

to a maximum increase or decrease of 1 percentage point; or

(B) if the initial contract interest rate remained fixed for 5 years or more, be limited to a maximum increase or decrease of such percentage point or points as the Secretary may prescribe;

(4) in the case of any single annual interest rate adjustment after the initial contract interest rate adjustment, be limited to a maximum increase or decrease of such percentage points as the Secretary may prescribe; and

(5) be limited, over the term of the mortgage, to a maximum increase of such number of percentage points as the Secretary shall prescribe for purposes of this section.

(d) The Secretary shall promulgate underwriting standards for loans guaranteed under this section, taking into account—

(1) the status of the interest rate index referred to in subsection (c)(1) and available at the time an underwriting decision is made, regardless of the actual initial rate offered by the lender;

(2) the maximum and likely amounts of increases in mortgage payments that the loans would require;

(3) the underwriting standards applicable to adjustable rate mortgages insured under title II of the National Housing Act; and

(4) such other factors as the Secretary finds appropriate.

(e) 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 the adjustable rate mortgage, including a hypothetical payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first five years of the mortgage term.

(Added Pub. L. 107-330, title III, §303(a), Dec. 6, 2002, 116 Stat. 2825; amended Pub. L. 108-454, title IV, §405(a), (b), Dec. 10, 2004, 118 Stat. 3616; Pub. L. 109-233, title I, §102, June 15, 2006, 120 Stat. 399; Pub. L. 110-389, title V, §505(b), Oct. 10, 2008, 122 Stat. 4176; Pub. L. 112-154, title II, §209, Aug. 6, 2012, 126 Stat. 1179.)

#### Editorial Notes

##### REFERENCES IN TEXT

The National Housing Act, referred to in subsecs. (a) and (d)(3), 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 chapter 13 of Title 12, Banks and Banking. Section 251 of the Act is classified to section 1715z-16 of Title 12. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

##### AMENDMENTS

2012—Subsec. (a). Pub. L. 112-154 substituted “project under this section” for “demonstration project under this section during fiscal years 2004 through 2012”.

2008—Subsec. (a). Pub. L. 110-389 substituted “2012” for “2008”.

2006—Subsec. (c)(4). Pub. L. 109-233 substituted “such percentage points as the Secretary may prescribe” for “1 percentage point”.

2004—Subsec. (a). Pub. L. 108-454, §405(a), substituted “during fiscal years 2004 through 2008” for “during fiscal years 2004 and 2005”.

Subsec. (c)(3). Pub. L. 108-454, §405(b)(2), added par. (3) and struck out former par. (3) which read as follows: “be limited, with respect to any single annual interest rate adjustment, to a maximum increase or decrease of 1 percentage point; and”.

Subsec. (c)(4). Pub. L. 108-454, §405(b)(2), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 108-454, §405(b)(1), (3), redesignated par. (4) as (5) and substituted “such number of percentage points as the Secretary shall prescribe for purposes of this section” for “5 percentage points above the initial contract interest rate”.

#### Statutory Notes and Related Subsidiaries

##### NO EFFECT ON GUARANTEE OF LOANS UNDER HYBRID ADJUSTABLE RATE MORTGAGE GUARANTEE DEMONSTRATION PROJECT

Pub. L. 108-454, title IV, §405(c), Dec. 10, 2004, 118 Stat. 3616, provided that: “The amendments made by this section [amending this section] shall not be construed to affect the force or validity of any guarantee of a loan made by the Secretary of Veterans Affairs under the demonstration project for the guarantee of hybrid adjustable rate mortgages under section 3707A of title 38, United States Code, as in effect on the day before the date of the enactment of this Act [Dec. 10, 2004].”

#### § 3708. Authority to buy down interest rates: pilot program

(a) In order to enable the purchase of housing in areas where the supply of suitable military housing is inadequate, the Secretary may conduct a pilot program under which the Secretary may make periodic or lump sum assistance payments on behalf of an eligible veteran for the purpose of buying down the interest rate on a loan to that veteran that is guaranteed under this chapter for a purpose described in paragraph (1), (6), or (10) of section 3710(a) of this title.

(b) An individual is an eligible veteran for the purposes of this section if—

(1) the individual is a veteran, as defined in section 3701(b)(4) of this title;

(2) the individual submits an application for a loan guaranteed under this chapter within one year of an assignment of the individual to duty at a military installation in the United States designated by the Secretary of Defense as a housing shortage area;

(3) at the time the loan referred to in subsection (a) is made, the individual is an enlisted member, warrant officer, or an officer (other than a warrant officer) at a pay grade of O-3 or below;

(4) the individual has not previously used any of the individual's entitlement to housing loan benefits under this chapter; and

(5) the individual receives comprehensive prepurchase counseling from the Secretary (or the designee of the Secretary) before making application for a loan guaranteed under this chapter.

(c) Loans with respect to which the Secretary may exercise the buy down authority under subsection (a) shall—

(1) provide for a buy down period of not more than three years in duration;

(2) specify the maximum and likely amounts of increases in mortgage payments that the loans would require; and

(3) be subject to such other terms and conditions as the Secretary may prescribe by regulation.

(d) The Secretary shall promulgate underwriting standards for loans for which the interest rate assistance payments may be made under subsection (a). Such standards shall be based on the interest rate for the second year of the loan.

(e) The Secretary or lender shall provide comprehensive prepurchase counseling to eligible veterans explaining the features of interest rate buy downs under subsection (a), including a hypothetical payment schedule that displays the increases in monthly payments to the mortgagor over the first five years of the mortgage term. For the purposes of this subsection, the Secretary may assign personnel to military installations referred to in subsection (b)(2).

(f) There is authorized to be appropriated \$3,000,000 annually to carry out this section.

(g) The Secretary may not guarantee a loan under this chapter after September 30, 1998, on which the Secretary is obligated to make payments under this section.

(Added Pub. L. 104-106, div. B, title XXVIII, § 2822(b)(1), Feb. 10, 1996, 110 Stat. 556.)

#### Statutory Notes and Related Subsidiaries

##### AUTHORITY OF SECRETARY OF DEFENSE

Pub. L. 104-106, div. B, title XXVIII, § 2822(c), Feb. 10, 1996, 110 Stat. 557, directed the Secretary of Defense to reimburse the Secretary of Veterans Affairs for interest rate buy down costs paid to mortgagees under this section and authorized the Secretary of Defense to designate housing shortage areas with respect to housing loans guaranteed on or before Sept. 30, 1998.

#### § 3709. Refinancing of housing loans

(a) FEE RECOUPMENT.—Except as provided in subsection (d) and notwithstanding section 3703 of this title or any other provision of law, a loan to a veteran for a purpose specified in section 3710 of this title that is being refinanced may not be guaranteed or insured under this chapter unless—

(1) the issuer of the refinanced loan provides the Secretary with a certification of the recoupment period for fees, closing costs, and any expenses (other than taxes, amounts held in escrow, and fees paid under this chapter) that would be incurred by the borrower in the refinancing of the loan;

(2) all of the fees and incurred costs are scheduled to be recouped on or before the date that is 36 months after the date of loan issuance; and

(3) the recoupment is calculated through lower regular monthly payments (other than taxes, amounts held in escrow, and fees paid under this chapter) as a result of the refinanced loan.

(b) NET TANGIBLE BENEFIT TEST.—Except as provided in subsection (d) and notwithstanding section 3703 of this title or any other provision of law, a loan to a veteran for a purpose specified in section 3710 of this title that is refinanced may not be guaranteed or insured under this chapter unless—

(1) the issuer of the refinanced loan provides the borrower with a net tangible benefit test;

(2) in a case in which the original loan had a fixed rate mortgage interest rate and the re-

financed loan will have a fixed rate mortgage interest rate, the refinanced loan has a mortgage interest rate that is not less than 50 basis points less than the previous loan;

(3) in a case in which the original loan had a fixed rate mortgage interest rate and the refinanced loan will have an adjustable rate mortgage interest rate, the refinanced loan has a mortgage interest rate that is not less than 200 basis points less than the previous loan; and

(4) the lower interest rate is not produced solely from discount points, unless—

(A) such points are paid at closing; and

(B) such points are not added to the principal loan amount, unless—

(i) for discount point amounts that are less than or equal to one discount point, the resulting loan balance after any fees and expenses allows the property with respect to which the loan was issued to maintain a loan to value ratio of 100 percent or less; and

(ii) for discount point amounts that are greater than one discount point, the resulting loan balance after any fees and expenses allows the property with respect to which the loan was issued to maintain a loan to value ratio of 90 percent or less.

(c) LOAN SEASONING.—Except as provided in subsection (d) and notwithstanding section 3703 of this title or any other provision of law, a loan to a veteran for a purpose specified in section 3710 of this title that is a refinance may not be guaranteed or insured under this chapter until the date that is the later of—

(1) the date on which the borrower has made at least six consecutive monthly payments on the loan being refinanced; and

(2) the date that is 210 days after the first payment due date of the loan being refinanced.

(d) CASH-OUT REFINANCES.—(1) Subsections (a) through (c) shall not apply in a case of a loan refinancing in which the amount of the principal for the new loan to be guaranteed or insured under this chapter is larger than the payoff amount of the refinanced loan.

(2) Not later than 180 days after the date of the enactment of this section, the Secretary shall promulgate such rules as the Secretary considers appropriate with respect to refinancing described in paragraph (1) to ensure that such refinancing is in the financial interest of the borrower, including rules relating to recoupment, seasoning, and net tangible benefits.

(Added Pub. L. 115-174, title III, § 309(a)(1), May 24, 2018, 132 Stat. 1348; amended Pub. L. 116-33, § 2(b), July 25, 2019, 133 Stat. 1038.)

#### Editorial Notes

##### REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 115-174, which was approved May 24, 2018.

##### AMENDMENTS

2019—Subsec. (c). Pub. L. 116-33 substituted “is a refinance” for “is refinanced” in introductory provisions,