may be prescribed by the bylaws. When shares are issued in trust, the name of the beneficiary shall be disclosed to the Federal credit union.

(June 26, 1934, ch. 750, title I, §119, formerly §15, 48 Stat. 1221; renumbered §20, and amended Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 634; renumbered title I, §119, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994.)

EDITORIAL NOTES

AMENDMENTS

1959—Pub. L. 86-354 substituted "When shares are issued in trust, the" for "The" in second sentence.

§1766. Powers of Board

(a) The Board may prescribe rules and regulations for the administration of this chapter (including, but not by way of limitation, the merger, consolidation, and dissolution of corporations organized under this chapter). Any central credit union chartered by the Board shall be subject to such rules, regulations, and orders as the Board deems appropriate and, except as otherwise specifically

provided in such rules, regulations, or orders, shall be vested with or subject to the same rights, privileges, duties, restrictions, penalties, liabilities, conditions, and limitations that would apply to all Federal credit unions under this chapter.

(b)(1) The Board may suspend or revoke the charter of any Federal credit union, or place the same in involuntary liquidation and appoint a liquidating agent therefor, upon its finding that the organization is bankrupt or insolvent, or has violated any of the provisions of its charter, its bylaws, this chapter, or any regulations issued thereunder.

(2) The Board, through such persons as it shall designate, may examine any Federal credit union in voluntary liquidation and, upon its finding that such voluntary liquidation is not being conducted in an orderly or efficient manner or in the best interests of its members, may terminate such voluntary liquidation and place such organization in involuntary liquidation and appoint a liquidating agent therefor.

(3) Such liquidating agent shall have power and authority, subject to the control and supervision of the Board and under such rules and regulations as the Board may prescribe, (A) to receive and take possession of the books, records, assets, and property of every description of the Federal credit union in liquidation, to sell, enforce collection of, and liquidate all such assets and property, to compound all bad or doubtful debts, and to sue in his own name or in the name of the Federal credit union in liquidation, and defend such actions as may be brought against him as liquidating agent or against the Federal credit union; (B) to receive, examine, and pass upon all claims against the Federal credit union in liquidation, including claims of members on member accounts; (C) to make distribution and payment to creditors and members as their interests may appear; and (D) to execute such documents and papers and to do such other acts and things which he may deem necessary or desirable to discharge his duties hereunder.

(4) Subject to the control and supervision of the Board and under such rules and regulations as the Board may prescribe, the liquidating agent of a Federal credit union in involuntary liquidation shall (A) cause notice to be given to creditors and members to present their claims and make legal proof thereof, which notice shall be published once a week in each of three successive weeks in a newspaper of general circulation in each county in which the Federal credit union in liquidation maintained an office or branch for the transaction of business on the date it ceased unrestricted operations; except that whenever the aggregate book value of the assets and property of a Federal credit union in involuntary liquidation is less than \$1,000, unless the Board shall find that its books and records do not contain a true and accurate record of its liabilities he shall declare such Federal credit union in liquidation to be a "no publication" liquidation, and publication of notice to creditors and members shall not be required in such case; (B) from time to time make a ratable dividend on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction and, after the assets of such organization have been liquidated, make further dividends on all claims previously proved or adjudicated, and he may accept in lieu of a formal proof of claim on behalf of any creditor or member the statement of any amount due to such creditor or member as shown on the books and records of the credit union; but all claims not filed before payment of the final dividend shall be barred and claims rejected or disallowed by the liquidating agent shall be likewise barred unless suit be instituted thereon within three months after notice of rejection or disallowance; and (C) in a "no publication" liquidation, determine from all sources available to him, and within the limits of available funds of the Federal credit union, the amounts due to creditors and members, and after sixty days shall have elapsed from the date of his appointment distribute the funds of the Federal credit union to creditors and members ratably and as their interests may appear.

(5) Upon certification by the liquidating agent in the case of an involuntary liquidation, and upon such proof as shall be satisfactory to the Board in the case of a voluntary liquidation, that distribution has been made and that liquidation has been completed, as provided herein, the Board shall cancel the charter of such Federal credit union; but the corporate existence of the Federal credit union shall continue for a period of three years from the date of such cancellation of its charter, during which period the liquidating agent, or his duly appointed successor, or such persons as the Board shall designate, may act on behalf of the Federal credit union for the purpose of paying, satisfying, and discharging any existing liabilities or obligations, collecting and distributing its assets, and doing all

other acts required to adjust and wind up its business and affairs, and it may sue and be sued in its corporate name.

(c) After the expiration of five years from the date of cancellation of the charter of a Federal credit union the Board may, in its discretion, destroy any or all books and records of such Federal credit union in its possession or under its control.

(d) The Board is authorized and empowered to execute any and all functions and perform any and all duties vested in it hereby, through such persons as it shall designate or employ; and it may delegate to any person or persons, including any institution operating under the general supervision of the Administration, the performance and discharge of any authority, power, or function vested in it by this chapter.

(e) All books and records of Federal credit unions shall be kept and reports shall be made in accordance with forms approved by the Board.

(f)(1) The Board is authorized to make investigations and to conduct researches and studies of the problems of persons of small means in obtaining credit at reasonable rates of interest, and of the methods and benefits of cooperative saving and lending among such persons. It is further authorized to make reports of such investigations and to publish and disseminate the same.

(2)(A) The Board is authorized to conduct directly, or to make grants to or contracts with colleges or universities, State or local educational agencies, or other appropriate public or private nonprofit organizations to conduct, programs for the training of persons engaged, or preparing to engage, in the operation of credit unions, and in related consumer counseling programs, serving the poor. It is authorized to establish a program of experimental, developmental, demonstration, and pilot projects, either directly or by grants to public or private nonprofit organizations, including credit unions, or by contracts with such organizations or other private organizations, designed to promote more effective operation of credit unions, and related consumer counseling programs, serving the poor.

(B) In carrying out its authority under this paragraph, the Board shall consult with officials of the Office of Economic Opportunity and other appropriate Federal agencies responsible for the administration of projects or programs concerned with problems of the poor. The development and operation of programs and projects under this paragraph shall involve maximum feasible participation of residents of the areas and members of the groups served by such programs and projects, with community action agencies established under the provisions of the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] serving, to the extent feasible, as the means through which such participation is achieved.

(C) In order to carry out the purposes of this paragraph, there is authorized to be appropriated, as a supplement to any funds that may be expended by the Board pursuant to sections 1755 and 1756 of this title for such purposes, not to exceed \$300,000 for the fiscal year ending June 30, 1970, and not to exceed \$1,000,000 for the fiscal year ending June 30, 1971.

(g) Any officer or employee of the Administration is authorized, when designated for the purpose by the Board, to administer oaths and affirmations and to take affidavits and depositions touching upon any matter within the jurisdiction of the Administration.

(h) The Board is authorized, empowered, and directed to require that every person appointed or elected by any Federal credit union to any position requiring the receipt, payment, or custody of money or other personal property owned by a Federal credit union, or in its custody or control as collateral or otherwise, give bond in a corporate surety company holding a certificate of authority from the Secretary of the Treasury under chapter 93 of title 31, as an acceptable surety on Federal bonds. Any such bond or bonds shall be in a form approved by the Board with a view to providing surety coverage to the Federal credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction, or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the Board may determine to be reasonably appropriate or as elsewhere required by this chapter. Any such bond or bonds shall be in such an amount in relation to the money or other personal property involved or in relation to the assets of the Federal credit union as the Board may from time to time prescribe by regulation for the purpose of requiring reasonable coverage. In lieu of individual bonds the Board may approve the use of a form of schedule or blanket bond which covers all of the officers

and employees of a Federal credit union whose duties include the receipt, payment, or custody of money or other personal property for or on behalf of the Federal credit union. The Board may also approve the use of a form of excess coverage bond whereby a Federal credit union may obtain an amount of coverage in excess of the basic surety coverage.

(i) In addition to the authority conferred upon it by other sections of this chapter, the Board is authorized in carrying out its functions under this chapter—

(1) to appoint such personnel as may be necessary to enable the Administration to carry out its functions;

(2) to expend such funds, enter into such contracts with public and private organizations and persons, make such payments in advance or by way of reimbursement, acquire and dispose of, by lease or purchase, real or personal property, without regard to the provisions of any other law applicable to executive or independent agencies of the United States, and perform such other functions or acts as it may deem necessary or appropriate to carry out the provisions of this chapter, in accordance with the rules and regulations or policies established by the Board not inconsistent with this chapter; and

(3) to pay stipends, including allowances for travel to and from the place of residence, to any individual to study in a program assisted under this chapter upon a determination by the Board that assistance to such individual in such studies will be in furtherance of the purposes of this chapter.

(j) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—The Board shall fix the compensation and number of, and appoint and direct, employees of the Board. Rates of basic pay for employees of the Board may be set and adjusted by the Board without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5.

(2) ADDITIONAL COMPENSATION AND BENEFITS.—The Board may provide additional compensation and benefits to employees of the Board if the same type of compensation or benefits are then being provided by any other Federal bank regulatory agency or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation. In setting and adjusting the total amount of compensation and benefits for employees of the Board, the Board shall seek to maintain comparability with other Federal bank regulatory agencies.

(3) FUNDING.—The salaries and expenses of the Board and employees of the Board shall be paid from fees and assessments (including income earned on insurance deposits) levied on insured credit unions under this chapter.

(June 26, 1934, ch. 750, title I, §120, formerly §16, 48 Stat. 1221; Dec. 6, 1937, ch. 3, §3, 51 Stat. 4; July 31, 1946, ch. 711, §8, 60 Stat. 745; 1947 Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; June 30, 1954, ch. 426, §2, 68 Stat. 336; Aug. 24, 1954, ch. 905, §3, 68 Stat. 792; renumbered §21 and amended Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 635; Pub. L. 90–375, §2(a), July 5, 1968, 82 Stat. 285; Pub. L. 91–206, §2(1), (3), 4, Mar. 10, 1970, 84 Stat. 49, 50; renumbered title I, §120, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–22, title III, §306, Apr. 19, 1977, 91 Stat. 52; Pub. L. 95–630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97–320, title V, §526, Oct. 15, 1982, 96 Stat. 1535; Pub. L. 100–86, title VII, §707, Aug. 10, 1987, 101 Stat. 653; Pub. L. 101–73, title XII, §1203, Aug. 9, 1989, 103 Stat. 520; Pub. L. 101–144, title III, Nov. 9, 1989, 103 Stat. 864; Pub. L. 103–325, title I, §120(a), Sept. 23, 1994, 108 Stat. 2188; Pub. L. 109–351, title VII, §726(10), Oct. 13, 2006, 120 Stat. 2002.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in subsec. (f)(2)(B), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, which was classified generally to chapter 34 (§2701 et seq.) of Title 42, The Public Health and Welfare, prior to repeal, except for titles VIII and X, by Pub. L. 97–35, title VI, §683(a), Aug. 13, 1981, 95

Stat. 519. Titles VIII and X of the Act are classified generally to subchapters VIII (§2991 et seq.) and X (§2996 et seq.) of chapter 34 of Title 42. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2006—Subsec. (h). Pub. L. 109–351 substituted "chapter 93 of title 31" for "the Act approved July 30, 1947 (6 U.S.C., secs. 6–13)".

1994—Subsec. (k). Pub. L. 103–325 struck out subsec. (k) which read as follows: "Notwithstanding any other provision of law, the Board may exercise the authority granted it by the Community Development Credit Union Revolving Loan Fund Transfer Act (Public Law 99–609, sec. 1, Nov. 6, 1986, 100 Stat. 3475) subject only to the rules and regulations prescribed by the Board."

1989—Subsec. (j). Pub. L. 101–73 added subsec. (j).

Subsec. (k). Pub. L. 101–144 added subsec. (k).

1987—Subsec. (i)(2). Pub. L. 100–86 inserted "acquire and dispose of, by lease or purchase, real or personal property, without regard to the provisions of any other law applicable to executive or independent agencies of the United States," after "reimbursement," and ", in accordance with the rules and regulations or policies established by the Board not inconsistent with this chapter" after "this chapter".

1982—Subsec. (a). Pub. L. 97–320 inserted provisions relating to the special authority of the Board over a central credit union, and such a union's general prerogatives and liabilities.

1978—Pub. L. 95–630 substituted "Board" for "Administrator" wherever appearing; and "it", "them", and "its" for "he", "him", and "his", respectively, where appropriate.

1977—Subsec. (b)(3)(B). Pub. L. 95–22 substituted "member accounts" for "shares".

1970—Subsecs. (a) to (h). Pub. L. 91–206, §2(1), (3), substituted "Administrator" for "Director" and "Administration" for "Bureau" wherever appearing.

Subsec. (i). Pub. L. 91–206, §4, added subsec. (i).

1968—Subsec. (f). Pub. L. 90–375 redesignated existing provisions as par. (1) and added par. (2).

1959—Pub. L. 86–354 made capitalization, punctuation and phraseological changes throughout text; redesignated, in subsec. (b)(3), cls. (i) to (iv) as (A) to (D) and corrected in cl. (A) the final "credit" to read "credit"; redesignated, in subsec. (b)(4), cls. (i) to (iii) as cls. (A) to (C); and redesignated the second subsec. (b) and subsecs. (c) to (g) as (c) to (h), respectively.

1954—Subsec. (f). Act June 30, 1954, added subsec. (f).

Subsec. (g). Act Aug. 24, 1954, added subsec. (g).

1946—Subsec. (b). Act July 31, 1946, provided a more adequate statutory procedure for the administration of this chapter by expressly authorizing the liquidation of a Federal credit union and setting up a procedure which will achieve more orderly and complete liquidation.

1937—Subsec. (e). Act Dec. 6, 1937, added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–375, §2(b), July 5, 1968, 82 Stat. 285, provided that: "The amendments made by subsection (a) [amending this section] shall become effective July 1, 1968."

§1767. Fiscal agents and depositories; authorization to secure deposits by governmental bodies

(a) Each Federal credit union organized under this chapter, when requested by the Secretary of the Treasury, shall act as fiscal agent of the United States and shall perform such services as the Secretary of the Treasury may require in connection with the collection of taxes and other obligations due the United States and the lending, borrowing, and repayment of money by the United States, including the issue, sale, redemption, or repurchase of bonds, notes, Treasury certificates of indebtedness, or other obligations of the United States; and to facilitate such purposes the Board shall furnish to the Secretary of the Treasury from time to time the names and addresses of all

Federal credit unions with such other available information concerning them as may be requested by the Secretary of the Treasury. Any Federal credit union organized under this chapter, when designated for that purpose by the Secretary of the Treasury, shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary of the Treasury.

(b) Any Federal credit union, upon the deposit with it of any funds by the Federal Government, an Indian tribe, or any State or local government or political subdivision thereof as otherwise authorized by this chapter, is authorized to pledge any of its assets securing the payment of the funds so deposited.

(June 26, 1934, ch. 750, title I, §121, formerly §17, 48 Stat. 1222; 1947, Reorg. Plan No. 1, §401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§1, 2, 62 Stat. 1091; renumbered §22, Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 637; amended Pub. L. 91-206, §2(1), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §121, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 100-86, title VII, §716, Aug. 10, 1987, 101 Stat. 656.)

EDITORIAL NOTES

AMENDMENTS

1987—Pub. L. 100-86 designated existing provisions as subsec. (a) and added subsec. (b).

1978—Pub. L. 95-630 substituted "Board" for "Administrator".

1970—Pub. L. 91-206 substituted "Administrator" for "Director".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Transfer of functions of Farm Credit Administration and Governor thereof, generally, see notes set out under section 1751 of this title.

Functions of Governor of Farm Credit Administration under this section transferred to Federal Deposit Insurance Corporation by Reorg. Plan No. 1 of 1947.

§1768. Taxation

The Federal credit unions organized hereunder, their property, their franchises, capital, reserves, surpluses, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and any tangible personal property of such Federal credit unions shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed. Nothing herein contained shall prevent holdings in any Federal credit union organized hereunder from being included in the valuation of the personal property of the owners or holders thereof in assessing taxes imposed by authority of the State or political subdivision thereof in which the Federal credit union is located; but the duty or burden of collecting or enforcing the payment of such a tax shall not be imposed upon any such Federal credit union and the tax shall not exceed the rate of taxes imposed upon holdings in domestic credit unions.

(June 26, 1934, ch. 750, title I, §122, formerly §18, 48 Stat. 1222; Dec. 6, 1937, ch. 3, §4, 51 Stat. 4; renumbered §23 and amended Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 637; renumbered title I,

§122, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994.)

EDITORIAL NOTES

AMENDMENTS

1959—Pub. L. 86-354 substituted "but" for "*Provided, however, That*" and inserted "a" before "tax".

1937—Act Dec. 6, 1937, inserted tax exemption provision, the real and tangible personal property proviso, provided that responsibility of tax collection would not be imposed upon Federal credit unions, and that tax rate would not exceed that of domestic credit unions.

§1769. Separability; right to alter, amend, or repeal chapter

(a) If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(b) The right to alter, amend, or repeal this chapter or any part thereof, or any charter issued pursuant to the provisions of this chapter, is expressly reserved.

(June 26, 1934, ch. 750, title I, §123, formerly §24, as added Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 637; renumbered title I, §123, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 1769, act June 26, 1934, ch. 750, §19, 48 Stat. 1222, made available not more than \$50,000 of the funds available to the Governor of the Farm Credit Administration, under former section 1404 of this title, for administrative expenses in administering this chapter, prior to the amendment of act June 26, 1934, by Pub. L. 86-354.

Provisions similar to those comprising this section were contained in section 20 of act June 26, 1934, ch. 750, 48 Stat. 1222 (formerly classified to section 1770 of this title), prior to the amendment and renumbering of act June 26, 1934, by Pub. L. 86-354.

§1770. Allotment of space in Federal buildings or Federal land

Notwithstanding any other provision of law, upon application by any credit union organized under State law or by any Federal credit union organized in accordance with the terms of this chapter, which application shall be addressed to the officer or agency of the United States charged with the allotment of space on lands reserved for the use of, and under the exclusive or concurrent jurisdiction of, the United States or in the Federal buildings in the community or district in which such credit union does business, such officer or agency may in his or its discretion lease land or allot space to such credit union without charge for rent or services if at least 95 percent of the membership of the credit union to be served by the allotment of space or the facility built on the lease land is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families, and if space is available. For the purpose of this section, the term "services" includes, but is not limited to, the providing of lighting, heating, cooling, electricity, office furniture, office machines and equipment, telephone service (including installation of lines and equipment and other expenses associated with telephone service), and security systems (including installation and other expenses associated with security systems). Where there is an agreement for the payment of costs associated with the provision of space or services, nothing in title 31 or any other provision of law, shall be construed to prohibit or restrict payment by reimbursement to the miscellaneous receipts or other appropriate account of the Treasury.

(June 26, 1934, ch. 750, title I, §124, formerly §25, as added Pub. L. 86-354, §1, Sept. 22, 1959, 73

Stat. 638; renumbered title I, §124, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 97-320, title V, §515, Oct. 15, 1982, 96 Stat. 1530; Pub. L. 97-457, §27, Jan. 12, 1983, 96 Stat. 2510; Pub. L. 103-160, div. B, title XXVIII, §2854, Nov. 30, 1993, 107 Stat. 1908; Pub. L. 103-337, div. A, title X, §1070(b)(12), Oct. 5, 1994, 108 Stat. 2857; Pub. L. 109-351, title V, §501, Oct. 13, 2006, 120 Stat. 1974.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 1770, act June 26, 1934, ch. 750, §20, 48 Stat. 1222, related to separability of provisions and right to alter, amend, or repeal chapter, prior to the amendment of act June 26, 1934, by Pub. L. 86-354. See section 1769 of this title.

Provisions similar to those comprising this section were contained in section 21 of act June 26, 1934, ch. 750, as added July 9, 1937, ch. 471, 50 Stat. 487 (formerly classified to section 1771 of this title), prior to the amendment and renumbering of act June 26, 1934, by Pub. L. 86-354.

AMENDMENTS

2006—Pub. L. 109-351, in section catchline, inserted "or Federal land" after "buildings" and, in text, substituted "Notwithstanding any other provision of law, upon application by any credit union" for "Upon application by any credit union" and inserted "on lands reserved for the use of, and under the exclusive or concurrent jurisdiction of, the United States or" after "officer or agency of the United States charged with the allotment of space", "lease land or" after "such officer or agency may in his or its discretion", and "or the facility built on the lease land" after "credit union to be served by the allotment of space".

1994—Pub. L. 103-337 made technical correction to Pub. L. 103-160, §2854(1). See 1993 Amendment note below.

1993—Pub. L. 103-160, §2854(2), substituted "allot space to such credit union without charge for rent or services if at least 95 percent of the membership of the credit union to be served by the allotment of space is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families, and if space is available." for "allot space to such credit union if space is available without charge for rent or services."

Pub. L. 103-160, §2854(1), as amended by Pub. L. 103-337, struck out "at least 95 per centum of the membership of which is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families," after "terms of this chapter".

1983—Pub. L. 97-457 inserted "of" after "including installation".

1982—Pub. L. 97-320 inserted definition of "services", and provided that where there is an agreement for the payment of costs associated with the provision of space or services, nothing in title 31 or any other provision of law shall be construed to prohibit or restrict payment by reimbursement to the miscellaneous receipts or other appropriate account of the Treasury.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-337, div. A, title X, §1070(b), Oct. 5, 1994, 108 Stat. 2856, provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103-160, as enacted.

§1771. Conversion from Federal to State credit union and from State to Federal credit union

(a) A Federal credit union may be converted into a State credit union under the laws of any State, the District of Columbia, the several Territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, by complying with the following requirements:

(1) The proposition for such conversion shall first be approved, and a date set for a vote thereon by the members (either at a meeting to be held on such date or by written ballot to be filed on or

before such date), by a majority of the directors of the Federal credit union. Written notice of the proposition and of the date set for the vote shall then be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty nor less than seven days prior to such date. Approval of the proposition for conversion shall be by the affirmative vote of a majority of the members of the credit union who vote on the proposal. The written notice of the proposition shall in boldface type state that the issue will be decided by a majority of the members who vote.

(2) A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the Administration within ten days after the vote is taken.

(3) Promptly after the vote is taken and in no event later than ninety days thereafter, if the proposition for conversion was approved by such vote, the credit union shall take such action as may be necessary under the applicable State law to make it a State credit union, and within ten days after receipt of the State credit union charter there shall be filed with the Administration a copy of the charter thus issued. Upon such filing the credit union shall cease to be a Federal credit union.

(4) Upon ceasing to be a Federal credit union, such credit union shall no longer be subject to any of the provisions of this chapter. The successor State credit union shall be vested with all of the assets and shall continue responsible for all of the obligations of the Federal credit union to the same extent as though the conversion had not taken place.

(b)(1) A State credit union, organized under the laws of any State, the District of Columbia, the several Territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, may be converted into a Federal credit union by (A) complying with all State requirements requisite to enabling it to convert to a Federal credit union or to cease being a State credit union, (B) filing with the Administration proof of such compliance, satisfactory to the Board, and (C) filing with the Administration an organization certificate as required by this chapter.

(2) When the Board has been satisfied that all of such requirements, and all other requirements of this chapter, have been complied with, the Board shall approve the organization certificate. Upon such approval, the State credit union shall become a Federal credit union as of the date it ceases to be a State credit union. The Federal credit union shall be vested with all of the assets and shall continue responsible for all of the obligations of the State credit union to the same extent as though the conversion had not taken place.

(June 26, 1934, ch. 750, title I, §125, formerly §26, as added Pub. L. 86-354, §1, Sept. 22, 1959, 73 Stat. 638; amended Pub. L. 91-206, §2(1), (3), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §125, Pub. L. 91-468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97-320, title V, §527, Oct. 15, 1982, 96 Stat. 1535.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

PRIOR PROVISIONS

A prior section 1771, act June 26, 1934, ch. 750, §21, as added July 9, 1937, ch. 471, 50 Stat. 487, related to allotment of space in Federal buildings, prior to the amendment of act June 26, 1934, by Pub. L. 86-354. See section 1770 of this title.

AMENDMENTS

1982—Subsec. (a)(1). Pub. L. 97-320 substituted "of the credit union who vote on the proposal" for ", in person or in writing", and inserted provision that the written notice of the proposition shall in boldface type state that the issue will be decided by a majority of the members who vote.

1978—Subsec. (b). Pub. L. 95-630 substituted "Board" for "Administrator" in two places.

1970—Pub. L. 91–206 substituted "Administration" for "Bureau" and "Administrator" for "Director" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§1772. Territorial application of chapter

The provisions of this chapter shall apply to the several States, the District of Columbia, the several Territories, including the trust territories, and possessions of the United States, the Panama Canal Zone, and the Commonwealth of Puerto Rico.

(June 26, 1934, ch. 750, title I, §126, formerly §22, as added July 31, 1946, ch. 711, §7, 60 Stat. 745; amended May 8, 1952, ch. 245, 66 Stat. 66, renumbered §27 and amended Pub. L. 86–354, §1, Sept. 22, 1959, 73 Stat. 638; renumbered title I, §126, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 93–383, title VII, §726, Aug. 22, 1974, 88 Stat. 720.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1974—Pub. L. 93–383 inserted reference to trust territories.

1959—Pub. L. 86–354 provided for application of chapter to the States, the District of Columbia, the Territories and possessions of the United States and Puerto Rico and struck out specific reference to the Virgin Islands.

1952—Act May 8, 1952, amended section to extend provisions of this chapter to the Virgin Islands.

§1772a. Gifts; acceptance of conditional gifts; deposit

The Board is authorized to accept gifts of money made unconditionally by will or otherwise for the carrying out of any of the functions under this chapter. A conditional gift of money made by will or otherwise for such purposes may be accepted and used in accordance with its conditions, but no such gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from income thereof unless the Board determines that supplementation of such gift from the fees it may expend pursuant to sections 1755 and 1756 of this title or from any funds appropriated pursuant to section 1766(f)(2)(C) of this title for the purpose of making such expenditure will not adversely affect the sound administration of this chapter. Any such gift shall be deposited in the Treasury of the United States for the account of the Administration and may be expended in accordance with section 1755 of this title or as provided in the preceding sentence.

(June 26, 1934, ch. 750, title I, §127, formerly §28, as added Pub. L. 90–375, §3, July 5, 1968, 82 Stat. 285; amended Pub. L. 91–206, §2(1), (3), Mar. 10, 1970, 84 Stat. 49; renumbered title I, §127, Pub. L. 91–468, §1(2), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 95–630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681.)

EDITORIAL NOTES

AMENDMENTS

1978—Pub. L. 95–630 substituted "Board" for "Administrator" in two places, and "it may expend" for "he may expend".

1970—Pub. L. 91–206 substituted "Administrator" for "Director" and "Administration" for "Bureau" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§1772b. Apportionment

Notwithstanding any other provision of law, funds received by the Board pursuant to any method provided by this chapter, and interest, dividend, or other income thereon, shall not be subject to apportionment for the purpose of chapter 15 of title 31 or under any other authority.

(June 26, 1934, ch. 750, title I, §128, as added Pub. L. 100–86, title V, §505(e), Aug. 10, 1987, 101 Stat. 633.)

§1772c. Trust fund

Notwithstanding any other provision of law, all moneys of the Board shall be treated as trust funds for the purpose of section 906(a)(2) ¹ of title 2. This section is effective for fiscal year 1986 and every fiscal year thereafter.

(June 26, 1934, ch. 750, title I, §129, as added Pub. L. 100–86, title VII, §708, Aug. 10, 1987, 101 Stat. 653.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 906(a) of title 2, referred to in text, was amended generally by Pub. L. 101–508, title XIII, §13101(d)(1), Nov. 5, 1990, 104 Stat. 1388–589, and subsequently repealed by Pub. L. 111–139, title I, §10(a), Feb. 12, 2010, 124 Stat. 21. Provisions similar to those formerly appearing in section 906(a)(2) are now contained in section 906(k)(6) of Title 2, The Congress.

¹ [*See References in Text note below.*](#)

§1772c–1. Community development revolving loan fund for credit unions

(a) In general

The Board may exercise the authority granted to it by the Community Development Credit Union Revolving Loan Fund Transfer Act, including any additional appropriation made or earnings accrued, subject only to this section and to regulations prescribed by the Board.

(b) Investment

The Board may invest any idle Fund moneys in United States Treasury securities. Any interest accrued on such securities shall become a part of the Fund.

(c) Loans

The Board may require that any loans made from the Fund be matched by increased shares in the borrower credit union.

(d) Interest

Interest earned by the Fund may be allocated by the Board for technical assistance to community development credit unions, subject to an appropriations Act.

(e) "Fund" defined

As used in this section, the term "Fund" means the Community Development Credit Union Revolving Loan Fund.

(June 26, 1934, ch. 750, title I, §130, as added Pub. L. 103–325, title I, §120(b), Sept. 23, 1994, 108 Stat. 2188.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Community Development Credit Union Revolving Loan Fund Transfer Act, referred to in subsec. (a), is Pub. L. 99–609, Nov. 6, 1986, 100 Stat. 3475, which is set out as a note under section 9822 of Title 42, The Public Health and Welfare.

§1772d. Forfeiture of organization certificate for money laundering or cash transaction reporting offenses

(a) Forfeiture of franchise for money laundering or cash transaction reporting offenses

(1) Conviction of title 18 offenses

(A) Duty to notify

If a credit union has been convicted of any criminal offense under section 1956 or 1957 of title 18, the Attorney General shall provide to the Board a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

(B) Notice of termination; pretermination hearing

After receiving written notification from the Attorney General of such a conviction, the Board shall issue to such credit union a notice of its intention to terminate all rights, privileges, and franchises of the credit union and schedule a pretermination hearing.

(2) Conviction of title 31 offenses

If a credit union is convicted of any criminal offense under section 5322 or 5324 of title 31 after receiving written notification from the Attorney General, the Board may issue to such credit union a notice of its intention to terminate all rights, privileges, and franchises of the credit union and schedule a pretermination hearing.

(3) Judicial review

Section 1786(j) of this title shall apply to any proceeding under this section.

(b) Factors to be considered

In determining whether a franchise shall be forfeited under subsection (a), the Board shall take into account the following factors:

(1) The extent to which directors, committee members, or senior executive officers (as defined by the Board in regulations which the Board shall prescribe) of the credit union knew of, or were involved in, the commission of the money laundering offense of which the credit union was found guilty.

(2) The extent to which the offense occurred despite the existence of policies and procedures within the credit union which were designed to prevent the occurrence of any such offense.

(3) The extent to which the credit union has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the credit union was

found guilty.

(4) The extent to which the credit union has implemented additional internal controls (since the commission of the offense of which the credit union was found guilty) to prevent the occurrence of any other money laundering offense.

(5) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the forfeiture of the franchise.

(c) Successor liability

This section shall not apply to a successor to the interests of, or a person who acquires, a credit union that violated a provision of law described in subsection (a), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this section or regulations prescribed under this section.

(June 26, 1934, ch. 750, title I, §131, as added Pub. L. 102–550, title XV, §1502(c), Oct. 28, 1992, 106 Stat. 4047; amended Pub. L. 103–325, title IV, §411(c)(2)(B), Sept. 23, 1994, 108 Stat. 2253.)

EDITORIAL NOTES

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–325 substituted "section 5322 or 5324 of title 31" for "section 5322 of title 31".

§1772e. Data standards

(a) Requirement

The Board shall, by rule, adopt data standards for all collections of information and reports regularly filed with or submitted to the Administration under this chapter.

(b) Consistency

The data standards required under subsection (a) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 5334 of this title, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 5334.

(June 26, 1934, ch. 750, title I, §132, as added Pub. L. 117–263, div. E, title LVIII, §5871, Dec. 23, 2022, 136 Stat. 3436.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

RULEMAKING

Pub. L. 117–263, div. E, title LVIII, §5873, Dec. 23, 2022, 136 Stat. 3436, provided that:

"(a) **IN GENERAL.**—The National Credit Union Administration Board shall issue rules to carry out the amendments made by this subtitle [subtitle G (§§5871–5874) of title LVIII of div. E of Pub. L. 117–263, enacting this section and section 1772f of this title], which shall take effect not later than 2 years after the date on which final rules are promulgated under section 124(b)(2) of the Financial Stability Act of 2010 [12 U.S.C. 5334(b)(2)], as added by section 5811(a) of this title.

"(b) **SCALING OF REGULATORY REQUIREMENTS; MINIMIZING DISRUPTION.**—In issuing the rules required under subsection (a), the National Credit Union Administration Board—

"(1) may scale data reporting requirements in order to reduce any unjustified burden on smaller regulated entities; and

"(2) shall seek to minimize disruptive changes to the persons affected by those regulations."

RULE OF CONSTRUCTION REGARDING NO NEW DISCLOSURE REQUIREMENTS

Pub. L. 117–263, div. E, title LVIII, §5874, Dec. 23, 2022, 136 Stat. 3437, provided that: "Nothing in this subtitle [subtitle G (§§5871–5874) of title LVIII of div. E of Pub. L. 117–263, enacting this section, section 1772f of this title, and provisions set out as a note under this section], or the amendments made by this

subtitle, shall be construed to require the National Credit Union Administration Board to collect or make publicly available additional information under the Federal Credit Union Act (12 U.S.C. 1751 et seq.), beyond information that was collected or made publicly available under that Act, as of the day before the date of enactment of this Act [Dec. 23, 2022]."

§1772f. Open data publication

All public data assets published by the Administration under this subchapter shall be—

- (1) made available as an open Government data asset (as defined in section 3502 of title 44);
- (2) freely available for download;
- (3) rendered in a human-readable format; and
- (4) accessible via application programming interface where appropriate.

(June 26, 1934, ch. 750, title I, §133, as added Pub. L. 117–263, div. E, title LVIII, §5872, Dec. 23, 2022, 136 Stat. 3436.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

RULE OF CONSTRUCTION REGARDING NO NEW DISCLOSURE REQUIREMENTS

Enactment of section not to be construed to require certain additional information to be collected or disclosed, see section 5874 of Pub. L. 117–263, set out as a note under section 1772e of this title.

§1773. District of Columbia credit unions; conversion to Federal status

Any credit union organized under the District of Columbia Credit Unions Act, as amended, may apply for conversion into a Federal credit union by filing with the National Credit Union Administration Board (in sections 1773 to 1775 of this title referred to as the Board), pursuant to a resolution adopted by a majority of its directors, an organization certificate meeting the requirements of section 1753 of this title.

(Pub. L. 88–395, §1, Aug. 1, 1964, 78 Stat. 377; Pub. L. 91–206, §3, Mar. 10, 1970, 84 Stat. 49; Pub. L. 95–630, title V, §501, Nov. 10, 1978, 92 Stat. 3680.)

EDITORIAL NOTES

REFERENCES IN TEXT

The District of Columbia Credit Unions Act, referred to in text, was repealed by Pub. L. 88–395, §4, Aug. 1, 1964, 78 Stat. 377.

CODIFICATION

Section was not enacted as part of the Federal Credit Union Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

"National Credit Union Administration Board" and "Board" substituted in text for "Director of the Bureau of Federal Credit Unions" and "Director", respectively, pursuant to section 3 of Pub. L. 91–206 and section 501 of Pub. L. 95–630 [12 U.S.C. 1752a] which transferred functions of Bureau of Federal Credit Unions, and Director thereof, to National Credit Union Administration and vested authority for management of Administration in National Credit Union Administration Board.

REPEALS; REVOCATION OF ORGANIZATION CERTIFICATES ISSUED UNDER DISTRICT OF COLUMBIA CREDIT UNIONS ACT

Pub. L. 88–395, §4, Aug. 1, 1964, 78 Stat. 377, provided that: "Effective thirty days after enactment of this Act [Aug. 1, 1964], the District of Columbia Credit Unions Act (47 Stat. 326), as amended, is repealed and all

organization certificates issued thereunder and still in force are revoked."

§1774. Approval of certificate; assets and obligations of applicant credit union

The Board shall approve any such organization certificate meeting such requirements. Upon such approval, the applicant credit union shall become a Federal credit union, and shall be vested with all of the assets and shall continue responsible for all of the obligations of such applicant credit union to the same extent as though the conversion had not taken place.

(Pub. L. 88-395, §2, Aug. 1, 1964, 78 Stat. 377; Pub. L. 91-206, §3, Mar. 10, 1970, 84 Stat. 49; Pub. L. 95-630, title V, §501, Nov. 10, 1978, 92 Stat. 3680.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the Federal Credit Union Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

"Board", meaning the National Credit Union Administration Board, substituted in text for "Director", meaning Director of Bureau of Federal Credit Unions, pursuant to section 3 of Pub. L. 91-206 and section 501 of Pub. L. 95-630 [12 U.S.C. 1752a] which transferred functions of Bureau of Federal Credit Unions, and Director thereof, to National Credit Union Administration and vested authority for management of Administration in National Credit Union Administration Board.

§1775. Conditions upon conversion to Federal status

Any District of Columbia credit union converting into a Federal credit union in accordance with sections 1773 to 1775 of this title shall thereupon be subject to the limitations, vested with the powers, and charged with the liabilities conferred and imposed by the Federal Credit Union Act [12 U.S.C. 1751 et seq.] upon credit unions organized thereunder, except that—

(1) no fee shall be imposed upon a credit union converting pursuant to sections 1773 to 1775 of this title as an incident to its conversion;

(2) any loan or investment made by a credit union converting pursuant to sections 1773 to 1775 of this title in conformity with the District of Columbia Credit Unions Act prior to its conversion, which does not conform to the requirements of the Federal Credit Union Act and is still outstanding at the time of conversion, shall be liquidated at or before its maturity or, if it has no maturity date, in a prudent manner and within a reasonable period of time;

(3) a credit union converting pursuant to sections 1773 to 1775 of this title shall submit proposed bylaws to the Board for the Board's approval after its conversion, but not later than thirty days following its next annual meeting or six months after August 1, 1964, whichever is later:

Provided, That any existing bylaw inconsistent with any other requirements of the Federal Credit Union Act shall be deemed null and void.

(Pub. L. 88-395, §3, Aug. 1, 1964, 78 Stat. 377; Pub. L. 91-206, §3, Mar. 10, 1970, 84 Stat. 49; Pub. L. 95-630, title V, §501, Nov. 10, 1978, 92 Stat. 3680.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in text, is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

The District of Columbia Credit Unions Act, referred to in par. (2), was act June 23, 1932, ch. 272, 47 Stat. 326, and was repealed by Pub. L. 88-395, §4, Aug. 1, 1964, 78 Stat. 377.

CODIFICATION

Section was not enacted as part of the Federal Credit Union Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

"Board" and "the Board's", meaning the National Credit Union Administration Board, substituted in par. (3) for "Director" and "his", respectively, meaning Director of Bureau of Federal Credit Unions, pursuant to section 3 of Pub. L. 91-206 and section 501 of Pub. L. 95-630 [12 U.S.C. 1752a] which transferred functions of Bureau of Federal Credit Unions, and Director thereof, to National Credit Union Administration and vested authority for management of Administration in National Credit Union Administration Board.

SUBCHAPTER II—SHARE INSURANCE

§1781. Insurance of member accounts

(a) Eligibility

The Board, as hereinafter provided, shall insure the member accounts of all Federal credit unions and it may insure the member accounts of (1) credit unions organized and operated according to the laws of any State, the District of Columbia, the several territories, including the trust territories, and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, and (2) credit unions organized and operating under the jurisdiction of the Department of Defense if such credit unions are operating in compliance with the requirements of subchapter I of this chapter and regulations issued thereunder.

(b) Application; agreement

Application for insurance of member accounts shall be made immediately by each Federal credit union and may be made at any time by a State credit union or a credit union operating under the jurisdiction of the Department of Defense. Applications for such insurance shall be in such form as the Board shall provide and shall contain an agreement by the applicant—

(1) to pay the reasonable cost of such examinations as the Board may deem necessary in connection with determining the eligibility of the applicant for insurance: *Provided*, That examinations required under subchapter I of this chapter shall be so conducted that the information derived therefrom may be utilized for share insurance purposes, and examinations conducted by State regulatory agencies shall be utilized by the Board for such purposes to the maximum extent feasible;

(2) to permit and pay the reasonable cost of such examinations as in the judgment of the Board may from time to time be necessary for the protection of the fund and of other insured credit unions;

(3) to permit the Board to have access to any information or report with respect to any examination made by or for any public regulatory authority, including any commission, board, or authority having supervision of a State-chartered credit union, and furnish such additional information with respect thereto as the Board may require;

(4) to provide protection and indemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates;

(5) to maintain such regular reserves as may be required by the laws of the State, district, territory, or other jurisdiction pursuant to which it is organized and operated, in the case of a State-chartered credit union, or as may be required by this chapter, in the case of a Federal credit

union;

(6) to maintain such special reserves as the Board, by regulation or in special cases, may require for protecting the interest of members or to assure that all insured credit unions maintain regular reserves which are not less than those required under subchapter I of this chapter;

(7) not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Board except for accounts authorized by State law for State credit unions;

(8) to pay and maintain its deposit and to pay the premium charges for insurance imposed by this subchapter; and

(9) to comply with the requirements of this subchapter and of regulations prescribed by the Board pursuant thereto.

(c) Approval of application

(1) Before approving the application of any credit union for insurance of its member accounts, the Board shall consider—

(A) the history, financial condition, and management policies of the applicant;

(B) the economic advisability of insuring the applicant without undue risk of the fund;

(C) the general character and fitness of the applicant's management;

(D) the convenience and needs of the members to be served by the applicant; and

(E) whether the applicant is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

(2) The Board shall disapprove the application of any credit union for insurance of its member accounts if it finds that its reserves are inadequate, that its financial condition and policies are unsafe or unsound, that its management is unfit, that insurance of its member accounts would otherwise involve undue risk to the fund, or that its powers and purposes are inconsistent with the promotion of thrift among its members and the creation of a source of credit for provident or productive purposes.

(3) Repealed. Pub. L. 95-22, title III, §301, Apr. 19, 1977, 91 Stat. 49.

(d) Certificate of insurance

Upon the approval of any application for insurance, the Board shall notify the applicant and shall issue to it a certificate evidencing the fact that it is, as of the date of issuance of the certificate, an insured credit union under the provisions of this subchapter.

(e) Prohibition on certain associations

(1) In general

No insured credit union may be sponsored by or accept financial support, directly or indirectly, from any Government-sponsored enterprise, if the credit union includes the customers of the Government-sponsored enterprise in the field of membership of the credit union.

(2) Routine business financing

Paragraph (1) shall not apply with respect to advances or other forms of financial assistance generally provided by a Government-sponsored enterprise in the ordinary course of business of the enterprise.

(3) "Government-sponsored enterprise" defined

For purposes of this subsection, the term "Government-sponsored enterprise" has the meaning given to such term in section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(4) Employee credit union

No provision of this subsection shall be construed as prohibiting any employee of a Government-sponsored enterprise from becoming a member of a credit union whose field of membership is the employees of such enterprise.

(June 26, 1934, ch. 750, title II, §201, as added Pub. L. 91-468, §1(3), Oct. 19, 1970, 84 Stat. 994;

amended Pub. L. 92-221, §§1, 2, Dec. 23, 1971, 85 Stat. 796, 797; Pub. L. 95-22, title III, §301, Apr. 19, 1977, 91 Stat. 49; Pub. L. 95-630, title V, §§502(b), 504, Nov. 10, 1978, 92 Stat. 3681, 3682; Pub. L. 98-369, div. B, title VIII, §2801, July 18, 1984, 98 Stat. 1203; Pub. L. 104-208, div. A, title II, §2615(a), Sept. 30, 1996, 110 Stat. 3009-478; Pub. L. 109-351, title VII, §726(11), Oct. 13, 2006, 120 Stat. 2002.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (e)(3), is section 1404(e)(1)(A) of Pub. L. 101-73, which is set out as a note under section 1811 of this title.

AMENDMENTS

2006—Subsec. (b)(5). Pub. L. 109-351 substituted "this chapter" for "section 1762 of this title".

1996—Subsec. (e). Pub. L. 104-208 added subsec. (e).

1984—Subsec. (b)(8). Pub. L. 98-369 inserted provisions relating to payment and maintenance of the deposit.

1978—Subsec. (a). Pub. L. 95-630, §§502(b), 504(a), substituted "Board" for "Administrator" and "it" for "he", and inserted ", including the trust territories," after "the several territories".

Subsec. (b). Pub. L. 95-630, §§502(b), 504(b), substituted "Board" for "Administrator" wherever appearing and inserted in par. (7) "except for accounts authorized by State law for State credit unions" after "by the Board".

Subsec. (c). Pub. L. 95-630, §502(b), substituted "Board" for "Administrator" wherever appearing, and in par. (2) substituted "it" for "he" before "finds".

Subsecs. (d), (e). Pub. L. 95-630, §§502(b), 504(c), struck out subsec. (d), redesignated subsec. (e) as (d) and substituted "Board" for "Administrator".

1977—Subsec. (c)(3). Pub. L. 95-22 struck out par. (3) which provided for approval by Administrator of applications of State credit unions for insurance of its member accounts where credit union meets requirements of this chapter and where in the event of liquidation of the credit union, the claims with respect to demand deposit accounts shall be subordinate to the claims with respect to member accounts.

1971—Subsec. (c)(2). Pub. L. 92-221, §1(a), substituted "disapproved" for "reject".

Subsec. (c)(3). Pub. L. 92-221, §2, added par. (3).

Subsec. (d). Pub. L. 92-221, §1(b), substituted provisions allowing, in certain cases, a two-year period to meet the requirements for insurance following the disapproval of an application for insurance by a Federal credit union, for provisions mandating the suspension or revocation of the charter of a Federal credit union unless the credit union met the requirements for insurance and became an insured credit union within one year of the rejection of its application for insurance.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. A, title II, §2615(c), Sept. 30, 1996, 110 Stat. 3009-479, provided that: "The amendments made by this section [amending this section and section 1828 of this title] shall apply on and after January 1, 1996."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

§1782. Administration of insurance fund

(a) Reports of condition

(1) Each insured credit union shall make reports of condition to the Board upon dates which shall be selected by it. Such reports of condition shall be in such form and shall contain such information as the Board may require. The reporting dates selected for reports of condition shall be the same for all insured credit unions except that when any of said reporting dates is a nonbusiness day for any credit union the preceding business day shall be its reporting date. The total amount of the member accounts of each insured credit union as of each reporting date shall be reported in such reports of condition in accordance with regulations prescribed by the Board. Each report of condition shall contain a declaration by the president, by a vice president, by the treasurer, or by any other officer designated by the board of directors of the reporting credit union to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief. Unless such requirement is waived by the Board, the correctness of each report of condition shall be attested by the signatures of three of the officers of the reporting credit union with the declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct.

(2) The Board may call for such other reports as it may from time to time require.

(3) The Board may require reports of condition to be published in such manner, not inconsistent with any applicable law, as it may direct. Any insured credit union which maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit or publish any report required under this subsection or section 1756 of this title, within the period of time specified by the Board, or submits or publishes any false or misleading report or information, or inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false or misleading information is not corrected. The insured credit union shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any insured credit union which fails to submit or publish any report required under this subsection or section 1756 of this title, within the period of time specified by the Board, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any insured credit union knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Board may assess a penalty of not more than \$1,000,000 or 1 percent of total assets of such credit union, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Board in the manner provided in section 1786(k)(2) of this title (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any insured credit union against which any penalty is assessed under this subsection shall be afforded an agency hearing if such insured credit union submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1786(j) of this title shall apply to any proceeding under this subsection.

(4) The Board may accept any report of condition made to any commission, board, or authority having supervision of a State-chartered credit union and may furnish to any such commission, board, or authority reports of condition made to the Board.

(5) Reports required under subchapter I of this chapter shall be so prepared that they can be used for share insurance purposes. To the maximum extent feasible, the Board shall use for insurance purposes reports submitted to State regulatory agencies by State-chartered credit unions.

(6) AUDIT REQUIREMENT.—

(A) IN GENERAL.—Before the end of the 120-day period beginning on August 9, 1989, and notwithstanding any other provision of Federal or State law, the Board shall prescribe, by regulation, audit standards which require an outside, independent audit of any insured credit union by a certified public accountant for any fiscal year (of such credit union)—

- (i) for which such credit union has not conducted an annual supervisory committee audit;
- (ii) for which such credit union has not received a complete and satisfactory supervisory

committee audit; or

(iii) during which such credit union has experienced persistent and serious recordkeeping deficiencies, as determined by the Board.

(B) UNSAFE OR UNSOUND PRACTICE.—The Board may treat the failure of any insured credit union to obtain an outside, independent audit for any fiscal year for which such audit is required under subparagraph (A) or (D) as an unsafe or unsound practice within the meaning of section 1786(b) of this title.

(C) ACCOUNTING PRINCIPLES.—

(i) IN GENERAL.—Accounting principles applicable to reports or statements required to be filed with the Board by each insured credit union shall be uniform and consistent with generally accepted accounting principles.

(ii) BOARD DETERMINATION.—If the Board determines that the application of any generally accepted accounting principle to any insured credit union is not appropriate, the Board may prescribe an accounting principle for application to the credit union that is no less stringent than generally accepted accounting principles.

(iii) DE MINIMUS ¹ exception.—This subparagraph shall not apply to any insured credit union, the total assets of which are less than \$10,000,000, unless prescribed by the Board or an appropriate State credit union supervisor.

(D) LARGE CREDIT UNION AUDIT REQUIREMENT.—

(i) IN GENERAL.—Each insured credit union having total assets of \$500,000,000 or more shall have an annual independent audit of the financial statements of the credit union, performed in accordance with generally accepted auditing standards by an independent certified public accountant or public accountant licensed by the appropriate State or jurisdiction to perform those services.

(ii) VOLUNTARY AUDITS.—If a Federal credit union that is not required to conduct an audit under clause (i), and that has total assets of more than \$10,000,000 conducts such an audit for any purpose, using an independent auditor who is compensated for his or her audit services with respect to that audit, the audit shall be performed consistent with the accountancy laws of the appropriate State or jurisdiction, including licensing requirements.

(7) REPORT TO INDEPENDENT AUDITOR.—

(A) IN GENERAL.—Each insured credit union which has engaged the services of an independent auditor to audit such depository institution within the past 2 years shall transmit to such auditor a copy of the most recent report of condition made by such credit union (pursuant to this chapter or any other provision of law) and a copy of the most recent report of examination received by such credit union.

(B) ADDITIONAL INFORMATION.—In addition to the copies of the reports required to be provided to an auditor under subparagraph (A), each insured credit union shall provide such auditor with—

(i) a copy of any supervisory memorandum of understanding with such credit union and any written agreement between the Board or a State regulatory agency and the credit union which is in effect during the period covered by the audit; and

(ii) a report of any action initiated or taken by the Board during such period under subsection (e), (f), (g), (i), (l), or (q) of section 1786 of this title, or any similar action taken by a State regulatory agency under State law, or any other civil money penalty assessed by the Board under this chapter, with respect to—

(I) the credit union; or

(II) any institution-affiliated party.

(8) DATA SHARING WITH OTHER AGENCIES AND PERSONS.—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Board

(with respect to all insured credit unions, including a credit union for which the Corporation has been appointed conservator or liquidating agent) or an appropriate State commission, board, or authority having supervision of a State-chartered credit union, the Board may, in the discretion of the Board, furnish any report of examination or other confidential supervisory information concerning any credit union or other entity examined by the Board under authority of any Federal law, to—

(A) any other Federal or State agency or authority with supervisory or regulatory authority over the credit union or other entity;

(B) any officer, director, or receiver of such credit union or entity; and

(C) any other person that the Board determines to be appropriate.

(b) Certified statement

(1) Statement required

(A) In general

For each calendar year, in the case of an insured credit union with total assets of not more than \$50,000,000, and for each semi-annual period in the case of an insured credit union with total assets of \$50,000,000 or more, an insured credit union shall file with the Board, at such time as the Board prescribes, a certified statement showing the total amount of insured shares in the credit union at the close of the relevant period and both the amount of its deposit or adjustment of deposit and the amount of the insurance charge due to the Fund for that period, both as computed under subsection (c).

(B) Exception for newly insured credit union

Subparagraph (A) shall not apply with respect to a credit union that became insured during the reporting period.

(2) Form

The certified statements required to be filed with the Board pursuant to this subsection shall be in such form and shall set forth such supporting information as the Board shall require.

(3) Certification

The president of the credit union or any officer designated by the board of directors shall certify, with respect to each statement required to be filed with the Board pursuant to this subsection, that to the best of his or her knowledge and belief the statement is true, correct, complete, and in accordance with this subchapter and the regulations issued under this subchapter.

(c) Deposit with National Credit Union Share Insurance Fund; amount, return, distribution, etc.

(1)(A)(i) Each insured credit union shall pay to and maintain with the National Credit Union Share Insurance Fund a deposit in an amount equaling 1 per centum of the credit union's insured shares.

(ii) The Board may, in its discretion, authorize insured credit unions to initially fund such deposit over a period of time in excess of one year if necessary to avoid adverse effects on the condition of insured credit unions.

(iii) PERIODIC ADJUSTMENT.—The amount of each insured credit union's deposit shall be adjusted as follows, in accordance with procedures determined by the Board, to reflect changes in the credit union's insured shares:

(I) annually, in the case of an insured credit union with total assets of not more than \$50,000,000; and

(II) semi-annually, in the case of an insured credit union with total assets of \$50,000,000 or more.

(B)(i) The deposit shall be returned to an insured credit union in the event that its insurance coverage is terminated, it converts to insurance coverage from another source, or in the event the operations of the fund are transferred from the National Credit Union Administration Board.

(ii) The deposit shall be returned in accordance with procedures and valuation methods determined

by the Board, but in no event shall the deposit be returned any later than one year after the final date on which no shares of the credit union are insured by the Board.

(iii) The deposit shall not be returned in the event of liquidation on account of bankruptcy or insolvency.

(iv) The deposit funds may be used by the fund if necessary to meet its expenses, in which case the amount so used shall be expensed and shall be replenished by insured credit unions in accordance with procedures established by the Board.

(2) INSURANCE PREMIUM CHARGES.—

(A) IN GENERAL.—Each insured credit union shall, at such times as the Board prescribes (but not more than twice in any calendar year), pay to the Fund a premium charge for insurance in an amount stated as a percentage of insured shares (which shall be the same for all insured credit unions).

(B) RELATION OF PREMIUM CHARGE TO EQUITY RATIO OF FUND.—The Board may assess a premium charge only if—

- (i) the Fund's equity ratio is less than 1.3 percent; and
- (ii) the premium charge does not exceed the amount necessary to restore the equity ratio to 1.3 percent.

(C) PREMIUM CHARGE REQUIRED IF EQUITY RATIO FALLS BELOW 1.2 PERCENT.—If the Fund's equity ratio is less than 1.2 percent, the Board shall, subject to subparagraph (B), assess a premium charge in such an amount as the Board determines to be necessary to restore the equity ratio to, and maintain that ratio at, 1.2 percent.

(D) FUND RESTORATION PLANS.—

(i) IN GENERAL.—Whenever—

(I) the Board projects that the equity ratio of the Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (C); or

(II) the equity ratio of the Fund actually falls below the minimum amount specified in subparagraph (C) without any determination under sub-clause (I) having been made,

the Board shall establish and implement a restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Board determines to be appropriate.

(ii) REQUIREMENTS OF RESTORATION PLAN.—A restoration plan meets the requirements of this clause if the plan provides that the equity ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (C) before the end of the 8-year period beginning upon the implementation of the plan (or such longer period as the Board may determine to be necessary due to extraordinary circumstances).

(iii) TRANSPARENCY.—Not more than 30 days after the Board establishes and implements a restoration plan under clause (i), the Board shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.

(3) DISTRIBUTIONS FROM FUND REQUIRED.—

(A) IN GENERAL.—The Board shall, subject to the requirements of section 1790e(e) of this title, effect a pro rata distribution to insured credit unions after each calendar year if, as of the end of that calendar year—

- (i) any loans to the Fund from the Federal Government, and any interest on those loans, have been repaid;
- (ii) the Fund's equity ratio exceeds the normal operating level; and
- (iii) the Fund's available assets ratio exceeds 1.0 percent.

(B) AMOUNT OF DISTRIBUTION.—The Board shall distribute under subparagraph (A) the maximum possible amount that—

- (i) does not reduce the Fund's equity ratio below the normal operating level; and
- (ii) does not reduce the Fund's available assets ratio below 1.0 percent.

(C) CALCULATION BASED ON CERTIFIED STATEMENTS.—In calculating the Fund's equity ratio and available assets ratio for purposes of this paragraph, the Board shall determine the aggregate amount of the insured shares in all insured credit unions from insured credit unions certified statements under subsection (b) for the final reporting period of the calendar year referred to in subparagraph (A).

(4) TIMELINESS AND ACCURACY OF DATA.—In calculating the available assets ratio and equity ratio of the Fund, the Board shall use the most current and accurate data reasonably available.

(d) Remedy for failure to report; penalty for failure to file certified statement or pay premium; dispute as to deposit or premium charge; prohibition on distribution of assets or dividends while in default

(1) Any insured credit union which fails to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by it in connection with determining the amount of its deposit or any premium charge for insurance may be compelled to make such report or to file such statement by mandatory injunction or other appropriate remedy in a suit brought for such purpose by the Board against the credit union and any officer or officers thereof. Any such suit may be brought in any court of the United States of competent jurisdiction in the district or territory in which the principal office of the credit union is located.

(2) PENALTY FOR FAILURE TO MAKE ACCURATE CERTIFIED STATEMENT OR TO PAY DEPOSIT OR PREMIUM.—

(A) FIRST TIER.—Any insured credit union which—

(i) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit any certified statement under subsection (b)(1) within the period of time required or submits a false or misleading certified statement under such subsection; or

(ii) submits the statement at a time which is minimally after the time required,

shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false and misleading information is not corrected. The insured credit union shall have the burden of proving that an error was inadvertent or that a statement was inadvertently submitted late.

(B) SECOND TIER.—Any insured credit union which—

(i) fails to submit any certified statement under subsection (b)(1) within the period of time required or submits a false or misleading certified statement in a manner not described in subparagraph (A); or

(ii) fails or refuses to pay any deposit or premium for insurance required under this subchapter,

shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues, such false and misleading information is not corrected, or such deposit or premium is not paid.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), if any insured credit union knowingly or with reckless disregard for the accuracy of any certified statement under subsection (b)(1) submits a false or misleading certified statement under such subsection, the Board may assess a penalty of not more than \$1,000,000 or not more than 1 percent of the total assets of the credit union, whichever is less, per day for each day during which the failure continues or the false or misleading information in such statement is not corrected.

(D) ASSESSMENT PROCEDURE.—Any penalty imposed under this paragraph shall be assessed and collected by the Board in the manner provided in section 1786(k)(2) of this title (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.

(E) HEARING.—Any insured credit union against which any penalty is assessed under this

paragraph shall be afforded an agency hearing if the credit union submits a request for such hearing within 20 days after the issuance of the notice of the assessment. Section 1786(j) of this title shall apply to any proceeding under this subparagraph.

(F) SPECIAL RULE FOR DISPUTED PAYMENTS.—No penalty may be assessed for the failure of any insured credit union to pay any deposit or premium for insurance if—

(i) the failure is due to a dispute between the credit union and the Board over the amount of the deposit or premium which is due from the credit union; and

(ii) the credit union deposits security satisfactory to the Board for payment of the deposit or insurance premium upon final determination of the dispute.

(3) No insured credit union shall pay any dividends on its insured shares or distribute any of its assets while it remains in default in the payment of its deposit or any premium charge for insurance due to the fund. Any director or officer of any insured credit union who knowingly participates in the declaration or payment of any such dividend or in any such distribution shall, upon conviction, be fined not more than \$1,000 or imprisoned not more than one year, or both. The provisions of this paragraph shall not be applicable in any case in which the default is due to a dispute between the credit union and the Board over the amount of its deposit or the premium charge due to the fund if the credit union deposits security satisfactory to the Board for payment of its deposit or the premium charge upon final determination of the issue.

(e) Recovery of unpaid deposit or premium; limitations

The Board, in a suit brought at law or in equity in any court of competent jurisdiction, shall be entitled to recover from any insured credit union the amount of any unpaid deposit or premium charge for insurance lawfully payable by the credit union to the fund, whether or not such credit union shall have made any report of condition under subsection (a) of this section or filed any certified statement required under subsection (b) of this section and whether or not suit shall have been brought to compel the credit union to make any such report or to file any such statement. No action or proceeding shall be brought for the recovery of any deposit or premium charge due to the fund, or for the recovery of any amount paid to the fund in excess of the amount due it, unless such action or proceeding shall have been brought within five years after the right accrued for which the claim is made. Where the insured credit union has made or filed with the Board a false or fraudulent certified statement with the intent to evade, in whole or in part, the payment of its deposit or any premium charge, the claim shall not be deemed to have accrued until the discovery by the Board of the fact that the certified statement is false or fraudulent.

(f) Penalty for failure to comply with section; court determination of failure; remedies not exclusive

Should any Federal credit union fail to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed under subsection (b) of this section or to pay its deposit or any premium charge for insurance required to be paid under any provision of this subchapter, and should the credit union fail to correct such failure within thirty days after written notice has been given by the Board to an officer of the credit union, citing this subsection and stating that the credit union has failed to make any such report or file any such statement or pay any such deposit or premium charges as required by law, all the rights, privileges, and franchises of the credit union granted to it under subchapter I of this chapter shall be thereby forfeited. Whether or not the penalty provided in this subsection has been incurred shall be determined and adjudged by any court of the United States of competent jurisdiction in a suit brought for that purpose in the district or territory in which the principal office of such credit union is located, under direction of and by the Board in its own name, before the credit union shall be declared dissolved. The remedies provided in this subsection and in subsections (d) and (e) of this section shall not be construed as limiting any other remedies against any insured credit union but shall be in addition thereto.

(g) Records

Each insured credit union shall maintain such records as will readily permit verification of the

correctness of its reports of condition, certified statements, and deposit and premium charges for insurance. However, no insured credit union shall be required to retain such records for such purpose for a period in excess of five years from the date of the making of any such report, the filing of any such statement, or the payment of any deposit or adjustment thereof or any premium charge, except that when there is a dispute between the insured credit union and the Board over the amount of any deposit or adjustment thereof or any premium charge for insurance the credit union shall retain such records until final determination of the issue.

(h) Definitions

For purposes of this section, the following definitions shall apply:

(1) Available assets ratio

The term "available assets ratio", when applied to the Fund, means the ratio of—

(A) the amount determined by subtracting—

(i) direct liabilities of the Fund and contingent liabilities for which no provision for losses has been made, from

(ii) the sum of cash and the market value of unencumbered investments authorized under section 1783(c) of this title, to

(B) the aggregate amount of the insured shares in all insured credit unions.

(2) Equity ratio

The term "equity ratio", which shall be calculated using the financial statements of the Fund alone, without any consolidation or combination with the financial statements of any other fund or entity, means the ratio of—

(A) the amount of Fund capitalization, including insured credit unions' 1 percent capitalization deposits and the retained earnings balance of the Fund (net of direct liabilities of the Fund and contingent liabilities for which no provision for losses has been made); to

(B) the aggregate amount of the insured shares in all insured credit unions.

(3) Insured shares

The term "insured shares", when applied to this section, includes share, share draft, share certificate, and other similar accounts as determined by the Board, but does not include amounts exceeding the insured account limit set forth in section 1787(k)(1) of this title.

(4) Normal operating level

The term "normal operating level", when applied to the Fund, means an equity ratio specified by the Board, which shall be not less than 1.2 percent and not more than 1.5 percent.

(June 26, 1934, ch. 750, title II, §202, as added Pub. L. 91-468, §1(3), Oct. 19, 1970, 84 Stat. 995; amended Pub. L. 93-383, title VII, §727, Aug. 22, 1974, 88 Stat. 720; Pub. L. 95-630, title V, §§502(b), 505, Nov. 10, 1978, 92 Stat. 3681, 3682; Pub. L. 97-320, title V, §§528, 529, Oct. 15, 1982, 96 Stat. 1535; Pub. L. 97-457, §29, Jan. 12, 1983, 96 Stat. 2510; Pub. L. 98-369, div. B, title VIII, §§2802-2810, July 18, 1984, 98 Stat. 1204, 1205; Pub. L. 101-73, title IX, §§911(f), 919, 931(b), Aug. 9, 1989, 103 Stat. 482, 488, 493; Pub. L. 102-242, title III, §313(b), Dec. 19, 1991, 105 Stat. 2369; Pub. L. 102-550, title XVI, §1605(b)(3), Oct. 28, 1992, 106 Stat. 4087; Pub. L. 105-219, title II, §201, title III, §302(a), Aug. 7, 1998, 112 Stat. 918, 931; Pub. L. 109-351, title VII, §707(b), 726(12), Oct. 13, 2006, 120 Stat. 1987, 2002; Pub. L. 111-22, div. A, title II, §204(e), (f)(2), May 20, 2009, 123 Stat. 1651, 1653; Pub. L. 111-382, §2, Jan. 4, 2011, 124 Stat. 4135.)

EDITORIAL NOTES

AMENDMENTS

2011—Subsec. (h)(2). Pub. L. 111-382 substituted "which shall be calculated using the financial statements of the Fund alone, without any consolidation or combination with the financial statements of any other fund or entity," for "when applied to the Fund," in introductory provisions.

2009—Subsec. (c)(2)(D). Pub. L. 111–22, §204(e), added subpar. (D).

Subsec. (c)(3)(A). Pub. L. 111–22, §204(f)(2), inserted ", subject to the requirements of section 1790e(e) of this title," after "The Board shall" in introductory provisions.

2006—Subsec. (a)(8). Pub. L. 109–351, §707(b), added par. (8).

Subsec. (h)(3). Pub. L. 109–351, §726(12), substituted "section 1787(k)(1) of this title" for "section 1787(c)(1) of this title".

1998—Subsec. (a)(6). Pub. L. 105–219, §201, substituted "subparagraph (A) or (D)" for "subparagraph (A)" in subpar. (B) and added subpars. (C) and (D).

Subsec. (b). Pub. L. 105–219, §302(a)(1), added subsec. (b) and struck out former subsec. (b) which read as follows:

"(b)(1) For each insurance year, each insured credit union which became insured prior to the beginning of that year shall file with the Board, at such time as the Board prescribes, a certified statement showing the total amount of insured shares in the credit union at the close of the preceding insurance year and both the amount of its deposit or adjustment thereof and the amount of the premium charge for insurance due to the fund for that year, both as computed under subsection (c) of this section.

"(2) The certified statements required to be filed with the Board pursuant to this subsection shall be in such form and shall set forth such supporting information as the Board shall require.

"(3) Each such statement shall be certified by the president of the credit union, or by any officer of the credit union designated by its board of directors, that to the best of his knowledge and belief that statement is true, correct, and complete and in accordance with this subchapter and regulations issued thereunder."

Subsec. (c)(1)(A)(iii). Pub. L. 105–219, §302(a)(2), added cl. (iii) and struck out former cl. (iii) which read as follows: "The amount of each insured credit union's deposit shall be adjusted annually, in accordance with procedures determined by the Board, to reflect changes in the credit union's insured shares."

Subsec. (c)(2), (3). Pub. L. 105–219, §302(a)(3), added pars. (2) and (3) and struck out former pars. (2) and (3) which read as follows:

"(2) Each insured credit union, at such time as the Board prescribes, shall pay to the fund a premium charge for insurance equal to one-twelfth of 1 per centum of the total amount of the insured shares in such credit union at the close of the preceding insurance year.

"(3) When, at the end of a given insurance year, any loans to the fund from the Federal Government and the interest thereon have been repaid and the equity of the fund exceeds the normal operating level, the Board shall effect for that insurance year a pro rata distribution to insured credit unions of an amount sufficient to reduce the equity in the fund to its normal operating level."

Subsec. (c)(4). Pub. L. 105–219, §302(a)(4), added par. (4).

Subsec. (h). Pub. L. 105–219, §302(a)(5), added subsec. (h) and struck out former subsec. (h) which read as follows: "For the purposes of this section—

"(1) the term 'insurance year' means the period beginning on January 1 and ending on the following December 31, both dates inclusive, unless otherwise prescribed by the Board;

"(2) the term 'normal operating level', when applied to the fund, means an amount equal to 1.3 per centum of the aggregate amount of the insured shares in all insured credit unions, or such lower level as the Board may determine; and

"(3) the term 'insured shares' when applied to this section includes share, share draft, share certificate and other similar accounts as determined by the Board, but does not include amounts in excess of the insured account limit set forth in section 1787(c)(1) of this title."

1992—Subsec. (d)(2). Pub. L. 102–550, in subpar. (C), substituted "insured credit union" for "insured depository institution", struck out "or" after "subsection (b)(1)", and substituted "Board" for "Corporation" and "assets of the credit union" for "assets of the institution", in subpar. (D), substituted "Board" for "Corporation", and in subpar. (E), substituted "insured credit union" for "insured depository institution" and "if the credit union" for "if the institution".

1991—Subsec. (d)(2). Pub. L. 102–242 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Any insured credit union which willfully fails or refuses to file any certified statement or to pay its deposit or any premium charge for insurance required under this subchapter shall be subject to a penalty of not more than \$100 for each day that such violation continues, which penalty the Board may recover for its use. The provisions of this paragraph shall not be applicable in any case in which the refusal to pay its deposit or the premium charge for insurance is due to a dispute between the insured credit union and the Board over the amount of its deposit or the premium charge due to the fund if the credit union deposits security satisfactory to the Board for payment of its deposit or the premium charge upon final determination of the issue."

1989—Subsec. (a)(3). Pub. L. 101–73, §911(f), inserted provisions relating to penalties and agency hearings and struck out at end: "Every insured credit union which willfully fails to make or publish any such

report within ten days shall be subject to a penalty of not more than \$100 for each day of such failure, recoverable by the Board for its use."

Subsec. (a)(6). Pub. L. 101-73, §919, added par. (6).

Subsec. (a)(7). Pub. L. 101-73, §931(b), added par. (7).

1984—Subsec. (b). Pub. L. 98-369, §2802, in amending subsec. (b) generally, revised existing provisions into numbered pars. (1) to (3) and in par. (1) substituted "For each insurance year, each insured credit union which became insured prior to the beginning of that year shall file with the Board, at such time as the Board prescribes, a certified statement showing the total amount of insured shares in the credit union at the close of the preceding insurance year and both the amount of its deposit or adjustment thereof and the amount of the premium charge for insurance due to the fund for that year, both as computed under subsection (c) of this section." for "On or before January 31 of each insurance year, each insured credit union which became insured prior to the beginning of that year shall file with the Board a certified statement showing the total amount of the member accounts in the credit union at the close of the preceding insurance year and the amount of the premium charge for insurance due to the fund for that year, as computed under subsection (c) of this section."

Subsec. (c)(1). Pub. L. 98-369, §2803(6), added par. (1). Former par. (1) redesignated (2).

Subsec. (c)(2). Pub. L. 98-369, §2803(3)-(5), substituted "Each insured credit union, at such time as the Board prescribes" for "Except as provided in paragraph (2) of this subsection, each insured credit union, on or before January 31 of each insurance year" and "insured shares" for "member accounts".

Pub. L. 98-369, §2803(1), (2), redesignated par. (1) as (2). Former par. (2), which related to payment of a premium charge for insurance by each credit union in existence prior to Oct. 19, 1970, and insured under this subchapter after January 1 of any insurance, was struck out.

Subsec. (c)(3). Pub. L. 98-369, §2804, amended par. (3) generally. Prior to amendment, par. (3) read as follows: "When any loans to the fund from the Federal Government and the interest thereon have been repaid and the amount in the fund equals or exceeds the normal operating level, the Board may reduce the premium charge for insurance, but not below the amount necessary, in its judgment, to maintain the fund at the normal operating level. Any such reduction shall be effective only so long as the amount in the fund equals or exceeds the normal operating level and no loan to the fund from the Federal Government is outstanding."

Subsec. (c)(4). Pub. L. 98-369, §2805, struck out par. (4) which provided that "If in any year expenditures from the fund exceed the income of the fund, the Board may require each insured credit union to pay to the fund for such year, in addition to the regular premium charge for insurance payable under paragraph (1), (2), or (3) of this subsection, a special premium charge which shall not exceed an amount equal to the amount of the regular premium charge".

Subsec. (d)(1), (2). Pub. L. 98-369, §2806(a)(1), inserted "its deposit or" wherever appearing.

Subsec. (d)(3). Pub. L. 98-369, §2806(a), inserted "its deposit or" wherever appearing and substituted "insured shares" for "member accounts".

Subsec. (e). Pub. L. 98-369, §2806(a)(1), (b)(1), (2), inserted "its deposit or" and "deposit or" wherever appearing.

Subsec. (f). Pub. L. 98-369, §2806(a)(1), (b)(3), inserted "its deposit or" and "deposit or".

Subsec. (g). Pub. L. 98-369, §2807, inserted "and deposit" and "deposit or adjustment thereof or any" in two places.

Subsec. (h)(1). Pub. L. 98-369, §2808, inserted ", unless otherwise prescribed by the Board".

Subsec. (h)(2). Pub. L. 98-369, §2809, in amending par. (2) generally, substituted "fund, means an amount equal to 1.3 per centum of the aggregate amount of the insured shares in all insured credit unions, or such lower level as the Board may determine" for "Fund, means an amount equal to 1 per centum of the aggregate amount of the member accounts in all insured credit unions".

Subsec. (h)(3). Pub. L. 98-369, §2810, amended par. (3) generally. Prior to amendment, par. (3) read as follows: "the term 'members accounts' when applied to the premium charge for insurance of accounts shall not include amounts received from other credit unions, the accounts of which are federally insured or insured or guaranteed by a fund established under State law or regulation for this purpose, in excess of the insured account limit set forth in section 1787(c)(1) of this title;"

1983—Subsec. (c)(1). Pub. L. 97-457 substituted "paragraph (2)" for "paragraphs (2) and (3)" after "except as provided in".

1982—Subsec. (c)(3). Pub. L. 97-320, §529, redesignated par. (4) as (3). Former (3), which set forth rules for computing the insurance premiums due from credit unions chartered after Oct. 19, 1970, that became insured in the insurance year of their charter, was struck out.

Subsec. (c)(4), (5). Pub. L. 97-320, §529, redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (c)(6). Pub. L. 97-320, §529, struck out par. (6) which set forth rules for payment of insurance rebates to insured credit unions closed for liquidation because of insolvency or otherwise.

Subsec. (h)(3). Pub. L. 97-320, §528, substituted " 'members accounts' " for " 'member account' ", struck out "federally insured" after "received from other", and inserted ", the accounts of which are federally insured or insured or guaranteed by a fund established under State law or regulation for this purpose," after "credit unions".

1978—Subsec. (a). Pub. L. 95-630, §§502(b), 505(a), substituted "Board" for "Administrator" wherever appearing; "it" for "him" and "such officer's knowledge" for "his knowledge" in par. (1); "reports as it" for "reports as he" in par. (2); and "it may direct" for "he may direct" and "for its use" for "for his use" in par. (3).

Subsecs. (b) to (g). Pub. L. 95-630, §502(b), substituted "Board" for "Administrator" wherever appearing, and "its" for "his" where appropriate.

Subsec. (h)(3). Pub. L. 95-630, §505(b), substituted "The term 'member account' when" for "the term 'members accounts' when", struck out "of federally insured credit unions" after "of accounts", and inserted "received from other federally insured credit unions" after "not include amounts".

1974—Subsec. (h)(3). Pub. L. 93-383 added par. (3).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-219, title III, §302(b), Aug. 7, 1998, 112 Stat. 934, provided that: "This section [amending this section] and the amendments made by this section shall become effective on January 1 of the first calendar year beginning more than 180 days after the date of enactment of this Act [Aug. 7, 1998]."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 911(f) of Pub. L. 101-73 applicable with respect to reports filed or required to be filed after Aug. 9, 1989, see section 911(i) of Pub. L. 101-73, set out as a note under section 161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

¹ So in original. Probably should be "De minimis".

§1783. National Credit Union Share Insurance Fund

(a) Creation; use of fund

There is hereby created in the Treasury of the United States a National Credit Union Share Insurance Fund which shall be used by the Board as a revolving fund for carrying out the purposes of this subchapter. Money in the fund shall be available upon requisition by the Board, without fiscal year limitation, for making payments of insurance under section 1787 of this title, for providing assistance and making expenditures under section 1788 of this title in connection with the liquidation or threatened liquidation of insured credit unions, and for such administrative and other expenses incurred in carrying out the purposes of this subchapter as it may determine to be proper.

(b) Deposit of deposits and premium charges, fees and penalties

All deposits and premium charges for insurance paid pursuant to the provisions of section 1782 of this title and all fees for examinations and all penalties collected by the Board under any provision of this subchapter shall be deposited in the National Credit Union Share Insurance Fund. The Board shall report annually to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives with respect to the operating level of the fund. Such report shall also include the results of an independent audit of the fund.

(c) Investment authorization

The Board may authorize the Secretary of the Treasury to invest and reinvest such portions of the fund as the Board may determine are not needed for current operations in any interest-bearing securities of the United States or in any securities guaranteed as to both principal and interest by the United States or in bonds or other obligations which are lawful investments for fiduciary, trust, and public funds of the United States, and the income therefrom shall constitute a part of the fund.

(d) Loans to fund, limitation and terms; interest accrual; determination of interest rate

(1) If, in the judgment of the Board, a loan to the insurance fund, or to the stabilization fund described in section 1790e of this title, is required at any time for purposes of this subchapter,¹ the Secretary of the Treasury shall make the loan, but loans under this paragraph shall not exceed in the aggregate \$6,000,000,000 outstanding at any one time. Except as otherwise provided in this subsection, section 1790e of this title, and in subsection (e) of this section, each loan under this paragraph shall be made on such terms as may be fixed by agreement between the Board and the Secretary of the Treasury.

(2) Interest shall accrue to the Treasury on the amount of any outstanding loans made to the fund pursuant to paragraph (1) of this subsection on the basis of the average daily amount of such outstanding loans determined at the close of each fiscal year with respect to such year, and the Board shall pay the interest so accruing into the Treasury as miscellaneous receipts annually from the fund. The Secretary of the Treasury shall determine the applicable interest rate in advance by calculating the average yield to maturity (on the basis of daily closing market bid quotations during the month of September of the preceding fiscal year) on outstanding marketable public debt obligations of the United States having a maturity date of five or less years from the first day of such month of September and by adjusting such yield to the nearest one-eighth of 1 per centum.

(3) For the purpose of making loans under paragraph (1) of this subsection, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are hereby extended to include such loans. All loans and repayments under this section shall be treated as public debt transactions of the United States.

(4) TEMPORARY INCREASES AUTHORIZED.—

(A) RECOMMENDATIONS FOR INCREASE.—During the period beginning on May 20, 2009, and ending on December 31, 2010, if, upon the written recommendation of the Board (upon a vote of not less than two-thirds of the members of the Board) and the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of the members of such Board), the Secretary of the Treasury (in consultation with the President) determines that additional amounts above the \$6,000,000,000 amount specified in paragraph (1) are necessary, such amount shall be increased to the amount so determined to be necessary, not to exceed \$30,000,000,000.

(B) REPORT REQUIRED.—If the borrowing authority of the Board is increased above \$6,000,000,000 pursuant to subparagraph (A), the Board shall promptly submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the reasons and need for the additional borrowing authority and its intended uses.

(e) Excess funds credited against loans

So long as any loans to the fund are outstanding, the Board shall from time to time, not less often than annually, determine whether the balance in the fund is in excess of the amount which, in its judgment, is needed to meet the requirements of the fund and shall pay such excess to the Secretary of the Treasury, to be credited against the loans to the fund.

(f) Authorization for fund to borrow from Central Liquidity Facility

In addition to the authority to borrow from the Secretary of the Treasury provided in subsection (d), if in the judgment of the Board, a loan to the fund is required at any time for carrying out the purposes of this subchapter, the fund is authorized to borrow from the National Credit Union Administration Central Liquidity Facility.

(June 26, 1934, ch. 750, title II, §203, as added Pub. L. 91-468, §1(3), Oct. 19, 1970, 84 Stat. 999; amended Pub. L. 94-273, §2(4), Apr. 21, 1976, 90 Stat. 375; Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97-320, title V, §530, Oct. 15, 1982, 96 Stat. 1535; Pub. L. 98-369, div. B, title VIII, §2811, July 18, 1984, 98 Stat. 1206; Pub. L. 111-22, div. A, title II, §204(c)(2), (3), May 20, 2009, 123 Stat. 1650.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in subsec. (d)(1), probably should have been a reference to this title in the original, meaning title II of act June 26, 1934, ch. 750, which is classified generally to this subchapter.

CODIFICATION

In subsec. (d)(3), "chapter 31 of title 31" substituted for "the Second Liberty Bond Act, as amended" on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2009—Subsec. (d)(1). Pub. L. 111-22, §204(c)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "If, in the judgment of the Board, a loan to the fund is required at any time for carrying out the purposes of this subchapter, the Secretary of the Treasury shall make the loan, but loans under this paragraph shall not exceed in the aggregate \$100,000,000 outstanding at any one time. Except as otherwise provided in this subsection and in subsection (e) of this section, each loan under this paragraph shall be made on such terms as may be fixed by agreement between the Board and the Secretary of the Treasury."

Subsec. (d)(4). Pub. L. 111-22, §204(c)(3), added par. (4).

1984—Subsec. (b). Pub. L. 98-369 inserted "deposits and" and provisions relating to annual reporting requirements by the Board.

1982—Subsec. (f). Pub. L. 97-320 added subsec. (f).

1978—Pub. L. 95-630 substituted "Board" for "Administrator" wherever appearing and "it" and "its" for "he" and "his", respectively, where appropriate.

1976—Subsec. (d)(2). Pub. L. 94-273 substituted "September" for "June" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

¹ [*See References in Text note below.*](#)

§1784. Examination of insured credit unions

(a) Examiners and claim agents; powers; report by examiner; jurisdiction of court

The Board shall appoint examiners who shall have power, on its behalf, to examine any insured credit union, any credit union making application for insurance of its member accounts, or any closed insured credit union whenever in the judgment of the Board an examination is necessary to

determine the condition of any such credit union for insurance purposes. Each examiner shall have power to make a thorough examination of all of the affairs of the credit union and shall make a full and detailed report of the condition of the credit union to the Board. The Board in like manner shall appoint claim agents who shall have power to investigate and examine all claims for insured member accounts. Each claim agent shall have power to administer oaths and affirmations, to examine and to take and preserve testimony under oath as to any matter in respect to claims for insured accounts, and to issue subpoenas and subpoenas duces tecum and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States court in any territory in which the principal office of the credit union is located or in which the witness resides or carries on business. Such courts shall have jurisdiction and power to order and require compliance with any such subpoena.

(b) Power of Board; jurisdiction of court

In connection with examinations of insured credit unions, or with other types of investigations to determine compliance with applicable law and regulations, the Board, or its designated representatives, shall have power to administer oaths and affirmations, to examine and to take and preserve testimony under oath as to any matter in respect of the affairs of any such credit union, and to issue subpoenas and subpoenas duces tecum and to exercise such other powers as are set forth in section 1786(p) of this title and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States Court in any territory in which the principal office of the credit union is located or in which the witness resides or carries on business. Such courts shall have jurisdiction and power to order and require compliance with any such subpoena.

(c) Court orders enforcing subpoenas; immunity

In cases of refusal to obey a subpoena issued to, or contumacy by, any person, the Board may invoke the aid of any court of the United States within the jurisdiction of which such hearing, examination, or investigation is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, records, or other papers. Such court may issue an order requiring such person to appear before the Board, or before a person designated by it, there to produce records, if so ordered, or to give testimony touching the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or carries on business or wherever he may be found. No person shall be excused from attending and testifying or from producing books, records, or other papers in obedience to a subpoena issued under the authority of this subchapter on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture, but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(d) Administration acceptance of State board reports; reports of Board furnished to State board

The Administration may accept any report of examination made by or to any commission, board, or authority having supervision of a State-chartered credit union and may furnish to any such commission, board, or authority reports of examination made on behalf of the Board.

(e) Flood insurance compliance by insured credit unions

(1) Examination

The Board shall, during each examination conducted under this section, determine whether the insured credit union is complying with the requirements of the national flood insurance program.

(2) Report

(A) Requirement

Not later than 1 year after September 23, 1994, and biennially thereafter for the next 4 years, the Board shall submit a report to the Congress on compliance by insured credit unions with the requirements of the national flood insurance program.

(B) Contents

The report shall include a description of the methods used to determine compliance, the number of insured credit unions examined during the reporting year, a listing and total number of insured credit unions found not to be in compliance, actions taken to correct incidents of noncompliance, and an analysis of compliance, including a discussion of any trends, patterns, and problems, and recommendations regarding reasonable actions to improve the efficiency of the examinations processes.

(f) Access to liquidity

The Board shall—

- (1) periodically assess the potential liquidity needs of each insured credit union, and the options that the credit union has available for meeting those needs; and
- (2) periodically assess the potential liquidity needs of insured credit unions as a group, and the options that insured credit unions have available for meeting those needs.

(g) Sharing information with Federal reserve banks

The Board shall, for the purpose of facilitating insured credit unions' access to liquidity, make available to the Federal reserve banks (subject to appropriate assurances of confidentiality) information relevant to making advances to such credit unions, including the Board's reports of examination.

(June 26, 1934, ch. 750, title II, §204, as added Pub. L. 91–468, §1(3), Oct. 19, 1970, 84 Stat. 1001; amended Pub. L. 95–630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 101–73, title IX, §915(a), Aug. 9, 1989, 103 Stat. 486; Pub. L. 103–325, title V, §529(b), Sept. 23, 1994, 108 Stat. 2266; Pub. L. 105–219, title III, §303, Aug. 7, 1998, 112 Stat. 934; Pub. L. 109–351, title VII, §726(13), Oct. 13, 2006, 120 Stat. 2002.)

EDITORIAL NOTES

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–351 substituted "such other powers" for "such others powers".

1998—Subsecs. (f), (g). Pub. L. 105–219 added subsecs. (f) and (g).

1994—Subsec. (e). Pub. L. 103–325 added subsec. (e).

1989—Subsec. (b). Pub. L. 101–73, §915(a)(1), inserted "or with other types of investigations to determine compliance with applicable law and regulations," after "insured credit unions,".

Pub. L. 101–73, §915(a)(2), which directed the insertion of "and to exercise such others powers as are set forth in section 1786(p) of this title" after "subpena duces tecum", was executed by making the insertion after "subpenas duces tecum", as the probable intent of Congress.

1978—Pub. L. 95–630 substituted "Board" for "Administrator" wherever appearing, and "it" and "its" for "him" and "his", respectively, where appropriate.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

§1785. Requirements governing insured credit unions

(a) Insurance logo

(1) Insured credit unions

(A) In general

Each insured credit union shall display at each place of business maintained by that credit union a sign or signs relating to the insurance of the share accounts of the institution, in accordance with regulations to be prescribed by the Board.

(B) Statement to be included

Each sign required under subparagraph (A) shall include a statement that insured share accounts are backed by the full faith and credit of the United States Government.

(2) Regulations

The Board shall prescribe regulations to carry out this subsection, including regulations governing the substance of signs required by paragraph (1) and the manner of display or use of such signs.

(3) Penalties

For each day that an insured credit union continues to violate this subsection or any regulation issued under this subsection, it shall be subject to a penalty of not more than \$100, which the Board may recover for its use.

(b) Restrictions

(1) Except as provided in paragraph (2), no insured credit union shall, without the prior approval of the Board—

- (A) merge or consolidate with any noninsured credit union or institution;
- (B) assume liability to pay any member accounts in, or similar liabilities of, any noninsured credit union or institution;
- (C) transfer assets to any noninsured credit union or institution in consideration of the assumption of liabilities for any portion of the member accounts in such insured credit union; or
- (D) convert into a noninsured credit union or institution.

(2) CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS.—

(A) IN GENERAL.—Notwithstanding paragraph (1), an insured credit union may convert to a mutual savings bank or savings association (if the savings association is in mutual form), as those terms are defined in section 1813 of this title, without the prior approval of the Board, subject to the requirements and procedures set forth in the laws and regulations governing mutual savings banks and savings associations.

(B) CONVERSION PROPOSAL.—A proposal for a conversion described in subparagraph (A) shall first be approved, and a date set for a vote thereon by the members (either at a meeting to be held on that date or by written ballot to be filed on or before that date), by a majority of the directors of the insured credit union. Approval of the proposal for conversion shall be by the affirmative vote of a majority of the members of the insured credit union who vote on the proposal.

(C) NOTICE OF PROPOSAL TO MEMBERS.—An insured credit union that proposes to convert to a mutual savings bank or savings association under subparagraph (A) shall submit notice to each of its members who is eligible to vote on the matter of its intent to convert—

- (i) 90 days before the date of the member vote on the conversion;
- (ii) 60 days before the date of the member vote on the conversion; and
- (iii) 30 days before the date of the member vote on the conversion.

(D) NOTICE OF PROPOSAL TO BOARD.—The Board may require an insured credit union that proposes to convert to a mutual savings bank or savings association under subparagraph (A) to submit a notice to the Board of its intent to convert during the 90-day period preceding the date of the completion of the conversion.

(E) INAPPLICABILITY OF CHAPTER UPON CONVERSION.—Upon completion of a

conversion described in subparagraph (A), the credit union shall no longer be subject to any of the provisions of this chapter.

(F) LIMIT ON COMPENSATION OF OFFICIALS.—

(i) **IN GENERAL.**—No director or senior management official of an insured credit union may receive any economic benefit in connection with a conversion of the credit union as described in subparagraph (A), other than—

(I) director fees; and

(II) compensation and other benefits paid to directors or senior management officials of the converted institution in the ordinary course of business.

(ii) **SENIOR MANAGEMENT OFFICIAL.**—For purposes of this subparagraph, the term "senior management official" means a chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer (as defined by the appropriate Federal banking agency pursuant to section 1831i(f) of this title).

(G) CONSISTENT RULES.—

(i) **IN GENERAL.**—Not later than 6 months after August 7, 1998, the Administration shall promulgate final rules applicable to charter conversions described in this paragraph that are consistent with rules promulgated by other financial regulators, including the Office of the Comptroller of the Currency. The rules required by this clause shall provide that charter conversion by an insured credit union shall be subject to regulation that is no more or less restrictive than that applicable to charter conversions by other financial institutions.

(ii) **OVERSIGHT OF MEMBER VOTE.**—The member vote concerning charter conversion under this paragraph shall be administered by the Administration, and shall be verified by the Federal or State regulatory agency that would have jurisdiction over the institution after the conversion. If either the Administration or that regulatory agency disapproves of the methods by which the member vote was taken or procedures applicable to the member vote, the member vote shall be taken again, as directed by the Administration or the agency.

(3) Except with the prior written approval of the Board, no insured credit union shall merge or consolidate with any other insured credit union or, either directly or indirectly, acquire the assets of, or assume liability to pay any member accounts in, any other insured credit union.

(c) Considerations for waiver or enforcement of restrictions

In granting or withholding approval or consent under subsection (b) of this section, the Board shall consider—

(1) the history, financial condition, and management policies of the credit union;

(2) the adequacy of the credit union's reserves;

(3) the economic advisability of the transaction;

(4) the general character and fitness of the credit union's management;

(5) the convenience and needs of the members to be served by the credit union; and

(6) whether the credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

(d) Prohibition

(1) In general

Except with prior written consent of the Board—

(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not—

(i) become, or continue as, an institution-affiliated party with respect to any insured credit union; or

(ii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union; and

(B) any insured credit union may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.

(2) Minimum 10-year prohibition period for certain offenses

(A) In general

If the offense referred to in paragraph (1)(A) in connection with any person referred to in such paragraph is—

(i) an offense under—

(I) section 215, 656, 657, 1005, 1006, 1007, 1008,¹ 1014, 1032, 1344, 1517, 1956, or 1957 of title 18; or

(II) section 1341 or 1343 of such title which affects any financial institution (as defined in section 20 of such title); or

(ii) the offense of conspiring to commit any such offense,

the Board may not consent to any exception to the application of paragraph (1) to such person during the 10-year period beginning on the date the conviction or the agreement of the person becomes final.

(B) Exception by order of sentencing court

(i) In general

On motion of the Board, the court in which the conviction or the agreement of a person referred to in subparagraph (A) has been entered may grant an exception to the application of paragraph (1) to such person if granting the exception is in the interest of justice.

(ii) Period for filing

A motion may be filed under clause (i) at any time during the 10-year period described in subparagraph (A) with regard to the person on whose behalf such motion is made.

(3) Penalty

Whoever knowingly violates paragraph (1) or (2) shall be fined not more than \$1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.

(4) Exceptions

(A) Certain older offenses

(i) In general

With respect to an individual, paragraph (1) shall not apply to an offense if—

(I) it has been 7 years or more since the offense occurred; or

(II) the individual was incarcerated with respect to the offense and it has been 5 years or more since the individual was released from incarceration.

(ii) Offenses committed by individuals 21 or younger

For individuals who committed an offense when they were 21 years of age or younger, paragraph (1) shall not apply to the offense if it has been more than 30 months since the sentencing occurred.

(iii) Limitation

This subparagraph shall not apply to an offense described under paragraph (1)(B).¹

(B) Expungement and sealing

With respect to an individual, paragraph (1) shall not apply to an offense if—

(i) there is an order of expungement, sealing, or dismissal that has been issued in regard to the conviction in connection with such offense; and

(ii) it is intended by the language in the order itself, or in the legislative provisions under which the order was issued, that the conviction shall be destroyed or sealed from the individual's State, Tribal, or Federal record, even if exceptions allow the record to be considered for certain character and fitness evaluation purposes.

(C) De minimis exemption

(i) In general

Paragraph (1) shall not apply to such de minimis offenses as the Board determines, by rule.

(ii) Confinement criteria

In issuing rules under clause (i), the Board shall include a requirement that the offense was punishable by a term of three years or less confined in a correctional facility, where such confinement—

(I) is calculated based on the time an individual spent incarcerated as a punishment or a sanction, not as pretrial detention; and

(II) does not include probation or parole where an individual was restricted to a particular jurisdiction or was required to report occasionally to an individual or a specific location.

(iii) Bad check criteria

In setting the criteria for de minimis offenses under clause (i), if the Board establishes criteria with respect to insufficient funds checks, the Board shall require that the aggregate total face value of all insufficient funds checks across all convictions or program entries related to insufficient funds checks is \$2,000 or less.

(iv) Designated lesser offenses

Paragraph (1) shall not apply to certain lesser offenses (including the use of a fake ID, shoplifting, trespass, fare evasion, driving with an expired license or tag, and such other low-risk offenses as the Board may designate) if 1 year or more has passed since the applicable conviction or program entry.

(5) Consent applications

(A) In general

The Board shall accept consent applications from an individual and from an insured credit union on behalf of an individual that are filed separately or contemporaneously with a regional office of the Board.

(B) Sponsored applications filed with regional offices

Consent applications filed at a regional office of the Board by an insured credit union on behalf of an individual—

(i) shall be reviewed by such office;

(ii) may be approved or denied by such office, if such authority has been delegated to such office by the Board; and

(iii) may only be denied by such office if the general counsel of the Board (or a designee) certifies that the denial is consistent with this section.

(C) Individual applications filed with regional offices

Consent applications filed at a regional office by an individual—

(i) shall be reviewed by such office; and

(ii) may be approved or denied by such office, if such authority has been delegated to such office by the Board, except with respect to—

(I) cases involving an offense described under paragraph (1)(B); ¹ and

(II) such other high-level security cases as may be designated by the Board.

(D) National office review

The national office of the Board shall—

- (i) review any consent application with respect to which a regional office is not authorized to approve or deny the application; and
- (ii) review any consent application that is denied by a regional office, if the individual requests a review by the national office.

(E) Forms and instructions

(i) Availability

The Board shall make all forms and instructions related to consent applications available to the public, including on the website of the Board.

(ii) Contents

The forms and instructions described under clause (i) shall provide a sample cover letter and a comprehensive list of items that may accompany the application, including clear guidance on evidence that may support a finding of rehabilitation.

(F) Consideration of criminal history

(i) Regional office consideration

In reviewing a consent application, a regional office shall—

- (I) primarily rely on the criminal history record of the Federal Bureau of Investigation; and
- (II) provide such record to the applicant to review for accuracy.

(ii) Certified copies

The Board may not require an applicant to provide certified copies of criminal history records unless the Board determines that there is a clear and compelling justification to require additional information to verify the accuracy of the criminal history record of the Federal Bureau of Investigation.

(G) Consideration of rehabilitation

Consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Board shall—

- (i) conduct an individualized assessment when evaluating consent applications that takes into account evidence of rehabilitation, the applicant's age at the time of the conviction or program entry, the time that has elapsed since conviction or program entry, and the relationship of individual's ² offense to the responsibilities of the applicable position;
- (ii) consider the individual's employment history, letters of recommendation, certificates documenting participation in substance abuse programs, successful participating in job preparation and educational programs, and other relevant mitigating evidence; and
- (iii) consider any additional information the Board determines necessary for safety and soundness.

(H) Scope of employment

With respect to an approved consent application filed by an insured credit union on behalf of an individual, if the Board determines it appropriate, such approved consent application shall allow the individual to work for the same employer (without restrictions on the location) and across positions, except that the prior consent of the Board (which may require a new application) shall be required for any proposed significant changes in the individual's security-related duties or responsibilities, such as promotion to an officer or other positions that the employer determines will require higher security screening credentials.

(I) Coordination with FDIC

In carrying out this subsection, the Board shall consult and coordinate with the Federal Deposit Insurance Corporation as needed to promote consistent implementation where appropriate.

(6) Definitions

In this subsection:

(A) Consent application

The term "consent application" means an application filed with Board ² by an individual (or by an insured credit union on behalf of an individual) seeking the written consent of the Board under paragraph (1)(A).

(B) Criminal offense involving dishonesty

The term "criminal offense involving dishonesty"—

(i) means an offense under which an individual, directly or indirectly—

(I) cheats or defrauds; or

(II) wrongfully takes property belonging to another in violation of a criminal statute;

(ii) includes an offense that Federal, State, or local law defines as dishonest, or for which dishonesty is an element of the offense; and

(iii) does not include—

(I) a misdemeanor criminal offense committed more than one year before the date on which an individual files a consent application, excluding any period of incarceration; or

(II) an offense involving the possession of controlled substances.

(C) Pretrial diversion or similar program

The term "pretrial diversion or similar program" means a program characterized by a suspension or eventual dismissal or reversal of charges or criminal prosecution upon agreement by the accused to restitution, drug or alcohol rehabilitation, anger management, or community service.

(e) Security standards; reports; penalty

(1) The Board shall promulgate rules establishing minimum standards with which each insured credit union must comply with respect to the installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts.

(2) The rules shall establish the time limits within which insured credit unions shall comply with the standards and shall require the submission of periodic reports with respect to the installation, maintenance, and operation of security devices and procedures.

(3) An insured credit union which violates a rule promulgated pursuant to this subsection shall be subject to a civil penalty which shall not exceed \$100 for each day of the violation.

(f) Share draft accounts; maintenance, loans, etc.

(1) Every insured credit union is authorized to maintain, and make loans with respect to, share draft accounts in accordance with rules and regulations prescribed by the Board. Except as provided in paragraph (2), an insured credit union may pay dividends on share draft accounts and may permit the owners of such share draft accounts to make withdrawals by negotiable or transferable instruments or other orders for the purpose of making transfers to third parties.

(2) Paragraph (1) shall apply only with respect to share draft accounts in which the entire beneficial interest is held by one or more individuals or members or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit, and with respect to deposits of public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

(g) Interest rates

(1) If the applicable rate prescribed in this subsection exceeds the rate an insured credit union would be permitted to charge in the absence of this subsection, such credit union may,

notwithstanding any State constitution or statute which is hereby preempted for the purposes of this subsection, take, receive, reserve, and charge on any loan, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such insured credit union is located or at the rate allowed by the laws of the State, territory, or district where such credit union is located, whichever may be greater.

(2) If the rate prescribed in paragraph (1) exceeds the rate such credit union would be permitted to charge in the absence of this subsection, and such State fixed rate is thereby preempted by the rate described in paragraph (1), the taking, receiving, reserving, or charging a greater rate than is allowed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the loan carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of interest paid from the credit union taking or receiving such interest.

(h) Emergency merger

Notwithstanding any other provision of law, the Board may authorize a merger or consolidation of an insured credit union which is insolvent or is in danger of insolvency with any other insured credit union or may authorize an insured credit union to purchase any of the assets of, or assume any of the liabilities of, any other insured credit union which is insolvent or in danger of insolvency if the Board is satisfied that—

- (1) an emergency requiring expeditious action exists with respect to such other insured credit union;
- (2) other alternatives are not reasonably available; and
- (3) the public interest would best be served by approval of such merger, consolidation, purchase, or assumption.

(i) Emergency purchase of assets; conversion to insured deposits

(1) Notwithstanding any other provision of this chapter or of State law, the Board may authorize an institution whose deposits or accounts are insured by the Federal Deposit Insurance Corporation to purchase any of the assets of or assume any of the liabilities of an insured credit union which is insolvent or in danger of insolvency, except that prior to exercising this authority the Board must attempt to effect the merger or consolidation of an insured credit union which is insolvent or in danger of insolvency with another insured credit union, as provided in subsection (h).

(2) For purposes of the authority contained in paragraph (1), insured accounts of the credit union may upon consummation of the purchase and assumption be converted to insured deposits or other comparable accounts in the acquiring institution, and the Board and the National Credit Union Share Insurance Fund shall be absolved of any liability to the credit union's members with respect to those accounts.

(j) Privileges not affected by disclosure to banking agency or supervisor

(1) In general

The submission by any person of any information to the Administration, any State credit union supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such Board, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such Board, supervisor, or authority.

(2) Rule of construction

No provision of paragraph (1) may be construed as implying or establishing that—

- (A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or
- (B) any person would waive any privilege applicable to any information by submitting the

information to the Administration, any State credit union supervisor, or foreign banking authority, but for this subsection.

(June 26, 1934, ch. 750, title II, §205, as added Pub. L. 91-468, §1(3), Oct. 19, 1970, 84 Stat. 1002; amended Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 96-221, title III, §305(d), title V, §523, Mar. 31, 1980, 94 Stat. 147, 166; Pub. L. 97-320, title I, §131, 141(a)(8), title VII, §706(b), Oct. 15, 1982, 96 Stat. 1486, 1489, 1540; Pub. L. 100-86, title V, §509(a), Aug. 10, 1987, 101 Stat. 635; Pub. L. 101-73, title IX, §910(b), Aug. 9, 1989, 103 Stat. 478; Pub. L. 103-322, title XXXII, §320606, Sept. 13, 1994, 108 Stat. 2119; Pub. L. 105-219, title II, §202, Aug. 7, 1998, 112 Stat. 919; Pub. L. 109-173, §2(d)(3), Feb. 15, 2006, 119 Stat. 3604; Pub. L. 109-351, title VI, §607(b), Oct. 13, 2006, 120 Stat. 1982; Pub. L. 111-203, title III, §362(2), July 21, 2010, 124 Stat. 1549; Pub. L. 117-263, div. E, title LVII, §5705(b), Dec. 23, 2022, 136 Stat. 3414.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1008 of title 18, referred to in subsec. (d)(2)(A)(i)(I), was repealed by Pub. L. 101-73, title IX, §961(g)(1), Aug. 9, 1989, 103 Stat. 500.

Paragraph (1)(B), referred to in subsec. (d)(4)(A)(iii), (5)(C)(i)(I), probably should be a reference to "paragraph (2)", meaning par. (2) of subsec. (d). See similar provisions in section 1829(c)(1)(C) and (f)(3)(B)(i) of this title, which refer to offenses described in subsec. (a)(2) of that section, which correspond to those listed in subsec. (d)(2) of this section.

The Civil Rights Act of 1964, referred to in subsec. (d)(5)(G), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VII of the Act is classified generally to subchapter VI (§2000e et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

AMENDMENTS

2022—Subsec. (d)(4) to (6). Pub. L. 117-263 added pars. (4) to (6).

2010—Subsec. (b)(2)(G)(i). Pub. L. 111-203, §362(2)(A), struck out "the Office of Thrift Supervision and" before "the Office of the Comptroller".

Subsec. (i)(1). Pub. L. 111-203, §362(2)(B), struck out "or the Federal Savings and Loan Insurance Corporation" before "to purchase".

2006—Subsec. (a). Pub. L. 109-173 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "Every insured credit union shall display at each place of business maintained by it a sign or signs indicating that its member accounts are insured by the Board and shall include in all of its advertisements a statement to the effect that its member accounts are insured by the Board. The Board may exempt from this requirement advertisements which do not relate to member accounts or advertisements in which it is impractical to include such a statement. The Board shall prescribe by regulation the forms of such signs, the manner of display, the substance of any such statement, and the manner of use."

Subsec. (j). Pub. L. 109-351 added subsec. (j).

1998—Subsec. (b)(1). Pub. L. 105-219, §202(1), substituted "Except as provided in paragraph (2), no insured credit union shall, without the prior approval of the Board" for "Except with the prior written approval of the Board, no insured credit union shall".

Subsec. (b)(2), (3). Pub. L. 105-219, §202(2), (3), added par. (2) and redesignated former par. (2) as (3).

1994—Subsec. (d). Pub. L. 103-322 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows:

"(1) PROHIBITION.—Except with the prior written consent of the Board—

"(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust may not participate, directly or indirectly, in any manner in the conduct of the affairs of an insured credit union; and

"(B) an insured credit union may not permit such participation.

"(2) PENALTY.—Whoever knowingly violates paragraph (1) shall be fined not more than \$1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both."

1989—Subsec. (d). Pub. L. 101-73 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Except with the written consent of the Board, no person shall serve as a director, officer, committee member, or employee of an insured credit union who has been convicted, or who is hereafter convicted, of any

criminal offense involving dishonesty or a breach of trust. For each willful violation of this prohibition, the credit union involved shall be subject to a penalty of not more than \$100 for each day this prohibition is violated, which the Board may recover for its use."

1987—Pub. L. 100–86 repealed Pub. L. 97–320, §141. See 1982 Amendment note below.

1982—Subsec. (f)(2). Pub. L. 97–320, §706(b), inserted provisions relating to deposits of public funds.

Subsecs. (h), (i). Pub. L. 97–320, §131, added subsecs. (h) and (i).

Pub. L. 97–320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 131 of Pub. L. 97–320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100–86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

1980—Subsec. (f). Pub. L. 96–221, §305(d), added subsec. (f).

Subsec. (g). Pub. L. 96–221, §523, added subsec. (g).

1978—Pub. L. 95–630 substituted "Board" for "Administrator" wherever appearing, and "its" for "his" where appropriate.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–173, §2(e), Feb. 15, 2006, 119 Stat. 3605, provided that: "This section [amending this section and sections 1787, 1817, 1821, 1828, 1831t, and 3104 of this title] and the amendments made by this section shall take effect on the date on which the final regulations required under section 2109(a)(2) of the Federal Deposit Insurance Reform Act of 2005 [Pub. L. 109–171, set out as a Regulations note under section 1817 of this title] take effect [Apr. 1, 2006, see 71 F.R. 14629]."

EFFECTIVE DATE OF 1980 AMENDMENT

Enactment of subsec. (f) by Pub. L. 96–221 effective at the close of Mar. 31, 1980, see section 306 of Pub. L. 96–221, set out as a note under section 1464 of this title.

Pub. L. 96–221, title V, §525, Mar. 31, 1980, 94 Stat. 167, provided that: "The amendments made by sections 521 through 523 of this title [amending this section and enacting sections 1730g and 1831d of this title] shall apply only with respect to loans made in any State during the period beginning on April 1, 1980, and ending on the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the amendments made by such sections to apply with respect to loans made in such State, except that such amendments shall apply to a loan made on or after the date such law is adopted or such certification is made if such loan is made pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

EXTENSION OF EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISIONS OF PUB. L. 97–320

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect before Aug. 10, 1987, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had been made before such date, see section 509(c) of Pub. L. 100–86, set out as a note under section 1464 of this title.

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day before Oct. 8, 1986, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had taken effect before such date, see section 1(c) of Pub. L. 99–452, set out as a note under section 1464 of this title.

Section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day

after Aug. 27, 1986, applicable as if included in Pub. L. 97-320 on Oct. 15, 1982, with no amendment made by such section to any other provision of law to be deemed to have taken effect before Aug. 27, 1986, and any such provision of law to be in effect as if no such amendment had taken effect before Aug. 27, 1986, see section 1(c) of Pub. L. 99-400, set out as a note under section 1464 of this title.

DEFINITION OF "STATE"

For purposes of subsec. (g) of this section, the term "State" to include the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands, see section 527 of Pub. L. 96-221, set out as a note under section 1735f-7a of this title.

CHOICE OF HIGHEST APPLICABLE INTEREST RATE

In any case in which one or more provisions of, or amendments made by, title V of Pub. L. 96-221, section 1735f-7 of this title, or any other provisions of law, including section 85 of this title, apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate, see section 528 of Pub. L. 96-221, set out as a note under section 1735f-7a of this title.

¹ *See References in Text note below.*

² *So in original. Probably should be preceded by "the".*

§1786. Termination of insured credit union status; cease and desist orders; removal or suspension from office; procedure

(a) Termination of insurance

(1) Any insured credit union other than a Federal credit union may, upon not less than ninety days' written notice to the Board and upon the affirmative vote of a majority of its members within one year prior to the giving of such notice, terminate its status as an insured credit union.

(2) Any insured credit union, other than a Federal credit union, which has obtained a new certificate of insurance from a corporation authorized and duly licensed to insure member accounts may upon not less than ninety days' written notice to the Board convert from status as an insured credit union under this chapter: *Provided*, That at the time of giving notice to the Board the provisions of paragraph (b)(1) of this section are not being invoked against the credit union.

(b) Unsound condition of credit union; notice to correct condition; hearing; judicial review

(1) Whenever, in the opinion of the Board, any insured credit union is engaging or has engaged in unsafe or unsound practices in conducting the business of such credit union, or is in an unsafe or unsound condition to continue operations as an insured credit union, or is violating or has violated an applicable law, rule, regulation, order, or any condition imposed in writing by the Board in connection with any action on any application, notice, or other request by the credit union or institution-affiliated party,, ¹ or is violating or has violated any written agreement entered into with the Board, the Board shall serve upon the credit union a statement with respect to such practices or conditions or violations for the purpose of securing the correction thereof. In the case of an insured State-chartered credit union, the Board shall send a copy of such statement to the commission, board, or authority, if any, having supervision of such credit union. Unless such correction shall be made within one hundred and twenty days after service of such statement, or within such shorter period of not less than twenty days after such service as the Board shall require in any case where it determines that the insurance risk with respect to such credit union could be unduly jeopardized by further delay in the correction of such practices or conditions or violations, or as the commission, board, or authority having supervision of such credit union, if any, shall require in the case of an insured State-chartered credit union, the Board, if it shall determine to proceed further, shall give to the credit union not less than thirty days' written notice of its intention to terminate the status of the credit union as an insured credit union. Such notice shall contain a statement of the facts constituting

the alleged unsafe and unsound practices or conditions or violations and shall fix a time and place for a hearing thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Board at the request of the credit union. Unless the credit union shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured credit union. In the event of such consent, or if upon the record made at any such hearing the Board shall find that any unsafe or unsound practice or condition or violation specified in the notice has been established and has not been corrected within the time above-prescribed in which to make such correction, the Board may issue and serve upon the credit union an order terminating its status as an insured credit union on a date subsequent to the date of such finding and subsequent to the expiration of the time specified in the notice.

(2) Any credit union whose insured status has been terminated by order of the Board under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (j) of this section.

(c) Notice to members of termination of insured status

In the event of the termination of a credit union's status as an insured credit union as provided under subsection (a)(1) or (b) of this section, the credit union shall give prompt and reasonable notice to all of its members whose accounts are insured that it has ceased to be an insured credit union. It may include in such notice a statement of the fact that member accounts insured on the effective date of such termination, to the extent not withdrawn, remain insured for one year from the date of such termination, but it shall not further represent itself in any manner as an insured credit union. In the event of failure to give the notice as herein provided to members whose accounts are insured, the Board is authorized to give reasonable notice.

(d) Continuation of insurance for one year; approval of conversion of status; procedure subsequent to approval; reduction of premium charges

(1) After the termination of the insured status of any credit union as provided under subsection (a)(1) or (b) of this section, insurance of its member accounts to the extent that they were insured on the effective date of such termination, less any amounts thereafter withdrawn which reduce the accounts below the amount covered by insurance on the effective date of such termination, shall continue for a period of one year, but no shares issued by the credit union or deposits made after the date of such termination shall be insured by the Board. The credit union shall continue to maintain its deposit with and pay premiums to the Board during such period as in the case of an insured credit union and the Board shall have the right to examine such credit union from time to time during the period during which such insurance continues. Such credit union shall, in all other respects, be subject to the duties and obligations of an insured credit union for the period of one year from the date of such termination. In the event that such credit union shall be closed for liquidation within such period of one year, the Board shall have the same powers and rights with respect to such credit union as in the case of an insured credit union. Notwithstanding the above, when an insured credit union's insured status is terminated and the credit union subsequently obtains comparable insurance coverage from another source, insurance of its accounts by the fund may cease immediately upon the effective date of such comparable coverage by mutual consent of the credit union and the Board.

(2) No credit union shall convert from status as an insured credit union under this chapter as provided under subsection (a)(2) of this section until the proposition for such conversion has been approved by a majority of all the directors of the credit union, and by affirmative vote of a majority of the members of the credit union who vote on the proposition in a vote in which at least 20 per centum of the total membership of the credit union participates. Following approval by the directors, written notice of the proposition and of the date set for the membership vote shall be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty nor less than seven days prior to such date. The membership shall be given the opportunity to vote by mail ballot. If the proposition is approved by the membership, prompt and reasonable notice of insurance conversion shall be given to all members.

(3) In the event of a conversion of a credit union from status as an insured credit union under this chapter as provided under subsection (a)(2) of this section, premium charges payable under section 1782(c) of this title shall be reduced by an amount proportionate to the number of calendar months for which the converting credit union will no longer be insured under this chapter. As long as a converting credit union remains insured under this chapter, it shall remain subject to all of the provisions of this subchapter.

(e) Opinion of Board as to unsound condition of credit union; notice of charges; hearing; order to cease and desist; judicial review

(1) If, in the opinion of the Board, any insured credit union, credit union which has insured accounts, or any institution-affiliated party is engaging or has engaged, or the Board has reasonable cause to believe that the credit union or any institution-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of such credit union, or is violating or has violated, or the Board has reasonable cause to believe that the credit union or any institution-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Board in connection with the granting of any application or other request by the credit union or any written agreement entered into with the Board, the Board may issue and serve upon the credit union or such party a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the credit union or the institution-affiliated party. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Board at the request of any party so served. Unless the party or parties so served shall appear at the hearing by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the Board shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board may issue and serve upon the credit union or the institution-affiliated party an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the credit union or its institution-affiliated parties to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the credit union or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

(3) **AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.**—The authority to issue an order under this subsection and subsection (f) which requires an insured credit union or any institution-affiliated party to take affirmative action to correct any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such insured credit union or such party to—

(A) make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(i) such credit union or such party was unjustly enriched in connection with such violation or practice; or

(ii) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Board;

(B) restrict the growth of the institution;

(C) rescind agreements or contracts;

(D) dispose of any loan or asset involved;

(E) employ qualified officers or employees (who may be subject to approval by the Board at the direction of such Board); and

(F) take such other action as the Board determines to be appropriate.

(4) **AUTHORITY TO LIMIT ACTIVITIES.**—The authority to issue an order under this subsection or subsection (f) includes the authority to place limitations on the activities or functions of an insured credit union or any institution-affiliated party.

(f) Temporary cease and desist order; injunctive procedure

(1) Whenever the Board shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the credit union or any institution-affiliated party pursuant to paragraph (1) of subsection (e) of this section, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the credit union, or is likely to weaken the condition of the credit union or otherwise prejudice the interests of its insured members prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (e) of this section, the Board may issue a temporary order requiring the credit union or such party to cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under subsection (e)(3). Such order shall become effective upon service upon the credit union or such institution-affiliated party and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Administration shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the credit union or such party, until the effective date of such order.

(2) Within ten days after the credit union concerned or any institution-affiliated party has been served with a temporary cease-and-desist order, the credit union or such party may apply to the United States district court for the judicial district in which the home office of the credit union is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the credit union or such party under paragraph (1) of subsection (e) of this section, and such court shall have jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) **TEMPORARY ORDER.**—If a notice of charges served under subsection (e)(1) specifies, on the basis of particular facts and circumstances, that an insured credit union's books and records are so incomplete or inaccurate that the Board is unable, through the normal supervisory process, to determine the financial condition of that insured credit union or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that insured credit union, the Board may issue a temporary order requiring—

- (i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or
- (ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (e)(1).

(B) **EFFECTIVE PERIOD.**—Any temporary order issued under subparagraph (A)—

- (i) shall become effective upon service; and
- (ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (e)(1) in connection with the notice of charges; or

(II) the date the Board determines, by examination or otherwise, that the insured credit union's books and records are accurate and reflect the financial condition of the credit union.

(4) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order, the Board may apply to the United States district court, or the United States

court of any territory, within the jurisdiction of which the principal office of the credit union is located for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

(g) Removal and prohibition authority

(1) **AUTHORITY TO ISSUE ORDER.**—Whenever the Board determines that—

(A) any institution-affiliated party has, directly or indirectly—

(i) violated—

(I) any law or regulation;

(II) any cease-and-desist order which has become final;

(III) any condition imposed in writing by the Board in connection with any action on any application, notice, or request by such credit union or institution-affiliated party; or

(IV) any written agreement between such credit union and the Board;

(ii) engaged or participated in any unsafe or unsound practice in connection with any insured credit union or business institution; or

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

(B) by reason of the violation, practice, or breach described in any clause of subparagraph

(A)—

(i) such insured credit union or business institution has suffered or will probably suffer financial loss or other damage;

(ii) the interests of the insured credit union's members have been or could be prejudiced; or

(iii) such party has received financial gain or other benefit by reason of such violation, practice or breach; and

(C) such violation, practice, or breach—

(i) involves personal dishonesty on the part of such party; or

(ii) demonstrates such party's unfitness to serve as a director or officer of, or to otherwise participate in the conduct of the affairs of, an insured credit union,

the Board may serve upon such party a written notice of the Board's intention to remove such party from office or to prohibit any further participation, by such party, in any manner in the conduct of the affairs of any insured credit union.

(2) **SPECIFIC VIOLATIONS.**—

(A) **IN GENERAL.**—Whenever the Board determines that—

(i) an institution-affiliated party has committed a violation of any provision of subchapter II of chapter 53 of title 31, unless such violation was inadvertent or unintentional;

(ii) an officer or director of an insured credit union has knowledge that an institution-affiliated party of the insured credit union has violated any such provision or any provision of law referred to in subsection (i)(1)(A)(ii); or

(iii) an officer or director of an insured credit union has committed any violation of the Depository Institution Management Interlocks Act [12 U.S.C. 3201 et seq.],

the Board may serve upon such party, officer, or director a written notice of the Board's intention to remove such officer or director from office.

(B) **FACTORS TO BE CONSIDERED.**—In determining whether an officer or director should be removed as a result of the application of subparagraph (A)(ii), the Board shall consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.

(3) **SUSPENSION ORDER.**—

(A) **SUSPENSION OR PROHIBITION AUTHORIZED.**—If the Board serves written notice under paragraph (1) or (2) to any institution-affiliated party of the Board's intention to issue an order under such paragraph, the Board may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the institution, if the Board—

(i) determines that such action is necessary for the protection of the credit union or the interests of the credit union's members; and

(ii) serves such person with written notice of the suspension order.

(B) **EFFECTIVE PERIOD.**—Any suspension order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless a court issues a stay of such order under paragraph (6), shall remain in effect and enforceable until—

(I) the date the Board dismisses the charges contained in the notice served under paragraph (1) or (2) with respect to such party; or

(II) the effective date of an order issued by the Board to such person under paragraph (1) or (2).

(C) **COPY OF ORDER.**—If the Board issues a suspension order under subparagraph (A) to any institution-affiliated party, the Board shall serve a copy of such order on any insured credit union with which such party is associated at the time such order is issued.

(4) A notice of intention to remove a director, committee member, officer, or other person from office or to prohibit his participation in the conduct of the affairs of an insured credit union, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Board at the request of (A) such director, committee member, or officer or other person, and for good cause shown, or (B) the Attorney General of the United States. Unless such director, committee member, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Board shall find that any of the grounds specified in such notice have been established, the Board may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the credit union, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such credit union and the director, committee member, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

(5) **PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.**—Any person subject to an order issued under this subsection shall not—

(A) participate in any manner in the conduct of the affairs of any institution or agency specified in paragraph (7)(A);

(B) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in subparagraph (A);

(C) violate any voting agreement previously approved by the appropriate Federal banking agency; or

(D) vote for a director, or serve or act as an institution-affiliated party.

(6) Within ten days after any director, officer, committee member, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured credit union under paragraph (3) of this subsection, such director, officer, committee member, or

other person may apply to the United States district court for the judicial district in which the principal office of the credit union is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, committee member, or other person under paragraph (1) or (2) of this subsection, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(7) INDUSTRYWIDE PROHIBITION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any person who, pursuant to an order issued under this subsection or subsection (i), has been removed or suspended from office in an insured credit union or prohibited from participating in the conduct of the affairs of an insured credit union may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of—

- (i) any insured depository institution;
- (ii) any institution treated as an insured bank under paragraph (3) or (4) of section 1818(b) of this title, or as a savings association under section 1818(b)(9) of this title;
- (iii) any insured credit union;
- (iv) any institution chartered under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.];
- (v) any appropriate Federal financial institution regulatory agency; and
- (vi) the Federal Housing Finance Agency and any Federal home loan bank.

(B) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this subsection which removes or suspends from office any institution-affiliated party or prohibits such party from participating in the conduct of the affairs of an insured credit union, such party receives the written consent of—

- (i) the Board; and
- (ii) the appropriate Federal financial institutions regulatory agency of the institution described in any clause of subparagraph (A) with respect to which such party proposes to become an institution-affiliated party,

subparagraph (A) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in each written consent. If any person receives such a written consent from the Board, the Board shall publicly disclose such consent. If the agency referred to in clause (ii) grants such a written consent, such agency shall report such action to the Board and publicly disclose such consent.

(C) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of subparagraph (A) by any person who is subject to an order described in such subparagraph shall be treated as a violation of the order.

(D) "APPROPRIATE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCY" DEFINED.—For purposes of this paragraph, the term "appropriate Federal financial institutions regulatory agency" means—

- (i) the appropriate Federal banking agency, as provided in section 1813(q) of this title;
- (ii) the Farm Credit Administration, in the case of an institution chartered under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.];
- (iii) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 1752(7) of this title); and
- (iv) the Secretary of the Treasury, in the case of the Federal Housing Finance Agency and any Federal home loan bank; ²

(E) CONSULTATION BETWEEN AGENCIES.—The agencies referred to in clauses (i) and (ii) of subparagraph (B) shall consult with each other before providing any written consent described in subparagraph (B).

(F) APPLICABILITY.—This paragraph shall only apply to a person who is an individual, unless the Board specifically finds that it should apply to a corporation, firm, or other business

enterprise.

(h) Board's appointment of conservator; consultation with State; authority

(1) The Board may, *ex parte* without notice, appoint itself or another (including, in the case of a State-chartered insured credit union, the State official having jurisdiction over the credit union) as conservator and immediately take possession and control of the business and assets of any insured credit union in any case in which—

(A) the Board determines that such action is necessary to conserve the assets of any insured credit union or to protect the Fund or the interests of the members of such insured credit union;

(B) an insured credit union, by a resolution of its board of directors, consents to such an action by the Board;

(C) the Attorney General notifies the Board in writing that an insured credit union has been found guilty of a criminal offense under section 1956 or 1957 of title 18 or section 5322 or 5324 of title 31;

(D) there is a willful violation of a cease-and-desist order which has become final;

(E) there is concealment of books, papers, records, or assets of the credit union or refusal to submit books, papers, records, or affairs of the credit union for inspection to any examiner or to any lawful agent of the Board;

(F) the credit union is significantly undercapitalized, as defined in section 1790d of this title, and has no reasonable prospect of becoming adequately capitalized, as defined in section 1790d of this title; or

(G) the credit union is critically undercapitalized, as defined in section 1790d of this title.

(2)(A) Except as provided in subparagraph (C), in the case of a State-chartered insured credit union, the authority conferred by paragraph (1) shall not be exercised without the written approval of the State official having jurisdiction over the State-chartered credit union that the grounds specified for such exercise exist.

(B) If such approval has not been received by the Board within 30 days of receipt of notice by the State that the Board has determined such grounds exist, and the Board has responded in writing to the State's written reasons, if any, for withholding approval, then the Board may proceed without State approval only by a unanimous vote of the Board.

(C) In the case of a State-chartered insured credit union, the authority conferred by subparagraphs (F) and (G) of paragraph (1) may not be exercised unless the Board has complied with section 1790d(l) of this title.

(3) Not later than ten days after the date on which the Board takes possession and control of the business and assets of an insured credit union pursuant to paragraph (1), such insured credit union may apply to the United States district court for the judicial district in which the principal office of such insured credit union is located or the United States District Court for the District of Columbia, for an order requiring the Board to show cause why it should not be enjoined from continuing such possession and control. Except as provided in this paragraph, no court may take any action, except at the request of the Board by regulation or order, to restrain or affect the exercise of powers or functions of the Board as conservator.

(4) Except as provided in paragraph (3), in the case of a Federal credit union, the Board may maintain possession and control of the business and assets of such credit union and may operate such credit union until such time—

(A) as the Board shall permit such credit union to continue business subject to such terms and conditions as may be imposed by the Board; or

(B) as such credit union is liquidated in accordance with the provisions of section 1787 of this title.

(5) Except as provided in paragraph (3), in the case of an insured State-chartered credit union, the Board may maintain possession and control of the business and assets of such credit union and may operate such credit union until such time—

(A) as the Board shall permit such credit union to continue business, subject to such terms and

conditions as may be imposed by the Board;

(B) as the Board shall permit the transfer of possession and control of such credit union to any commission, board, or authority which has supervisory authority over such credit union and which is authorized by State law to operate such credit union; or

(C) as such credit union is liquidated in accordance with the provisions of section 1787 of this title.

(6) The Board may appoint such agents as it considers necessary in order to assist the Board in carrying out its duties as a conservator under this subsection.

(7) All expenses incurred by the Board in exercising its authority under this subsection with respect to any credit union shall be paid out of the assets of such credit union.

(8) The conservator shall have all the powers of the members, the directors, the officers, and the committees of the credit union and shall be authorized to operate the credit union in its own name or to conserve its assets in the manner and to the extent authorized by the Board.

(9) The authority granted by this subsection is in addition to all other authority granted to the Board under this chapter.

(i) Suspension, removal, and prohibition from participation orders in the case of certain criminal offenses

(1) SUSPENSION OR PROHIBITION AUTHORIZED.—

(A) IN GENERAL.—Whenever any institution-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in—

(i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or

(ii) a criminal violation of section 1956, 1957, or 1960 of title 18 or section 5322 or 5324 of title 31,

the Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in any credit union, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any credit union.

(B) PROVISIONS APPLICABLE TO NOTICE.—

(i) COPY.—A copy of any notice under subparagraph (A) shall also be served upon the credit union of which the subject of the order is, or most recently was, an institution-affiliated party.

(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the Board.

(C) REMOVAL OR PROHIBITION.—

(i) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an institution-affiliated party in connection with a crime described in subparagraph (A)(i), at such time as such judgment is not subject to further appellate review, the Board may, if continued service or participation by such party may pose a threat to the interests of any credit union's members or may threaten to impair public confidence in any credit union, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of any credit union without the prior written consent of the Board.

(ii) REQUIRED FOR CERTAIN OFFENSES.—In the case of a judgment of conviction or agreement against an institution-affiliated party in connection with a violation described in subparagraph (A)(ii), the Board shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of any credit union without the prior written consent of the Board.

(D) PROVISIONS APPLICABLE TO ORDER.—

(i) COPY.—A copy of any order under subparagraph (C) shall also be served upon the credit union of which the subject of the order is, or most recently was, an institution-affiliated party, whereupon such party (if a director or an officer) shall cease to be a director or officer of such credit union.

(ii) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the Board from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in credit union affairs, pursuant to paragraph (1), (2), or (3) of subsection (g) of this section.

(iii) EFFECTIVE PERIOD.—Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the Board.

(E) CONTINUATION OF AUTHORITY.—The Board may issue an order under this paragraph with respect to an individual who is an institution-affiliated party at a credit union at the time of an offense described in subparagraph (A) without regard to—

(i) whether such individual is an institution-affiliated party at any credit union at the time the order is considered or issued by the Board; or

(ii) whether the credit union at which the individual was an institution-affiliated party at the time of the offense remains in existence at the time the order is considered or issued by the Board.

(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a Federal credit union less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a Federal credit union are suspended pursuant to this section, the Board shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the credit union and their respective successors have been elected by the members at an annual or special meeting and have taken office. Directors appointed temporarily by the Board shall, within thirty days following their appointment, call a special meeting for the election of new directors, unless during the thirty-day period (A) the regular annual meeting is scheduled, or (B) the suspensions giving rise to the appointment of temporary directors are terminated.

(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the institution-affiliated party concerned may request in writing an opportunity to appear before the Board to show that the continued service to or participation in the conduct of the affairs of the credit union by such party does not, or is not likely to, pose a threat to the interests of the credit union's members or threaten to impair public confidence in the credit union. Upon receipt of any such request, the Board shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before the Board or its designee to submit written materials (or, at the discretion of the Board, oral testimony) and oral argument. Within sixty days of such hearing, the Board shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the credit union will be continued, terminated or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the credit union will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Board's decision, if adverse to such party. The Board is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(j) Jurisdiction of hearing; procedure; judicial review

(1) Any hearing provided for in this section (other than the hearing provided for in subsection

(i)(3) of this section) shall be held in the Federal judicial district or in the territory in which the principal office of the credit union is located, unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5. After such hearing, and within ninety days after the Board has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (j). Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Board may at any time, upon such notice and in such manner as it may deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Board may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the credit union or the institution-affiliated party concerned or an order issued under subsection (i)(1) of this section) by filing in the court of appeals of the United States for the circuit in which the principal office of the credit union is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Board be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall, except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Board. Review of such proceedings shall be had as provided in chapter 7 of title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Board.

(k) Jurisdiction and enforcement; penalty

(1) The Board may in its discretion apply to the United States district court, or the United States court of any territory within the jurisdiction of which the principal office of the credit union is located, for the enforcement of any effective and outstanding notice or order issued under this section or section 1790d of this title, and such courts shall have jurisdiction and power to order and require compliance therewith. However, except as otherwise provided in this section or section 1790d of this title, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section or section 1790d of this title or to review, modify, suspend, terminate, or set aside any such notice or order.

(2) CIVIL MONEY PENALTY.—

(A) FIRST TIER.—Any insured credit union which, and any institution-affiliated party who—

- (i) violates any law or regulation;
- (ii) violates any final order or temporary order issued pursuant to subsection (e), (f), (g), (i), or (q), or any final order under section 1790d of this title;
- (iii) violates any condition imposed in writing by the Board in connection with any action on any application, notice, or other request by the credit union or institution-affiliated party; or
- (iv) violates any written agreement between such credit union and such agency,

shall forfeit and pay a civil penalty of not more than \$5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding subparagraph (A), any insured credit union which, and any institution-affiliated party who—

- (i)(I) commits any violation described in any clause of subparagraph (A);

(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of such credit union; or

(III) breaches any fiduciary duty;

(ii) which violation, practice, or breach—

(I) is part of a pattern of misconduct;

(II) causes or is likely to cause more than a minimal loss to such credit union; or

(III) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation, practice, or breach continues.

(C) **THIRD TIER.**—Notwithstanding subparagraphs (A) and (B), any insured credit union which, and any institution-affiliated party who—

(i) knowingly—

(I) commits any violation described in any clause of subparagraph (A);

(II) engages in any unsafe or unsound practice in conducting the affairs of such credit union; or

(III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such credit union or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) **MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).**—The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

(i) in the case of any person other than an insured credit union, an amount to not ³ exceed \$1,000,000; and

(ii) in the case of any insured credit union, an amount not to exceed the lesser of—

(I) \$1,000,000; or

(II) 1 percent of the total assets of such credit union.

(E) **ASSESSMENT.**—

(i) **WRITTEN NOTICE.**—Any penalty imposed under subparagraph (A), (B), or (C) may be assessed and collected by the Board by written notice.

(ii) **FINALITY OF ASSESSMENT.**—If, with respect to any assessment under clause (i), a hearing is not requested pursuant to subparagraph (H) within the period of time allowed under such subparagraph, the assessment shall constitute a final and unappealable order.

(F) **AUTHORITY TO MODIFY OR REMIT PENALTY.**—The Board may compromise, modify, or remit any penalty which such agency may assess or had already assessed under subparagraph (A), (B), or (C).

(G) **MITIGATING FACTORS.**—In determining the amount of any penalty imposed under subparagraph (A), (B), or (C), the Board shall take into account the appropriateness of the penalty with respect to—

(i) the size of financial resources and good faith of the insured credit union or the person charged;

(ii) the gravity of the violation;

(iii) the history of previous violations; and

(iv) such other matters as justice may require.

(H) HEARING.—The insured credit union or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

(I) COLLECTION.—

(i) REFERRAL.—If any insured credit union or other person fails to pay an assessment after any penalty assessed under this paragraph has become final, the Board shall recover the amount assessed by action in the appropriate United States district court.

(ii) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any civil action under clause (i), the validity and appropriateness of the penalty shall not be subject to review.

(J) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(K) "VIOLATE" DEFINED.—For purposes of this section, the term "violate" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(L) REGULATIONS.—The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

(3) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of a institution-affiliated party (including a separation caused by the closing of an insured credit union) shall not affect the jurisdiction and authority of the Board to issue any notice or order and proceed under this section against any such party, if such notice or order is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such credit union (whether such date occurs before, on, or after August 9, 1989).

(l) Criminal penalty for violation of certain orders

Whoever—

(1) under this chapter, is suspended or removed from, or prohibited from participating in the affairs of any credit union described in subsection (g)(5); and

(2) knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order or in subsection (g)(5)) in the conduct of the affairs of such a credit union;

shall be fined not more than \$1,000,000, imprisoned for not more than 5 years, or both.

(m) Definitions

As used in this section (1) the terms "cease-and-desist order which has become final" and "order which has become final" means a cease-and-desist order, or an order issued by the Board with the consent of the credit union or the director, officer, committee member, or other person concerned, or with respect to which no petition for review of the action of the Board has been filed and perfected in a court of appeals as specified in paragraph (2) of subsection (j) of this section, or with respect to which the action of the court in which said petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in said paragraph, or an order issued under subsection (i) of this section, and (2) the term "violation" includes, without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(n) Notice or order to State board supervising State-chartered credit union

Any service required or authorized to be made by the Board under this section may be made by registered mail or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide. Copies of any notice or order served by the Board upon any

State-chartered credit union or any director, officer, or committee member thereof or other person participating in the conduct of its affairs, pursuant to the provisions of this section, shall also be sent to the commission, board, or authority, if any, having supervision of such credit union.

(o) Notice of proceedings to State board supervising State-chartered credit union; effect of corrective action by State board; attack on validity of notice or order

In connection with any proceeding under subsection (e), (f)(1), or (g) of this section involving an insured State-chartered credit union or any institution-affiliated party, the Board shall provide the commission, board, or authority, if any, having supervision of such credit union, with notice of its intent to institute such a proceeding and the grounds thereof. Unless within such time as the Board deems appropriate in the light of the circumstances of the case (which time must be specified in the notice prescribed in the preceding sentence) satisfactory corrective action is effectuated by action of such commission, board, or authority, the Board may proceed as provided in this section. No credit union or other party who is the subject of any notice or order issued by the Board under this section shall have standing to raise the requirements of this subsection as ground for attacking the validity of any such notice or order.

(p) Proceedings; powers of Board; court enforcement of subpoenas; witness fees; expenses and attorneys' fees

In the course of or in connection with any proceeding under this section or in connection with any claim for insured deposits or any examination or investigation under section 1784(b) of this title, the Board, in conducting the proceeding, examination, or investigation or considering the claim for insured deposits, ¹ or any designated representative thereof, including any person designated to conduct any hearing under this section, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum, and the Board is empowered to make rules and regulations with respect to any such proceedings, claims, examinations, or investigations. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceedings instituted under this section by an insured credit union or a director, officer, or committee member thereof may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper, and such expenses and fees shall be paid by the credit union or from its assets.

(q) Compliance with monetary transaction recordkeeping and report requirements

(1) Compliance procedures required

The Board shall prescribe regulations requiring insured credit unions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such credit unions with the requirements of subchapter II of chapter 53 of title 31.

(2) Examinations of credit unions to include review of compliance procedures

(A) In general

Each examination of an insured credit union by the Board shall include a review of the procedures required to be established and maintained under paragraph (1).

(B) Exam report requirement

The report of examination shall describe any problem with the procedures maintained by the

credit union.

(3) Order to comply with requirements

If the Board determines that an insured credit union—

- (A) has failed to establish and maintain the procedures described in paragraph (1); or
- (B) has failed to correct any problem with the procedures maintained by such credit union which was previously reported to the credit union by the Board,

the Board shall issue an order in the manner prescribed in subsection (e) or (f) requiring such credit union to cease and desist from its violation of this subsection or regulations prescribed under this subsection.

(r) "Institution-affiliated party" defined

For purposes of this chapter, the term "institution-affiliated party" means—

- (1) any committee member, director, officer, or employee of, or agent for, an insured credit union;
- (2) any consultant, joint venture partner, and any other person as determined by the Board (by regulation or on a case-by-case basis) who participates in the conduct of the affairs of an insured credit union; and
- (3) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—
 - (A) any violation of any law or regulation;
 - (B) any breach of fiduciary duty; or
 - (C) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured credit union.

(s) Public disclosure of agency action

(1) In general

The Board shall publish and make available to the public on a monthly basis—

- (A) any written agreement or other written statement for which a violation may be enforced by the Board, unless the Board, in its discretion, determines that publication would be contrary to the public interest;
- (B) any final order issued with respect to any administrative enforcement proceeding initiated by the Board under this section or any other law; and
- (C) any modification to or termination of any order or agreement made public pursuant to this paragraph.

(2) Hearings

All hearings on the record with respect to any notice of charges issued by the Board shall be open to the public, unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

(3) Reports to Congress

A written report shall be made part of a determination not to hold a public hearing pursuant to paragraph (2) or not to publish a document pursuant to paragraph (1)(A). At the end of each calendar quarter, all such reports shall be transmitted to the Congress.

(4) Transcript of hearing

A transcript that includes all testimony and other documentary evidence shall be prepared for all hearings commenced pursuant to subsection (k). A transcript of public hearings shall be made available to the public pursuant to section 552 of title 5.

(5) Delay of publication under exceptional circumstances

If the Board makes a determination in writing that the publication of a final order pursuant to

paragraph (1)(B) would seriously threaten the safety and soundness of an insured depository institution, the agency may delay the publication of the document for a reasonable time.

(6) Documents filed under seal in public enforcement hearings

The Board may file any document or part of a document under seal in any administrative enforcement hearing commenced by the agency if disclosure of the document would be contrary to the public interest. A written report shall be made part of any determination to withhold any part of a document from the transcript of the hearing required by paragraph (2).

(7) Retention of documents

The Board shall keep and maintain a record, for a period of at least 6 years, of all documents described in paragraph (1) and all informal enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any administrative enforcement proceeding initiated by such agency under this section or any other laws.

(8) Disclosures to Congress

No provision of this subsection may be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee of the Congress.

(9) Preservation of records

(A) In general

The Board may cause any and all records, papers, or documents kept by the Administration or in the possession or custody of the Administration to be—

- (i) photographed or microphotographed or otherwise reproduced upon film; or
- (ii) preserved in any electronic medium or format which is capable of—
 - (I) being read or scanned by computer; and
 - (II) being reproduced from such electronic medium or format by printing or any other form of reproduction of electronically stored data.

(B) Treatment as original records

Any photographs, micrographs, or photographic film or copies thereof described in subparagraph (A)(i) or reproduction of electronically stored data described in subparagraph (A)(ii) shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies, and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

(C) Authority of the administration

Any photographs, microphotographs, or photographic film or copies thereof described in subparagraph (A)(i) or reproduction of electronically stored data described in subparagraph (A)(ii) shall be preserved in such manner as the Administration shall prescribe, and the original records, papers, or documents may be destroyed or otherwise disposed of as the Administration may direct.

(t) Regulation of certain forms of benefits to institution-affiliated parties

(1) Golden parachutes and indemnification payments

The Board may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

(2) Factors to be taken into account

The Board shall prescribe, by regulation, the factors to be considered by the Board in taking any action pursuant to paragraph (1) which may include such factors as the following:

- (A) Whether there is a reasonable basis to believe that the institution-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the credit union that has had a material affect on the financial condition of the credit union.

(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for the insolvency of the credit union, the appointment of a conservator or liquidating agent for the credit union, or the credit union's troubled condition (as defined in regulations prescribed by the Board pursuant to paragraph (4)(A)(ii)(III)).

(C) Whether there is a reasonable basis to believe that the institution-affiliated party has materially violated any applicable Federal or State banking law or regulation that has had a material effect on the financial condition of the credit union.

(D) Whether there is a reasonable basis to believe that the institution-affiliated party has violated or conspired to violate—

- (i) section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18; or
- (ii) section 1341 or 1343 of such title affecting a financial institution.

(E) Whether the institution-affiliated party was in a position of managerial or fiduciary responsibility.

(F) The length of time the party was affiliated with the credit union and the degree to which—

- (i) the payment reasonably reflects compensation earned over the period of employment; and
- (ii) the compensation involved represents a reasonable payment for services rendered.

(3) Certain payments prohibited

No credit union may prepay the salary or any liability or legal expense of any institution-affiliated party if such payment is made—

(A) in contemplation of the insolvency of such credit union or after the commission of an act of insolvency; and

(B) with a view to, or has the result of—

- (i) preventing the proper application of the assets of the credit union; or
- (ii) preferring one creditor over another.

(4) "Golden parachute payment" defined

For purposes of this subsection—

(A) In general

The term "golden parachute payment" means any payment (or any agreement to make any payment) in the nature of compensation by any credit union for the benefit of any institution-affiliated party pursuant to an obligation of such credit union that—

- (i) is contingent on the termination of such party's affiliation with the credit union; and
- (ii) is received on or after the date on which—

(I) the credit union is insolvent;

(II) any conservator or liquidating agent is appointed for such credit union;

(III) the Board determines that the credit union is in a troubled condition (as defined in regulations which the Board shall prescribe);

(IV) the credit union has been assigned a composite rating by the Board of 4 or 5 under the Uniform Financial Institutions Rating System (as applicable with respect to credit unions); or

(V) the credit union is subject to a proceeding initiated by the Board to terminate or suspend deposit insurance for such credit union.

(B) Certain payments in contemplation of an event

Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

(C) Certain payments not included

The term "golden parachute payment" shall not include—

- (i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of title 26 or other nondiscriminatory retirement or severance benefit plan;
- (ii) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Board determines, by regulation or order, to be permissible; or
- (iii) any payment made by reason of the death or disability of an institution-affiliated party.

(5) Other definitions

For purposes of this subsection—

(A) Indemnification payment

Subject to paragraph (6), the term "indemnification payment" means any payment (or any agreement to make any payment) by any credit union for the benefit of any person who is or was an institution-affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the Board which results in a final order under which such person—

- (i) is assessed a civil money penalty;
 - (ii) is removed or prohibited from participating in conduct of the affairs of the credit union;
- or
- (iii) is required to take any affirmative action described in subsection (e)(3) with respect to such credit union.

(B) Liability or legal expense

The term "liability or legal expense" means—

- (i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;
- (ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and
- (iii) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(C) Payment

The term "payment" includes—

- (i) any direct or indirect transfer of any funds or any asset; and
- (ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—
 - (I) the determination, after such date, of the liability for the payment of such amount; or
 - (II) the liquidation, after such date, of the amount of such payment.

(6) Certain commercial insurance coverage not treated as covered benefit payment

No provision of this subsection shall be construed as prohibiting any credit union from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any legal or liability expense of the credit union which is described in paragraph (5)(A).

(u) Foreign investigations

(1) Requesting assistance from foreign banking authorities

In conducting any investigation, examination, or enforcement action under this chapter, the Board may—

- (A) request the assistance of any foreign banking authority; and
- (B) maintain an office outside the United States.

(2) Providing assistance to foreign banking authorities

(A) In general

The Board may, at the request of any foreign banking authority, assist such authority if such authority states that the requesting authority is conducting an investigation to determine whether any person has violated, is violating, or is about to violate any law or regulation relating to banking matters or currency transactions administered or enforced by the requesting authority.

(B) Investigation by Federal banking agency

The Board may, in the Board's discretion, investigate and collect information and evidence pertinent to a request for assistance under subparagraph (A). Any such investigation shall comply with the laws of the United States and the policies and procedures of the Board.

(C) Factors to consider

In deciding whether to provide assistance under this paragraph, the Board shall consider—

(i) whether the requesting authority has agreed to provide reciprocal assistance with respect to banking matters within the jurisdiction of the Board or any appropriate Federal banking agency; and

(ii) whether compliance with the request would prejudice the public interest of the United States.

(D) Treatment of foreign banking authority

For purposes of any Federal law or Board regulation relating to the collection or transfer of information by the Board or any appropriate Federal banking agency, the foreign banking authority shall be treated as another appropriate Federal banking agency.

(3) Rule of construction

Paragraphs (1) and (2) shall not be construed to limit the authority of the Board or any other Federal agency to provide or receive assistance or information to or from any foreign authority with respect to any matter.

(v) Termination of insurance for money laundering or cash transaction reporting offenses

(1) In general

(A) Conviction of title 18 offenses

(i) Duty to notify

If an insured State credit union has been convicted of any criminal offense under section 1956 or 1957 of title 18, the Attorney General shall provide to the Board a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

(ii) Notice of termination

After written notification from the Attorney General to the Board of such a conviction, the Board shall issue to such insured credit union a notice of its intention to terminate the insured status of the insured credit union and schedule a hearing on the matter, which shall be conducted as a termination hearing pursuant to subsection (b) of this section, except that no period for correction shall apply to a notice issued under this subparagraph.

(B) Conviction of title 31 offenses

If a credit union is convicted of any criminal offense under section 5322 or 5324 of title 31 after prior written notification from the Attorney General, the Board may initiate proceedings to terminate the insured status of such credit union in the manner described in subparagraph (A).

(C) Notice to State supervisor

The Board shall simultaneously transmit a copy of any notice under this paragraph to the appropriate State financial institutions supervisor.

(2) Factors to be considered

In determining whether to terminate insurance under paragraph (1), the Board shall take into account the following factors:

(A) The extent to which directors, committee members, or senior executive officers (as defined by the Board in regulations which the Board shall prescribe) of the credit union knew of, or were involved in, the commission of the money laundering offense of which the credit union was found guilty.

(B) The extent to which the offense occurred despite the existence of policies and procedures within the credit union which were designed to prevent the occurrence of any such offense.

(C) The extent to which the credit union has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the credit union was found guilty.

(D) The extent to which the credit union has implemented additional internal controls (since the commission of the offense of which the credit union was found guilty) to prevent the occurrence of any other money laundering offense.

(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the termination of insurance.

(3) Notice to State credit union supervisor and public

When the order to terminate insured status initiated pursuant to this subsection is final, the Board shall—

(A) notify the commission, board, or authority (if any) having supervision of the credit union described in paragraph (1) at least 10 days prior to the effective date of the order of the termination of the insured status of such credit union; and

(B) publish notice of the termination of the insured status of the credit union.

(4) Temporary insurance of previously insured deposits

Upon termination of the insured status of any State credit union pursuant to paragraph (1), the deposits of such credit union shall be treated in accordance with subsection (d)(2).

(5) Successor liability

This subsection shall not apply to a successor to the interests of, or a person who acquires, an insured credit union that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

(w) One-year restrictions on Federal examiners of insured credit unions

(1) In general

In addition to other applicable restrictions set forth in title 18, the penalties set forth in paragraph (5) of this subsection shall apply to any person who—

(A) was an officer or employee (including any special Government employee) of the Administration;

(B) served 2 or more months during the final 12 months of his or her employment with the Administration as the senior examiner (or a functionally equivalent position) of an insured credit union with continuing, broad responsibility for the examination (or inspection) of that insured credit union on behalf of the Administration; and

(C) within 1 year after the termination date of his or her service or employment with the Administration, knowingly accepts compensation as an employee, officer, director, or consultant from such insured credit union.

(2) Rule of construction

For purposes of this subsection, a person shall be deemed to act as a consultant for an insured credit union only if such person directly works on matters for, or on behalf of, such insured credit union.

(3) Regulations

(A) In general

The Board shall prescribe rules or regulations to administer and carry out this subsection, including rules, regulations, or guidelines to define the scope of persons referred to in paragraph (1)(B).

(B) Consultation

In prescribing rules or regulations under this paragraph, the Board shall, to the extent it deems necessary, consult with the Federal banking agencies (as defined in section 1813 of this title) on regulations issued by such agencies in carrying out section 1820(k) of this title.

(4) Waiver

The Board may grant a waiver, on a case by case basis, of the restriction imposed by this subsection to any officer or employee (including any special Government employee) of the Administration if the Chairman certifies in writing that granting the waiver would not affect the integrity of the supervisory program of the Administration.

(5) Penalties

(A) In general

In addition to any other administrative, civil, or criminal remedy or penalty that may otherwise apply, whenever the Board determines that a person subject to paragraph (1) has become associated, in the manner described in paragraph (1)(C), with an insured credit union, the Board shall impose upon such person one or more of the following penalties:

(i) Industry-wide prohibition order

The Board shall serve a written notice or order in accordance with and subject to the provisions of subsection (g)(4) for written notices or orders under paragraph (1) or (2) of subsection (g), upon such person of the intention of the Board—

(I) to remove such person from office or to prohibit such person from further participation in the conduct of the affairs of the insured credit union for a period of up to 5 years; and

(II) to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any insured credit union for a period of up to 5 years.

(ii) Civil monetary penalty

The Board may, in an administrative proceeding or civil action in an appropriate United States district court, impose on such person a civil monetary penalty of not more than \$250,000. Any administrative proceeding under this clause shall be conducted in accordance with subsection (k). In lieu of an action by the Board under this clause, the Attorney General of the United States may bring a civil action under this clause in the appropriate United States district court.

(B) Scope of prohibition order

Any person subject to an order issued under this subparagraph (A)(i) shall be subject to paragraphs (5) and (7) of subsection (g) in the same manner and to the same extent as a person subject to an order issued under subsection (g).

(June 26, 1934, ch. 750, title II, §206, as added Pub. L. 91–468, §1(3), Oct. 19, 1970, 84 Stat. 1003; amended Pub. L. 93–383, title VII, §728, Aug. 22, 1974, 88 Stat. 720; Pub. L. 95–22, title III, §307, Apr. 19, 1977, 91 Stat. 52; Pub. L. 95–630, title I, §§107(a)(4), (c)(4), (d)(4), (e)(4), 111(d), title V, §502(b), Nov. 10, 1978, 92 Stat. 3652, 3656, 3659, 3663, 3670, 3681; Pub. L. 97–320, title I, §§132, 141(a)(8), title IV, §§424(a), (d)(9), (e), 427(c), Oct. 15, 1982, 96 Stat. 1487, 1489, 1522, 1523, 1525; Pub. L. 98–369, div. B, title VIII, §2812, July 18, 1984, 98 Stat. 1206; Pub. L. 99–570, title I, §1359(d), Oct. 27, 1986, 100 Stat. 3207–29; Pub. L. 100–86, title V, §509(a), title VII, §§709–713, Aug. 10, 1987, 101 Stat. 635, 653, 654; Pub. L. 101–73, title IX, §§901(a), (b)(2), 902(b), 903(b), 904(b), 905(b), 906(b), 907(b), 908(b), 913(b), 915(b), 920(b), title XII, §1217(b), Aug. 9, 1989, 103 Stat. 446, 448, 451, 455, 458, 460, 462, 464, 477, 484, 486, 488, 546; Pub. L. 101–647, title XXV,

§§2523(b), 2532(c), 2547(b), Nov. 29, 1990, 104 Stat. 4870, 4881, 4887; Pub. L. 102–233, title III, §302(a), Dec. 12, 1991, 105 Stat. 1767; Pub. L. 102–550, title XV, §§1501(b), 1503(b), 1504(b), Oct. 28, 1992, 106 Stat. 4044, 4050, 4053; Pub. L. 103–325, title IV, §411(c)(2)(B), Sept. 23, 1994, 108 Stat. 2253; Pub. L. 105–219, title III, §301(b)(1), (g)(1), (2), Aug. 7, 1998, 112 Stat. 930, 931; Pub. L. 108–458, title VI, §6303(c), Dec. 17, 2004, 118 Stat. 3753; Pub. L. 109–351, title VII, §§708(b), 715(b), 716(b), 723(b), 726(14)–(19), Oct. 13, 2006, 120 Stat. 1989, 1995, 1996, 2000, 2002, 2003; Pub. L. 111–203, title III, §362(3), July 21, 2010, 124 Stat. 1549.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Depository Institution Management Interlocks Act, referred to in subsec. (g)(2)(A)(iii), is title II of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3672, which is classified principally to chapter 33 (§3201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of this title and Tables.

The Farm Credit Act of 1971, referred to in subsec. (g)(7)(A)(iv), (D)(ii), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified generally to chapter 23 (§2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

AMENDMENTS

2010—Subsec. (g)(7)(A)(ii). Pub. L. 111–203, §362(3)(A)(i), substituted "(b)(9)" for "(b)(8)".

Subsec. (g)(7)(A)(v). Pub. L. 111–203, §362(3)(A)(ii), substituted "financial" for "depository" and inserted "and" at end.

Subsec. (g)(7)(A)(vi). Pub. L. 111–203, §362(3)(A)(iii), substituted "Agency" for "Board" and a period for "; and" at end.

Subsec. (g)(7)(A)(vii). Pub. L. 111–203, §362(3)(A)(iv), struck out cl. (vii) which read as follows: "the Resolution Trust Corporation."

Subsec. (g)(7)(D)(iii). Pub. L. 111–203, §362(3)(B)(i), inserted "and" at end.

Subsec. (g)(7)(D)(iv). Pub. L. 111–203, §362(3)(B)(ii), substituted "Agency" for "Board" and struck out "and" at end.

Subsec. (g)(7)(D)(v). Pub. L. 111–203, §362(3)(B)(iii), struck out cl. (v) which read as follows: "the Thrift Depositor Protection Oversight Board, in the case of the Resolution Trust Corporation."

2006—Subsec. (b)(1). Pub. L. 109–351, §716(b)(1), substituted "any action on any application, notice, or other request by the credit union or institution-affiliated party," for "the granting of any application or other request by the credit union" in first sentence.

Subsec. (e)(3)(D). Pub. L. 109–351, §726(14), struck out "and" after semicolon.

Subsec. (f)(1). Pub. L. 109–351, §726(15), substituted "subsection (e)(3)" for "subsection (e)(3)(B)".

Subsec. (g)(1)(A)(i)(III). Pub. L. 109–351, §716(b)(2), substituted "any action on any application, notice, or request by such credit union or institution-affiliated party" for "the grant of any application or other request by such credit union".

Subsec. (g)(7)(D). Pub. L. 109–351, §726(16), struck out "and subsection (1)" after "For purposes of this paragraph" in introductory provisions.

Subsec. (i). Pub. L. 109–351, §708(b)(2), inserted heading.

Subsec. (i)(1)(A). Pub. L. 109–351, §708(b)(1)(A), substituted "any credit union" for "the credit union" in two places.

Subsec. (i)(1)(B)(i). Pub. L. 109–351, §708(b)(1)(B), inserted "of which the subject of the order is, or most recently was, an institution-affiliated party" before period at end.

Subsec. (i)(1)(C). Pub. L. 109–351, §708(b)(1)(C), substituted "any credit union's" for "the credit union's" in cl. (i) and "any credit union" for "the credit union" wherever appearing.

Subsec. (i)(1)(D)(i). Pub. L. 109–351, §708(b)(1)(D), substituted "upon the credit union of which the subject of the order is, or most recently was, an institution-affiliated party" for "upon such credit union".

Subsec. (i)(1)(E). Pub. L. 109–351, §708(b)(1)(E), added subpar. (E).

Subsec. (k)(2)(A)(iii). Pub. L. 109–351, §716(b)(3), substituted "any action on any application, notice, or other request by the credit union or institution-affiliated party" for "the grant of any application or other request by such credit union".

Subsec. (k)(3). Pub. L. 109–351, §715(b), inserted "or order" after "notice" in two places.

Subsec. (s)(9). Pub. L. 109–351, §723(b), added par. (9).

Subsec. (t)(2)(B). Pub. L. 109-351, §726(17), inserted "regulations" after "(as defined in".

Subsec. (t)(2)(C). Pub. L. 109-351, §726(18), substituted "material effect" for "material affect".

Subsec. (t)(4)(A)(ii)(II). Pub. L. 109-351, §726(19), struck out "or" after semicolon at end.

2004—Subsec. (w). Pub. L. 108-458 added subsec. (w).

1998—Subsec. (h)(1). Pub. L. 105-219, §301(g)(2), inserted "or another (including, in the case of a State-chartered insured credit union, the State official having jurisdiction over the credit union)" after "appoint itself" in introductory provisions.

Subsec. (h)(1)(F), (G). Pub. L. 105-219, §301(b)(1)(A), added subpars. (F) and (G).

Subsec. (h)(2)(A). Pub. L. 105-219, §301(b)(1)(B)(i), substituted "Except as provided in subparagraph (C), in the case" for "In the case".

Subsec. (h)(2)(C). Pub. L. 105-219, §301(b)(1)(B)(ii), added subpar. (C).

Subsec. (k)(1). Pub. L. 105-219, §301(g)(1)(A), inserted "or section 1790d of this title" after "this section" in three places.

Subsec. (k)(2)(A)(ii). Pub. L. 105-219, §301(g)(1)(B), inserted ", or any final order under section 1790d of this title" before semicolon at end.

1994—Subsecs. (h)(1)(C), (i)(1)(A)(ii), (v)(1)(B). Pub. L. 103-325 substituted "section 5322 or 5324 of title 31" for "section 5322 of title 31".

1992—Subsec. (g)(2). Pub. L. 102-550, §1504(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Whenever, in the opinion of the Board, any director, officer, or committee member of an insured credit union has committed any violation of the Depository Institution Management Interlocks Act, the Board may serve upon such director, officer, or committee member a written notice of its intention to remove him from office."

Subsec. (h)(1)(C) to (E). Pub. L. 102-550, §1501(b), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (i)(1). Pub. L. 102-550, §1504(b)(2), amended par. (1) generally, subdividing existing provisions into subpars. (A) to (D), and, in subpar. (A), including violations under section 1956, 1957, or 1960 of title 18 or section 5322 of title 31 as reason for suspension of any violator from further participation in the affairs of the credit union.

Subsec. (v). Pub. L. 102-550, §1503(b), added subsec. (v).

1990—Subsec. (j)(1). Pub. L. 101-647, §2547(b)(2), which directed amendment of par. (1) by striking out after first sentence "Such hearing shall be private, unless the Board, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest." was executed by striking out "Such hearing shall be private unless the Board, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest." as the probable intent of Congress.

Subsec. (s). Pub. L. 101-647, §2547(b)(1), amended subsec. (s) generally. Prior to amendment, subsec. (s) read as follows:

"(1) IN GENERAL.—The Board shall publish and make available to the public—

"(A) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other provision of law; and

"(B) any modification to or termination of any final order described in subparagraph (A).

"(2) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Board makes a determination in writing that the publication of any final order pursuant to paragraph (1) would seriously threaten the safety or soundness of an insured credit union or other federally regulated depository institution, the Board may delay the publication of such order for a reasonable time."

Subsec. (t). Pub. L. 101-647, §2523(b), added subsec. (t).

Subsec. (u). Pub. L. 101-647, §2532(c), added subsec. (u).

1989—Subsec. (e)(1). Pub. L. 101-73, §901(b)(2)(A), (B), substituted references to institution-affiliated parties for references to directors, officers, committee members, agents, or other persons participating in the conduct of the affairs of credit unions. Substitution by section 901(b)(2)(A)(ii) was executed to reflect the probable intent of Congress, notwithstanding an error in the directory language.

Subsec. (e)(3), (4). Pub. L. 101-73, §902(b)(1), added pars. (3) and (4).

Subsec. (f)(1). Pub. L. 101-73, §902(b)(2)(B), substituted "significant" for "substantial", struck out "seriously" before "weaken the condition of" and before "prejudice the interests of", and inserted after first sentence "Such order may include any requirement authorized under subsection (e)(3)(B)."

Pub. L. 101-73, §901(b)(2)(B), (C), substituted references to institution-affiliated parties for references to directors, officers, committee members, employees, agents, or other persons participating in the conduct of the affairs of credit unions.

Subsec. (f)(2). Pub. L. 101-73, §901(b)(2)(B), substituted references to institution-affiliated parties for references to directors, officers, committee members, employees, agents, or other persons participating in the conduct of the affairs of credit unions.

Subsec. (f)(3), (4). Pub. L. 101-73, §902(b)(2)(A), (C), added par. (3) and redesignated former par. (3) as (4).

Subsec. (g)(1). Pub. L. 101-73, §903(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Whenever, in the opinion of the Board, any director, officer, committee member, or employee of an insured credit union has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the credit union, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director, officer, committee member, or employee and the Board determines that the credit union has suffered or will probably suffer substantial financial loss or other damage or that the interests of its insured members could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, the Board may serve upon such director, officer, committee member, or employee a written notice of its intention to remove him from office."

Subsec. (g)(2). Pub. L. 101-73, §903(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "Whenever, in the opinion of the Board, any director, officer, committee member, or employee of an insured credit union, by conduct or practice with respect to another insured credit union or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty or unfitness to continue as a director, officer, committee member, or employee, and, whenever, in the opinion of the Board, any agent or other person participating in the conduct of the affairs of an insured credit union, by conduct or practice with respect to such credit union or other insured credit union or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty or unfitness to participate in the conduct of the affairs of such insured credit union, the Board may serve upon such director, officer, committee member, employee, agent, or other person a written notice of its intention to remove him from office and/or to prohibit his further participation in any manner in the conduct of the affairs of such credit union."

Subsec. (g)(3). Pub. L. 101-73, §903(b)(2), added par. (3). Former par. (3) redesignated (2).

Subsec. (g)(4). Pub. L. 101-73, §903(b)(2), redesignated par. (5) as (4) and struck out former par. (4) which provided for temporary suspension from office or prohibition from further participation in credit union activities.

Subsec. (g)(5). Pub. L. 101-73, §903(b)(2), (3), added par. (5). Former par. (5) redesignated (4).

Subsec. (g)(6). Pub. L. 101-73, §903(b)(4), substituted "credit union under paragraph (3)" for "credit union under paragraph (4)" and "person under paragraph (1) or (2)" for "person under paragraph (1), (2), or (3)".

Subsec. (g)(7). Pub. L. 101-73, §904(b), amended par. (7) generally, revising and restating as subpars. (A) to (F) provisions of former subpars. (A) and (B).

Subsec. (h)(3). Pub. L. 101-73, §1217(b), inserted at end "Except as provided in this paragraph, no court may take any action, except at the request of the Board by regulation or order, to restrain or affect the exercise of powers or functions of the Board as conservator."

Subsec. (i)(1). Pub. L. 101-73, §906(b), struck out "authorized by a United States attorney" after "is charged in any information, indictment, or complaint", and substituted "or an agreement to enter a pre-trial diversion or other similar program" for "with respect to such crime" after "judgment of conviction".

Pub. L. 101-73, §901(b)(2)(D)(i)-(iv), (vi), substituted references to institution-affiliated parties for references to directors, committee members, or officers of insured credit unions, or other persons participating in the conduct of the affairs of credit unions, and substituted "whereupon such party (if a director, a committee member, or an officer)" for "whereupon such director, committee member, or officer".

Pub. L. 101-73, §901(b)(2)(D)(v), which directed the substitution of "party" for "director, officer or other person" could not be executed because "director, officer or other person" does not appear in par. (1).

Subsec. (i)(3). Pub. L. 101-73, §901(b)(2)(E)(i)-(iv), substituted references to institution-affiliated parties for references to directors, committee members, officers, or other persons.

Pub. L. 101-73, §901(b)(2)(E)(v), which directed the substitution of "such party" for "said director, committee member, officer or other person" was executed by making the substitution for "said director, committee member, officer, or other person" after "whether the order removing" in third sentence to reflect the probable intent of Congress.

Subsec. (j)(2). Pub. L. 101-73, §920(b), substituted "Any party to any proceeding under paragraph (1)" for "Any party to the proceeding, or any person required by an order issued under this section to cease and desist from any of the practices or violations stated therein,".

Pub. L. 101-73, §901(b)(2)(F), substituted "institution-affiliated party" for "director, officer, committee

member, or other person".

Subsec. (k)(2). Pub. L. 101-73, §907(b), in amending par. (2) generally, designated existing provisions as cls. (i) to (iv), substituted provisions imposing a fine of \$5,000 per day for violation of any law or regulation, a final or temporary order, any condition imposed in writing, or any written agreement for provisions imposing a fine of \$1,000 per day for violation of any final order, authorizing the penalizing agency to compromise or modify such penalty, providing for assessment and collection of such penalty by written notice, and defining "violates", and added subpars. (B) to (L).

Subsec. (k)(3). Pub. L. 101-73, §905(b), added par. (3).

Subsec. (l). Pub. L. 101-73, §908(b), amended subsec. (l) generally. Prior to amendment, subsec. (l) read as follows: "Any director, officer, or committee member, or former director, officer, or committee member, of an insured credit union or of a credit union any of the member accounts of which are insured, or any other person against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, committee member, or other person under subsections (g)(4), (g)(5), or (i) of this section and who (i) participates in any manner in the conduct of the affairs of the credit union involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such credit union, or (ii) without the prior written approval of the Board votes for a director, serves or acts as a director, officer, committee member, or employee of any credit union, shall upon conviction be fined not more than \$5,000 or imprisoned for not more than one year, or both."

Subsec. (o). Pub. L. 101-73, §901(b)(2)(G), substituted "institution-affiliated party" for "director, officer, committee member or other person participating in the conduct of its affairs".

Subsec. (p). Pub. L. 101-73, §915(b), in first sentence, inserted "or in connection with any claim for insured deposits or any examination or investigation under section 1784(b) of this title" after "any proceeding under this section", ", in conducting the proceeding, examination, or investigation or considering the claim for insured deposits," after "section, the Board", and ", claims, examinations, or investigations" before period at end.

Subsec. (r). Pub. L. 101-73, §901(a), added subsec. (r).

Subsec. (s). Pub. L. 101-73, §913(b), added subsec. (s).

1987—Pub. L. 100-86, §509(a), repealed Pub. L. 97-320, §141. See 1982 Amendment notes below.

Subsec. (g)(1). Pub. L. 100-86, §709(1), substituted "committee member, or employee" for "or committee member" in three places.

Subsec. (g)(2). Pub. L. 100-86, §709(2)-(4), substituted "committee member, or employee" for "or committee member" in two places, substituted "any agent or other person" for "any other person", and inserted "employee, agent," before "or other person".

Subsec. (g)(7). Pub. L. 100-86, §710, added par. (7).

Subsec. (h)(1)(C), (D). Pub. L. 100-86, §711, added subpars. (C) and (D).

Subsec. (h)(2)(B). Pub. L. 100-86, §712, substituted "30" for "ninety".

Subsec. (h)(8), (9). Pub. L. 100-86, §713, added par. (8) and redesignated former par. (8) as (9).

1986—Subsec. (k)(2)(A). Pub. L. 99-570, §1359(d)(2), inserted reference to subsec. (q) of this section.

Subsec. (q). Pub. L. 99-570, §1359(d)(1), added subsec. (q).

1984—Subsec. (d)(1). Pub. L. 98-369 inserted "(1)" after "subsection (a)", "maintain its deposit with and", and provisions relating to termination of insured status and the obtaining of comparable insurance coverage from another source.

1982—Subsec. (b)(2). Pub. L. 97-320, §132(b), substituted "subsection (j)" for "subsection (i)".

Pub. L. 97-320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97-320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100-86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97-320 note set out under section 1464 of this title.

Subsec. (g)(3) to (6). Pub. L. 97-320, §427(c)(1), added par. (3); redesignated former pars. (3) to (5) as (4) to (6), respectively; inserted reference to par. (3) in two places and substituted reference to par. (6) for par. (5) in par. (4); and inserted reference to par. (3) and substituted reference to par. (4) for par. (3) in par. (6).

Subsecs. (h), (i). Pub. L. 97-320, §132(a), added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

Pub. L. 97-320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97-320 shall be amended to read as they would without such amendment, was repealed

by Pub. L. 100-86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97-320 note set out under section 1464 of this title.

Subsec. (j). Pub. L. 97-320, §132(a), (c), (d), redesignated former subsec. (i) as (j), substituted "subsection (i)(3)" for "subsection (h)(3)" in first sentence and "subsection (j)" for "subsection (i)" in fourth sentence of par. (1), and substituted "subsection (i)(1)" for "subsection (h)(1)" after "an order issued under" in par. (2). Former subsec. (j) redesignated (k).

Pub. L. 97-320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97-320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100-86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97-320 note set out under section 1464 of this title.

Subsec. (k). Pub. L. 97-320, §132(a)(1), redesignated former subsec. (j) as (k). Former subsec. (k) redesignated (l).

Pub. L. 97-320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97-320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100-86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97-320 note set out under section 1464 of this title.

Subsec. (k)(2)(A), (D). Pub. L. 97-320, §424(a), (d)(9), (e), which directed insertion of proviso giving Board authority to compromise, etc., any civil money penalty imposed under this subsection and substitution of "may be assessed" for "shall be assessed" in subsec. (j)(2)(A), and substitution of "twenty days from the service" for "ten days from the date" in subsection (j)(2)(D), was executed to subsec. (k)(2)(A), (D) to reflect the probable intent of Congress and the redesignation of subsec. (j) as (k) by section 132(a)(1) of Pub. L. 97-320.

Subsec. (l). Pub. L. 97-320, §132(a)(1), (e), redesignated former subsec. (k) as (l) and substituted "(i)" for "(h)" after "(g)(3), (g)(4), or". Former subsec. (l) redesignated (m).

Pub. L. 97-320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97-320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100-86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97-320 note set out under section 1464 of this title.

Pub. L. 97-320, §427(c)(2), which directed substitution of reference to subsec. (g)(5) for subsec. (g)(3) in subsec. (k), was executed to subsec. (l) to reflect the probable intent of Congress and the redesignation of subsec. (k) as (l) by section 132(a)(1) of Pub. L. 97-320.

Subsec. (m). Pub. L. 97-320, §132(a)(1), (f), redesignated former subsec. (l) as (m) and substituted "subsection (j)" for "subsection (i)" after "paragraph (2) of" and "subsection (i)" for "subsection (h)" after "an order issued under". Former subsec. (m) redesignated (n).

Pub. L. 97-320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97-320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100-86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97-320 note set out under section 1464 of this title.

Subsecs. (n) to (p). Pub. L. 97-320, §132(a)(1), redesignated former subsecs. (m) to (o) as (n) to (p), respectively.

Pub. L. 97-320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97-320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100-86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97-320 note set out under section 1464 of this title.

1978—Subsecs. (a) to (d). Pub. L. 95-630, §502(b), substituted "Board" for "Administrator" wherever appearing, and "it" and "its" for "he" and "his", respectively, where appropriate.

Subsec. (e). Pub. L. 95-630, §§107(a)(4), 502(b), substituted "Board" for "Administrator" wherever appearing, and in par. (1) extended coverage of provisions to include directors, officers, committee members, employees, agents, or other persons participating in the conduct of the affairs of any insured credit union or credit union which has insured accounts.

Subsec. (f). Pub. L. 95-630, §§107(c)(4), 502(b), substituted "Board" for "Administrator" wherever appearing, inserted references to any director, officer, committee member, employee, agent, or other person

participating in the conduct of the affairs of the credit union, and inserted in par. (1) "prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (e) of this section" after "its insured members" and "and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings" after "violation or practice".

Subsec. (g). Pub. L. 95-630, §§107(d)(4), 502(b), substituted "Board" for "Administrator" wherever appearing, in pars. (1), (2) "its" for "his", in par. (3) "it" for "he", "or prohibit him" for "and/or prohibit him", "suspension or prohibition" for "suspension and/or prohibition", and "removal and prohibition" for "removal and/or prohibition", and in par. (4) "or to prohibit" for "and/or to prohibit", "removal or prohibition" for "removal and/or prohibition", and "or prohibition" for "and/or prohibition".

Subsec. (h). Pub. L. 95-630, §§111(d)(1), 502(b), among other changes, substituted "Board" for "Administrator" wherever appearing, in par. (1) substituted "Crime" for "felony" in two places and "subsection (g) of this section" for "paragraph (1) or (2) of subsection (g) of this section", inserted "which is punishable by imprisonment for a term exceeding one year under State or Federal law" after "or breach of trust" and ", if continued service or participation by the individual may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union" after "the Board may" in two places, and inserted provision that any notice of suspension or order of removal issued under this paragraph remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the Board, and added par. (3).

Subsec. (i). Pub. L. 95-630, §§111(d)(2), (3), 502(b), substituted "Board" for "Administrator" wherever appearing, in par. (1) substituted "its" for "his" and "it" for "he" and "him" and inserted "(other than the hearing provided for in subsection (h)(3) of this section)" after "provided for in this section", and in par. (2) substituted "subsection (h)(1)" for "subsection (h)".

Subsec. (j). Pub. L. 95-630, §§107(e)(4), 502(b), designated existing provisions as par. (1), added par. (2), and substituted "Board" for "Administrator" wherever appearing and "its" for "his" in par. (1).

Subsecs. (k) to (o). Pub. L. 95-630, §502(b), substituted "Board" for "Administrator" wherever appearing.

1977—Subsec. (g)(1). Pub. L. 95-22, §307(a), struck out "and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director, officer, or committee member" after "or breach of fiduciary duty".

Subsec. (g)(2). Pub. L. 95-22, §307(b), substituted "dishonesty or unfitness" for "dishonesty and unfitness" wherever appearing.

1974—Subsec. (a). Pub. L. 93-383, §728(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 93-383, §728(b), inserted "(1)" after "(a)".

Subsec. (d). Pub. L. 93-383, §728(c), designated existing provisions as par. (1) and added pars. (2) and (3).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Oversight Board redesignated Thrift Depositor Protection Oversight Board, effective Feb. 1, 1992, see section 302(a) of Pub. L. 102-233, formerly set out as a note under section 1441a of this title. Thrift Depositor Protection Oversight Board abolished, see section 14(a)-(d) of Pub. L. 105-216, formerly set out as a note under section 1441a of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the transfer date, see section 351 of Pub. L. 111-203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-458, title VI, §6303(d), Dec. 17, 2004, 118 Stat. 3754, provided that: "Notwithstanding any other effective date established pursuant to this Act [see Tables for classification], subsection (a) shall become effective on the date of enactment of this Act [Dec. 17, 2004], and the amendments made by subsections (b) and (c) [amending this section and section 1820 of this title] shall become effective at the end of the 12-month period beginning on the date of enactment of this Act [Dec. 17, 2004], whether or not final regulations are issued in accordance with the amendments made by this section [amending this section and section 1820 of this title] as of that date of enactment."

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-550, title XV, §1501(c), Oct. 28, 1992, 106 Stat. 4045, provided that: "The amendments made by this section [amending this section and section 1821 of this title] shall take effect on December 20, 1992."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–73, title IX, §903(e), Aug. 9, 1989, 103 Stat. 457, provided that: "The amendments made by this section [amending this section and section 1818 of this title] shall apply with respect to violations committed and activities engaged in after the date of the enactment of this Act [Aug. 9, 1989]."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by sections 107(a)(4), (c)(4), (d)(4), and 111(d)(1)–(3) of Pub. L. 95–630 effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

Amendment by section 107(e)(4) of Pub. L. 95–630 applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95–630, set out as a note under section 93 of this title.

Amendment by section 502(b) of Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of this title.

EFFECTIVE DATE OF REGULATIONS PRESCRIBED UNDER 1986 AMENDMENT

The regulations required to be prescribed under amendment by Pub. L. 99–570 effective at end of 3-month period beginning on October 27, 1986, see section 1364(e) of Pub. L. 99–570, set out as a note under section 1464 of this title.

EXTENSION OF EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISIONS OF PUB. L. 97–320

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect before Aug. 10, 1987, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had been made before such date, see section 509(c) of Pub. L. 100–86, set out as a note under section 1464 of this title.

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day before Oct. 8, 1986, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had taken effect before such date, see section 1(c) of Pub. L. 99–452, set out as a note under section 1464 of this title.

Section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day after Aug. 27, 1986, applicable as if included in Pub. L. 97–320 on Oct. 15, 1982, with no amendment made by such section to any other provision of law to be deemed to have taken effect before Aug. 27, 1986, and any such provision of law to be in effect as if no such amendment had taken effect before Aug. 27, 1986, see section 1(c) of Pub. L. 99–400, set out as a note under section 1464 of this title.

¹ *So in original.*

² *So in original. The semicolon probably should be a period.*

³ *So in original. Probably should be "not to".*

§1786a. Omitted

EDITORIAL NOTES

CODIFICATION

Section, act June 26, 1934, ch. 750, title II, §206A, as added Pub. L. 105–164, §3(b), Mar. 20, 1998, 112 Stat. 35; amended Pub. L. 109–351, title VII, §726(20), Oct. 13, 2006, 120 Stat. 2003, which related to regulation and examination of credit union organizations and service providers by the National Credit Union Administration Board, ceased to be effective as of Dec. 31, 2001, pursuant to subsec. (f) of the section.

§1787. Payment of insurance

(a) Liquidation by Board; bond; appointment of agent; fees to be fixed by Board

(1)(A) Upon its finding that a Federal credit union insured under this subchapter is bankrupt or insolvent, the Board shall close such credit union for liquidation and appoint itself liquidating agent therefor.

(B) Not later than 10 days after the date on which the Board closes a credit union for liquidation pursuant to paragraph (1), or accepts appointment as liquidating agent pursuant to subsection (b), such insured credit union may apply to the United States district court for the judicial district in which the principal office of such insured credit union is located or the United States District Court for the District of Columbia, for an order requiring the Board to show cause why it should not be prohibited from continuing such liquidation. Except as otherwise provided in this subparagraph, no court may take any action for or toward the removal of any liquidating agent or, except at the instance of the Board, restrain or affect the exercise of powers or functions of a liquidating agent.

(2) Notwithstanding any other provision of law, the Board as liquidating agent of a closed Federal credit union insured under this subchapter shall not be required to furnish bond and shall have the right to appoint an agent or agents to assist it in its duties as such liquidating agent. All fees, compensation, and expenses of liquidation and administration thereof shall be fixed by the Board and may be paid by them out of funds coming into its possession as such liquidating agent.

(3) **LIQUIDATION TO FACILITATE PROMPT CORRECTIVE ACTION.**—The Board may close any credit union for liquidation, and appoint itself or another (including, in the case of a State-chartered insured credit union, the State official having jurisdiction over the credit union) as liquidating agent of that credit union, if—

(A) the Board determines that—

(i) the credit union is significantly undercapitalized, as defined in section 1790d of this title, and has no reasonable prospect of becoming adequately capitalized, as defined in section 1790d of this title; or

(ii) the credit union is critically undercapitalized, as defined in section 1790d of this title; and

(B) in the case of a State-chartered insured credit union, the Board has complied with section 1790d(l) of this title.

(b) Powers and duties of Board as conservator or liquidating agent

(1) Rulemaking authority of Board

The Board may prescribe such regulations as the Board determines to be appropriate regarding the conduct of the Board as conservator or liquidating agent.

(2) General powers

(A) Successor to credit union

The Board shall, as conservator or liquidating agent, and by operation of law, succeed to—

(i) all rights, titles, powers, and privileges of the credit union, and of any member, accountholder, officer, or director of such credit union with respect to the credit union and the assets of the credit union; and

(ii) title to the books, records, and assets of any previous conservator or other legal custodian of such credit union.

(B) Operate the credit union

The Board may, as conservator or liquidating agent—

(i) take over the assets of and operate the credit union with all the powers of the members or shareholders, the directors, and the officers of the credit union and shall be authorized to conduct all business of the credit union;

(ii) collect all obligations and money due the credit union;

(iii) perform all functions of the credit union in the name of the credit union which is consistent with the appointment as conservator or liquidating agent; and

(iv) preserve and conserve the assets and property of such credit union.

(C) Functions of credit union's officers, directors, and shareholders

The Board may, by regulation or order, provide for the exercise of any function by any member or stockholder, director, or officer of any credit union for which the Board has been appointed conservator or liquidating agent.

(D) Powers as conservator

The Board may, as conservator, take such action as may be—

- (i) necessary to put the credit union in a sound and solvent condition; and
- (ii) appropriate to carry on the business of the credit union and preserve and conserve the assets and property of the credit union.

(E) Additional powers as liquidating agent

The Board may, as liquidating agent, place the credit union in liquidation and proceed to realize upon the assets of the credit union, having due regard to the conditions of credit in the locality.

(F) Payment of valid obligations

The Board, as conservator or liquidating agent, shall pay all valid obligations of the credit union in accordance with the prescriptions and limitations of this chapter.

(G) Attachment of assets and injunctive relief

Subject to subparagraph (H), any court of competent jurisdiction may, at the request of the Board (in the Board's capacity as conservator or liquidating agent for any insured credit union or in the Board's corporate capacity in the exercise of any authority under this section), issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Board under the control of the court and appointing a trustee to hold such assets.

(H) Standards

(i) Showing

Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subparagraph (G) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(ii) State proceeding

If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by clause (i)), the relief sought by the Board pursuant to subparagraph (G) may be requested under the laws of such State.

(I) Subpoena authority

(i) In general

The Board may, as conservator or liquidating agent and for purposes of carrying out any power, authority, or duty with respect to an insured credit union (including determining any claim against the credit union and determining and realizing upon any asset of any person in the course of collecting money due the credit union), exercise any power established under section 1786(p) of this title, and the provisions of such section shall apply with respect to the exercise of any such power under this subparagraph in the same manner as such provisions apply under such section.

(ii) Authority of Board

A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Board or their designees.

(iii) Rule of construction

This subsection shall not be construed as limiting any rights that the Board, in any

capacity, might otherwise have under section 1786(p) of this title.

(J) Incidental powers

The Board may, as conservator or liquidating agent—

- (i) exercise all powers and authorities specifically granted to conservators or liquidating agents, respectively, under this chapter and such incidental powers as shall be necessary to carry out such powers; and
- (ii) take any action authorized by this chapter,

which the Board determines is in the best interests of the credit union, its account holders, or the Board.

(K) Exemption from criminal prosecution

The Administration shall be exempt from all prosecution by the United States or any State, county, municipality, or local authority for any criminal offense arising under Federal, State, county, municipal, or local law, which was allegedly committed by a credit union, or persons acting on behalf of a credit union, prior to the appointment of the Administration as liquidating agent.

(3) Authority of liquidating agent to determine claims

(A) In general

The Board may, as liquidating agent, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (4).

(B) Notice requirements

The liquidating agent, in any case involving the liquidation or winding up of the affairs of a closed credit union, shall—

- (i) promptly publish a notice to the credit union's creditors to present their claims, together with proof, to the liquidating agent by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and
- (ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

(C) Mailing required

The liquidating agent shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the credit union's books—

- (i) at the creditor's last address appearing in such books; or
- (ii) upon discovery of the name and address of a claimant not appearing on the credit union's books within 30 days after the discovery of such name and address.

(4) Rulemaking authority relating to determination of claims

The Board may prescribe regulations regarding the allowance or disallowance of claims by the liquidating agent and providing for administrative determination of claims and review of such determination.

(5) Procedures for determination of claims

(A) Determination period

(i) In general

Before the end of the 180-day period beginning on the date any claim against a credit union is filed with the Board as liquidating agent, the Board shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) Extension of time

The period described in clause (i) may be extended by a written agreement between the

claimant and the Board.

(iii) Mailing of notice sufficient

The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

- (I) on the credit union's books;
- (II) in the claim filed by the claimant; or
- (III) in documents submitted in proof of the claim.

(iv) Contents of notice of disallowance

If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

- (I) a statement of each reason for the disallowance; and
- (II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) Allowance of proven claims

The liquidating agent shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the liquidating agent from any claimant which is proved to the satisfaction of the liquidating agent.

(C) Disallowance of claims filed after end of filing period

(i) In general

Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (3)(B)(i) shall be disallowed and such disallowance shall be final.

(ii) Certain exceptions

Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (3)(B)(i) and such claim may be considered by the liquidating agent if—

- (I) the claimant did not receive notice of the appointment of the liquidating agent in time to file such claim before such date; and
- (II) such claim is filed in time to permit payment of such claim.

(D) Authority to disallow claims

The liquidating agent may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the liquidating agent.

(E) No judicial review of determination pursuant to subparagraph (D)

No court may review the Board's determination pursuant to subparagraph (D) to disallow a claim.

(F) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the liquidating agent shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (12), the filing of a claim with the liquidating agent shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the liquidating agent.

(6) Provision for agency review or judicial determination of claims

(A) In general

Before the end of the 60-day period beginning on the earlier of—

- (i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against

- a credit union for which the Board is liquidating agent; or
- (ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i),

the claimant may request administrative review of the claim in accordance with subparagraph (A) or (B) of paragraph (7) or file suit on such claim (or continue an action commenced before the appointment of the liquidating agent) in the district or territorial court of the United States for the district within which the credit union's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

(B) Statute of limitations

If any claimant fails to—

- (i) request administrative review of any claim in accordance with subparagraph (A) or (B) of paragraph (7); or
- (ii) file suit on such claim (or continue an action commenced before the appointment of the liquidating agent),

before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the liquidating agent) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(7) Review of claims

(A) Administrative hearing

If any claimant requests review under this subparagraph in lieu of filing or continuing any action under paragraph (6) and the Board agrees to such request, the Board shall consider the claim after opportunity for a hearing on the record. The final determination of the Board with respect to such claim shall be subject to judicial review under chapter 7 of title 5.

(B) Other review procedures

(i) In general

The Board shall also establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

(ii) Criteria

In establishing alternative dispute resolution processes, the Board shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) Voluntary binding or nonbinding procedures

The Board may establish both binding and nonbinding processes, which may be conducted by any government or private party, but all parties, including the claimant and the Board, must agree to the use of the process in a particular case.

(iv) Consideration of incentives

The Board shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

(8) Expedited determination of claims

(A) Establishment required

The Board shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

- (i) allege the existence of legally valid and enforceable or perfected security interests in assets of any credit union for which the Board has been appointed liquidating agent; and
- (ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) Determination period

Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Board shall—

(i) determine—

(I) whether to allow or disallow such claim; or

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (5); or

(ii) notify the claimant of the determination, and if the claim is disallowed, a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

(C) Period for filing or renewing suit

Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the liquidating agent, seeking a determination of the claimant's rights with respect to such security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date the Board denies the claim.

(D) Statute of limitations

If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the liquidating agent), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the liquidating agent shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (12), the filing of a claim with the liquidating agent shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the liquidating agent.

(9) Agreement as basis of claim

(A) Requirements

Except as provided in subparagraph (B), any agreement which does not meet the requirements set forth in section 1788(a)(3) of this title shall not form the basis of, or substantially comprise, a claim against the liquidating agent or the Board.

(B) Exception to contemporaneous execution requirement

Notwithstanding section 1788(a)(3) of this title, any agreement between a Federal home loan bank or Federal Reserve bank and any insured credit union which was executed before the extension of credit by such bank to such credit union shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (A).

(10) Payment of claims

(A) In general

The liquidating agent may, in the liquidating agent's discretion and to the extent funds are available, pay creditor claims which are allowed by the liquidating agent, approved by the Board pursuant to a final determination pursuant to paragraph (7) or (8), or determined by the

final judgment of any court of competent jurisdiction in such manner and amounts as are authorized under this chapter.

(B) Payment of dividends on claims

The liquidating agent may, in the liquidating agent's sole discretion, pay dividends on proved claims at any time, and no liability shall attach to the Board (in such Board's corporate capacity or as liquidating agent), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(11) Distribution of assets

(A) Subrogated claims; claims of uninsured accountholders and other creditors

The liquidating agent shall—

- (i) retain for the account of the Board such portion of the amounts realized from any liquidation as the Board may be entitled to receive in connection with the subrogation of the claims of accountholders; and
- (ii) pay to accountholders and other creditors the net amounts available for distribution to them.

(B) Distribution to shareholders of amounts remaining after payment of all other claims and expenses

In any case in which funds remain after all accountholders, creditors, other claimants, and administrative expenses are paid, the liquidating agent shall distribute such funds to the credit union's shareholders or members together with the accounting report required under paragraph (14)(C).

(12) Suspension of legal actions

(A) In general

After the appointment of a conservator or liquidating agent for an insured credit union, the conservator or liquidating agent may request a stay for a period not to exceed—

- (i) 45 days, in the case of any conservator; and
- (ii) 90 days, in the case of any liquidating agent,

in any judicial action or proceeding to which such credit union is or becomes a party.

(B) Grant of stay by all courts required

Upon receipt of a request by any conservator or liquidating agent pursuant to subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(13) Additional rights and duties

(A) Prior final adjudication

The Board shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Board as conservator or liquidating agent.

(B) Rights and remedies of conservator or liquidating agent

In the event of any appealable judgment, the Board as conservator or liquidating agent shall—

- (i) have all the rights and remedies available to the credit union (before the appointment of such conservator or liquidating agent) and the Board in its corporate capacity, including removal to Federal court and all appellate rights; and
- (ii) not be required to post any bond in order to pursue such remedies.

(C) No attachment or execution

No attachment or execution may issue by any court upon assets in the possession of the

liquidating agent.

(D) Limitation on judicial review

Except as otherwise provided in this subsection, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any credit union for which the Board has been appointed liquidating agent, including assets which the Board may acquire from itself as such liquidating agent; or

(ii) any claim relating to any act or omission of such credit union or the Board as liquidating agent.

(14) Statute of limitations for actions brought by conservator or liquidating agent

(A) In general

Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Board as conservator or liquidating agent shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim, the longer of—

(I) the 3-year period beginning on the date the claim accrues; or

(II) the period applicable under State law.

(B) Determination of the date on which a claim accrues

For purposes of subparagraph (A), the date on which the statute of limitation begins to run on any claim described in such subparagraph shall be the later of—

(i) the date of the appointment of the Board as conservator or liquidating agent; or

(ii) the date on which the cause of action accrues.

(15) Accounting and recordkeeping requirements

(A) In general

The Board as conservator or liquidating agent shall, consistent with the accounting and reporting practices and procedures established by the Board, maintain a full accounting of each conservatorship and liquidation or other disposition of credit unions in default.

(B) Annual accounting or report

With respect to each conservatorship or liquidation to which the Board was appointed, the Board shall make an annual accounting or report, as appropriate, available to the Comptroller General of the United States or, in the case of a State-chartered credit union, the authority which appointed the Board as conservator or liquidating agent.

(C) Availability of reports

Any report prepared pursuant to subparagraph (B) shall be made available by the Board upon request to any shareholder of the credit union for which the Board was appointed conservator or liquidating agent or any other member of the public.

(D) Recordkeeping requirement

(i) In general

Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Board is appointed as liquidating agent of an insured credit union, the Board may destroy any records of such credit union which the Board, in the Board's discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(ii) Old records

Notwithstanding clause (i) the Board may destroy records of an insured credit union which are at least 10 years old as of the date on which the Board is appointed as liquidating agent of such credit union in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).

(16) Fraudulent transfers

(A) In general

The Board, as conservator or liquidating agent for any insured credit union, may avoid a transfer of any interest of an institution-affiliated party, or any person who the Board determines is a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Board becomes conservator or liquidating agent if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the insured credit union or the Board.

(B) Right of recovery

To the extent a transfer is avoided under subparagraph (A), the Board may recover, for the benefit of the insured credit union, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

- (i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or
- (ii) any immediate or mediate transferee of any such initial transferee.

(C) Rights of transferee or obligee

The Board may not recover under subparagraph (B) from—

- (i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or
- (ii) any immediate or mediate good faith transferee of such transferee.

(D) Rights under this paragraph

The rights of the Board under this paragraph shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11.

(c) Provisions relating to contracts entered into before appointment of conservator or liquidating agent

(1) Authority to repudiate contracts

In addition to any other rights a conservator or liquidating agent may have, the conservator or liquidating agent for any insured credit union may disaffirm or repudiate any contract or lease—

- (A) to which such credit union is a party;
- (B) the performance of which the conservator or liquidating agent, in the conservator's or liquidating agent's discretion, determines to be burdensome; and
- (C) the disaffirmance or repudiation of which the conservator or liquidating agent determines, in the conservator's or liquidating agent's discretion, will promote the orderly administration of the credit union's affairs.

(2) Timing of repudiation

The conservator or liquidating agent appointed for any insured credit union shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) Claims for damages for repudiation

(A) In general

Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or liquidating agent for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

- (i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the conservator or liquidating agent; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) No liability for other damages

For purposes of subparagraph (A), the term "actual direct compensatory damages" does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) Measure of damages for repudiation of financial contracts

In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (f) except as otherwise specifically provided in this section.

(4) Leases under which the credit union is the lessee

(A) In general

If the conservator or liquidating agent disaffirms or repudiates a lease under which the credit union was the lessee, the conservator or liquidating agent shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) Payments of rent

Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the date—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective,

unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (b).

(5) Leases under which the credit union is the lessor

(A) In general

If the conservator or liquidating agent repudiates an unexpired written lease of real property of the credit union under which the credit union is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) Provisions applicable to lessee remaining in possession

If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the

date of the repudiation of such lease; and

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the credit union under the lease after such date; and

(ii) the conservator or liquidating agent shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

(6) Contracts for the sale of real property

(A) In general

If the conservator or liquidating agent repudiates any contract (which meets the requirements of each paragraph of section 1788(a)(3) of this title) for the sale of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

- (i) treat the contract as terminated by such repudiation; or
- (ii) remain in possession of such real property.

(B) Provisions applicable to purchaser remaining in possession

If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the credit union under the contract; and

(ii) the conservator or liquidating agent shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) Assignment and sale allowed

(i) In general

No provision of this paragraph shall be construed as limiting the right of the conservator or liquidating agent to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) No liability after assignment and sale

If an assignment and sale described in clause (i) is consummated, the conservator or liquidating agent shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) Provisions applicable to service contracts

(A) Services performed before appointment

In the case of any contract for services between any person and any insured credit union for which the Board has been appointed conservator or liquidating agent, any claim of such person for services performed before the appointment of the conservator or the liquidating agent shall be—

- (i) a claim to be paid in accordance with subsection (b); and
- (ii) deemed to have arisen as of the date the conservator or liquidating agent was

appointed.

(B) Services performed after appointment and prior to repudiation

If, in the case of any contract for services described in subparagraph (A), the conservator or liquidating agent accepts performance by the other person before the conservator or liquidating agent makes any determination to exercise the right of repudiation of such contract under this section—

- (i) the other party shall be paid under the terms of the contract for the services performed; and
- (ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or liquidation.

(C) Acceptance of performance no bar to subsequent repudiation

The acceptance by any conservator or liquidating agent of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or liquidating agent to repudiate such contract under this section at any time after such performance.

(8) Certain qualified financial contracts

(A) Rights of parties to contracts

Subject to paragraphs (9) and (10) of this subsection and notwithstanding any other provision of this chapter (other than subsection (b)(9) of this section and section 1788(a)(3) of this title), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

- (i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with an insured credit union which arises upon the appointment of the Board as liquidating agent for such credit union at any time after such appointment;
- (ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i); ¹
- (iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) Applicability of other provisions

Subsection (b)(12) shall apply in the case of any judicial action or proceeding brought against any liquidating agent referred to in subparagraph (A), or the credit union for which such liquidating agent was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such credit union.

(C) Certain transfers not avoidable

(i) In general

Notwithstanding paragraph (11), section 91 of this title or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Board, whether acting as such or as conservator or liquidating agent of an insured credit union, may not avoid any transfer of money or other property in connection with any qualified financial contract with an insured credit union.

(ii) Exception for certain transfers

Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with an insured credit union if the Board determines that the transferee had actual intent to hinder, delay, or defraud such credit union, the creditors of such credit union, or any conservator or liquidating agent appointed for such credit union.

(D) Certain contracts and agreements defined

For purposes of this subsection, the following definitions shall apply:

(i) Qualified financial contract

The term "qualified financial contract" means any securities contract, forward contract, repurchase agreement, and any similar agreement that the Board determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) Securities contract

The term "securities contract"—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement", as defined in clause (v));

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II)));

(V) means any margin loan;

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) Commodity contract

The term "commodity contract" means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) Forward contract

The term "forward contract" means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including² a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement", as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) Repurchase agreement

The term "repurchase agreement" (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.]), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term "qualified foreign government security" means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).

(vi) Swap agreement

The term "swap agreement" means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets

(including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000 [7 U.S.C. 27 to 27f], the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)]) and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(vii) Treatment of master agreement as one agreement

Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(viii) Transfer

The term "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution's equity of redemption.

(ix) Person

The term "person" includes any governmental entity in addition to any entity included in the definition of such term in section 1 of title 1.

(E) Certain protections in event of appointment of conservator

Notwithstanding any other provision of this chapter (other than subsections (b)(9) and (c)(10) of this section, and section 1788(a)(3) of this title), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a credit union in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i); ¹

(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(F) Clarification

No provision of law shall be construed as limiting the right or power of the Board, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Board to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (c)(1) of this section.

(G) Walkaway clauses not effective

(i) In general

Notwithstanding the provisions of subparagraphs (A) and (E), and sections 4403 and 4404 of this title, no walkaway clause shall be enforceable in a qualified financial contract of an insured credit union in default.

(ii) Limited suspension of certain obligations

In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the liquidating agent is appointed until the earlier of—

(I) the time such party receives notice that such contract has been transferred pursuant to subparagraph (A); or

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent.

(iii) Walkaway clause defined

For purposes of this subparagraph, the term "walkaway clause" means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party's status as a nondefaulting party in connection with the insolvency of an insured credit union or the appointment of or the exercise of rights or powers by a conservator or liquidating agent of such credit union, and not as a result of a party's exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(H) Recordkeeping requirements

The Board, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured credit union with respect to qualified financial contracts (including market valuations) only if such insured credit union is in a troubled condition (as such term is defined by the Board pursuant to section 1790a of this title).

(9) Transfer of qualified financial contracts

(A) In general

In making any transfer of assets or liabilities of a credit union in default which includes any qualified financial contract, the conservator or liquidating agent for such credit union shall either—

(i) transfer to 1 financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the credit union in default;

(II) all claims of such person or any affiliate of such person against such credit union under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such credit union);