

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.

§ 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 limita-

¹ See References in Text note below.

tions 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