

(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,

added pars. (1) and (2), and struck out former pars. (1) and (2) which read as follows:

“(1) the date that is 210 days after the date on which the first monthly payment is made on the loan; and

“(2) the date on which the sixth monthly payment is made on the loan.”

### Statutory Notes and Related Subsidiaries

#### REGULATIONS

Pub. L. 115-174, title III, §309(a)(2), May 24, 2018, 132 Stat. 1349, provided that:

“(A) IN GENERAL.—In prescribing any regulation to carry out section 3709 of title 38, United States Code, as added by paragraph (1), the Secretary of Veterans Affairs may waive the requirements of sections 551 through 559 of title 5, United States Code, if—

“(i) the Secretary determines that urgent or compelling circumstances make compliance with such requirements impracticable or contrary to the public interest;

“(ii) the Secretary submits to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives, and publishes in the Federal Register, notice of such waiver, including a description of the determination made under clause (i); and

“(iii) a period of 10 days elapses following the notification under clause (ii).

“(B) PUBLIC NOTICE AND COMMENT.—If a regulation prescribed pursuant to a waiver made under subparagraph (A) is in effect for a period exceeding 1 year, the Secretary shall provide the public an opportunity for notice and comment regarding such regulation.

“(C) EFFECTIVE DATE.—This paragraph shall take effect on the date of the enactment of this Act [May 24, 2018].

“(D) TERMINATION DATE.—The authorities under this paragraph shall terminate on the date that is 1 year after the date of the enactment of this Act.”

#### CONSTRUCTION OF 2019 AMENDMENT

Amendment by Pub. L. 116-33 not to be construed to restrict or otherwise modify the authorities of the Government National Mortgage Association, see section 2(c) of Pub. L. 116-33, set out as a note under section 1721 of Title 12, Banks and Banking.

### SUBCHAPTER II—LOANS

#### § 3710. Purchase or construction of homes

(a) Except as provided in section 3704(c)(2) of this title, any loan to a veteran, if made pursuant to the provisions of this chapter, is automatically guaranteed if such loan is for one or more of the following purposes:

(1) To purchase or construct a dwelling to be owned and occupied by the veteran as a home.

(2) To purchase a farm on which there is a farm residence to be owned and occupied by the veteran as the veteran's home.

(3) To construct on land owned by the veteran a farm residence to be occupied by the veteran as the veteran's home.

(4) To repair, alter, or improve a farm residence or other dwelling owned by the veteran and occupied by the veteran as the veteran's home.

(5) To refinance existing mortgage loans or other liens which are secured of record on a dwelling or farm residence owned and occupied by the veteran as the veteran's home.

(6) To purchase a one-family residential unit in a condominium housing development or project, if such development or project is ap-

proved by the Secretary under criteria which the Secretary shall prescribe in regulations.

(7) To improve a dwelling or farm residence owned by the veteran and occupied by the veteran as the veteran's home through energy efficiency improvements, as provided in subsection (d).

(8) To refinance in accordance with subsection (e) of this section an existing loan guaranteed, insured, or made under this chapter.

(9)(A)(i) To purchase a manufactured home to be permanently affixed to a lot that is owned by the veteran.

(ii) To purchase a manufactured home and a lot to which the home will be permanently affixed.

(B)(i) To refinance, in accordance with the terms and conditions applicable under the provisions of subsection (e) of this section (other than paragraph (1)(E) of such subsection) to the guaranty of a loan for the purpose specified in clause (8) of this subsection, an existing loan guaranteed, insured, or made under this chapter that is secured by a manufactured home permanently affixed to a lot that is owned by the veteran.

(ii) To refinance, in accordance with section 3712(a)(5) of this title, an existing loan that was made for the purchase of, and that is secured by, a manufactured home that is permanently affixed to a lot and to purchase the lot to which the manufactured home is affixed.

(10) To purchase a dwelling to be owned and occupied by the veteran as a home and make energy efficiency improvements, as provided in subsection (d).

(11) To refinance in accordance with subsection (e) an existing loan guaranteed, insured, or made under this chapter, and to improve the dwelling securing such loan through energy efficiency improvements, as provided in subsection (d).

(12) With respect to a loan guaranteed after the date of the enactment of this paragraph and before the date that is five years after that date, to purchase stock or membership in a cooperative housing corporation for the purpose of entitling the veteran to occupy for dwelling purposes a single family residential unit in a development, project, or structure owned or leased by such corporation, in accordance with subsection (h).

If there is an indebtedness which is secured by a lien against land owned by the veteran, the proceeds of a loan guaranteed under this section or made under section 3711 of this title for construction of a dwelling or farm residence on such land may be used also to liquidate such lien, but only if the reasonable value of the land is equal to or greater than the amount of the lien.

(b) No loan may be guaranteed under this section or made under section 3711 of this title unless—

(1) the proceeds of such loan will be used to pay for the property purchased, constructed, or improved;

(2) the contemplated terms of payment required in any mortgage to be given in part payment of the purchase price or the construc-