

**§ 1715u. Authority to assist mortgagors in default****(a) Loss mitigation**

Upon default or imminent default, as defined by the Secretary<sup>1</sup> 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),<sup>2</sup> 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

<sup>1</sup>So in original. Probably should be followed by a comma.

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

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."

#### § 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