

Subsec. (h)(1). Pub. L. 101-508, §1202(c), substituted "4-year" for "3-year".

1988—Subsec. (b)(1)(C). Pub. L. 100-233, §613(b)(1), substituted "24-month" for "12-month".

Subsecs. (f), (g). Pub. L. 100-233, §613(b)(2), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 100-233, §613(c), added subsec. (h).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective Nov. 29, 1990, see section 1301 of Pub. L. 101-508, set out as an Effective Date note under section 940d of this title.

EFFECTIVE AND TERMINATION DATES

That part of section 1320 of Pub. L. 99-198, as amended by Pub. L. 100-233, title VI, §613(a), Jan. 6, 1988, 101 Stat. 1674; Pub. L. 101-508, title I, §1202(b)(2), Nov. 5, 1990, 104 Stat. 1388-11, which provided that this section was effective only for the period beginning Dec. 23, 1985, and ending Sept. 30, 1995, was repealed by Pub. L. 104-127, title VI, §643(b), Apr. 4, 1996, 110 Stat. 1103.

§ 2000. Homestead protection

(a) Definitions

As used in this section:

(1) The term "Administrator" means the Administrator of the Small Business Administration.

(2) The term "borrower-owner" means—

(A) a borrower of a loan made or insured by the Secretary or the Administrator who meets the eligibility requirements of subsection (c)(1) of this section; or

(B) in any case in which an owner of homestead property pledged the property to secure the loan and the owner is different than the borrower, the owner.

(3) The term "farm program loan" means any loan made by the Administrator under the Small Business Act (15 U.S.C. 631 et seq.) for any of the purposes authorized for loans under subchapters¹ I or II of this chapter.

(4) The term "homestead property" means the principal residence and adjoining property possessed and occupied by a borrower-owner specified in paragraph (2) of this subsection, including a reasonable number of farm outbuildings located on the adjoining land that are useful to the occupants of the homestead, and no more than 10 acres of adjoining land that is used to maintain the family of the individual.

(5) The term "Secretary" means the Secretary of Agriculture.

(b) Occupancy of homestead upon foreclosure, bankruptcy, or liquidation; appraisal; period of occupancy

(1) The Secretary or the Administrator shall, on application by a borrower-owner who meets the eligibility requirements of subsection (c)(1) of this section, permit the borrower-owner to retain possession and occupancy of homestead property under the terms set forth, and until the action described in this section has been completed, if—

(A) the Secretary forecloses, holds in inventory on January 6, 1988, or takes into inventory, property securing a loan made or insured under this chapter;

(B) the Administrator forecloses, holds in inventory on January 6, 1988, or takes into inventory, property securing a farm program loan made under the Small Business Act (15 U.S.C. 631 et seq.); or

(C) the borrower-owner of a loan made or insured by the Secretary or the Administrator files a petition in bankruptcy that results in the conveyance of the homestead property to the Secretary or the Administrator, or agrees to voluntarily liquidate or convey such property in whole or in part.

(2) The value of the homestead property shall be determined insofar as possible by an independent appraisal made within six months from the date of the borrower-owner's application to retain possession and occupancy of the homestead property.

(3) The period of occupancy of homestead property under this subsection may not exceed five years, but in no case shall the Secretary or the Administrator grant a period of occupancy less than three years, subject to compliance with the requirements of subsection (c) of this section.

(c) Terms and conditions

(1) To be eligible to occupy homestead property, a borrower-owner of a loan made or insured by the Secretary or the Administrator shall—

(A) apply for such occupancy not later than 30 days after the property is acquired by the Secretary or Administrator, or for property in inventory on January 6, 1988, the borrower-owner shall apply for occupancy not later than 30 days after January 6, 1988;

(B) have received from farming or ranching operations gross farm income reasonably commensurate with—

(i) the size and location of the farming unit of the borrower-owner; and

(ii) local agricultural conditions (including natural and economic conditions), in at least 2 calendar years during the 6-year period preceding the calendar year in which the application is made;

(C) have received from farming or ranching operations at least 60 percent of the gross annual income of the borrower-owner and any spouse of the borrower-owner in at least 2 calendar years during any 6-year period described in subparagraph (B);

(D) have continuously occupied the homestead property during the 6-year period described in subparagraph (B), except that such requirement may be waived if a borrower-owner has, due to circumstances beyond the control of the borrower-owner, had to leave the homestead property for a period of time not to exceed 12 months during the 6-year period;

(E) during the period of the occupancy of the homestead property, pay a reasonable sum as rent for such property to the Secretary or the Administrator in an amount substantially equivalent to rents charged for similar residential properties in the area in which the homestead property is located;

(F) during the period of the occupancy of the homestead property, maintain the property in good condition; and

¹ So in original. Probably should be "subchapter".

(G) meet such other reasonable and necessary terms and conditions as the Secretary may require consistent with this section.

(2) For purposes of subparagraphs (B) and (C) of paragraph (1), the term “farming or ranching operations” shall include rent paid by lessees of agricultural land during any period in which the borrower-owner, due to circumstances beyond the control of the borrower-owner, is unable to actively farm such land.

(3) For the purposes of paragraph (1)(E), the failure of the borrower-owner to make timely rental payments shall constitute cause for the termination of all rights of such borrower-owner to possession and occupancy of the homestead property under this section. In effecting any such termination, the Secretary shall afford the borrower-owner or lessee the notice and hearing procedural rights described in section 1983b² of this title and shall comply with all applicable State and local laws governing eviction from residential property.

(4)(A) The period of occupancy allowed the prior owner of homestead property under this section shall be the period requested in writing by the prior owner, except that such period shall not exceed 5 years.

(B) At any time during the period of occupancy of a borrower-owner who is a socially disadvantaged farmer or rancher (as defined in section 2003(e)(2) of this title), the borrower-owner or a member of the immediate family of the borrower-owner shall have a right of first refusal to reacquire the homestead property on such terms and conditions as the Secretary shall determine, except that the Secretary may not demand a payment for the homestead property that is in excess of the current market value of the homestead property as established by an independent appraisal. The independent appraisal shall be conducted by an appraiser selected by the borrower-owner or immediate family member, as the case may be, from a list of three appraisers approved by the county supervisor.

(5) No rights of a borrower-owner under this section, and no agreement entered into between the borrower-owner and the Secretary for occupancy of the homestead property, shall be transferable or assignable by the borrower-owner or by operation of any law, except that in the case of death or incompetency of such borrower-owner, such rights and agreements shall be transferable to the spouse of the borrower-owner if the spouse agrees to comply with the terms and conditions thereof.

(6) Not later than the date of acquisition of the property securing a loan made under this chapter (or, in the case of real property in inventory on April 4, 1996, not later than 5 days after April 4, 1996), the Secretary shall notify the borrower-owner from whom the property was acquired of the availability of homestead protection rights under this section.

(d) First right of refusal of reacquisition

At the end of the period of occupancy described in subsection (c) of this section, the Secretary or the Administrator shall grant to the borrower-owner a first right of refusal to reac-

quire the homestead property on such terms and conditions (which may include payment of principal in installments) as the Secretary or the Administrator shall determine. Such terms and conditions shall not be less favorable than those intended to be offered to any other buyer.

(e) Value as measure of reacquisition payment of principal

At the time any reacquisition agreement is entered into, the Secretary or the Administrator may not demand a total payment of principal that is in excess of the value of the homestead property as established under subsection (b)(2) of this section.

(f) Contract authority

The Secretary may enter into contracts authorized by this section before the Secretary acquires title to the homestead property.

(g) Conflict between Federal and State law

In the event of any conflict between this section and any provision of the law of any State relating to the right of a borrower-owner to designate for separate sale or redeem part or all of the real property securing a loan foreclosed on by the lender thereof, such provision of State law shall prevail.

(Pub. L. 87-128, title III, §352, as added Pub. L. 99-198, title XIII, §1321, Dec. 23, 1985, 99 Stat. 1532; amended Pub. L. 100-233, title VI, §614, Jan. 6, 1988, 101 Stat. 1675; Pub. L. 102-237, title V, §501(g), title VII, §701(h)(2), Dec. 13, 1991, 105 Stat. 1867, 1880; Pub. L. 102-552, title V, §516(i), (j)(1), Oct. 28, 1992, 106 Stat. 4138; Pub. L. 104-127, title VI, §644, Apr. 4, 1996, 110 Stat. 1103; Pub. L. 110-234, title V, §5305, May 22, 2008, 122 Stat. 1153; Pub. L. 110-246, §4(a), title V, §5305, June 18, 2008, 122 Stat. 1664, 1915.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsecs. (a)(3) and (b)(1)(B), is Pub. L. 85-536, §21 et seq., July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

For definition of “this chapter”, referred to in subsecs. (b)(1)(A) and (c)(6), see note set out under section 1921 of this title.

Section 1983b of this title, referred to in subsec. (c)(3), was repealed by Pub. L. 103-354, title II, §281(c), Oct. 13, 1994, 108 Stat. 3233.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (c)(4)(B). Pub. L. 110-246, §5305, substituted “period of occupancy of a borrower-owner who is a socially disadvantaged farmer or rancher (as defined in section 2003(e)(2) of this title), the borrower-owner or a member of the immediate family of the borrower-owner” for “period of occupancy, the borrower-owner” and inserted “or immediate family member, as the case may be,” after “selected by the borrower-owner”.

1996—Subsec. (c)(1)(A). Pub. L. 104-127, §644(1), substituted “30” for “90” in two places.

Subsec. (c)(6). Pub. L. 104-127, §644(2), substituted “Not later than the date of acquisition of the property

² See References in Text note below.

securing a loan made under this chapter (or, in the case of real property in inventory on April 4, 1996, not later than 5 days after April 4, 1996),” for “Within 30 days of the acquisition of the homestead property securing a loan made or insured under this chapter,” and struck out at end “For property in inventory on January 6, 1988, the Secretary shall make a good faith effort to notify the borrower-owner of the availability of homestead protection rights under this section within 60 days after January 6, 1988.”

1992—Subsec. (a)(4), (5). Pub. L. 102-552, §516(i), redesignated par. (4), defining “Secretary”, as (5).

Subsec. (b)(2). Pub. L. 102-552, §516(j)(1), substituted “borrower-owner’s” for “borrower’s”.

1991—Subsec. (a)(2) to (4). Pub. L. 102-237, §501(g), added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and substituted “borrower-owner” for “borrower” in redesignated par. (4).

Subsec. (b)(1). Pub. L. 102-237, §501(g)(2), substituted “borrower-owner” for “borrower” wherever appearing.

Subsec. (b)(3). Pub. L. 102-237, §701(h)(2), struck out “be” after “shall”.

Subsecs. (c), (d), (g). Pub. L. 102-237, §501(g)(2), substituted “borrower-owner” for “borrower” wherever appearing.

1988—Subsec. (a)(3). Pub. L. 100-233, §614(1), inserted “, including a reasonable number of farm outbuildings located on the adjoining land that are useful to the occupants of the homestead, and no more than 10 acres of adjoining land that is used to maintain the family of the individual”.

Subsec. (b)(1). Pub. L. 100-233, §614(2), added par. (1) and struck out former par. (1) which read as follows: “If the Secretary forecloses a loan made or insured under this chapter, the Administrator forecloses a farm program loan made under the Small Business Act (15 U.S.C. 631 et seq.), or a borrower of a loan made or insured by either agency declares bankruptcy or goes into voluntary liquidation to avoid foreclosure or bankruptcy, the Secretary or Administrator may upon application by the borrower, permit the borrower to retain possession and occupancy of any principal residence of the borrower, and a reasonable amount of adjoining land for the purpose of family maintenance.”

Subsec. (c). Pub. L. 100-233, §614(3), completely revised and restated subsec. (c), substituting pars. (1) to (6) for former pars. (1) to (8).

Subsec. (d). Pub. L. 100-233, §614(3), inserted at end “Such terms and conditions shall not be less favorable than those intended to be offered to any other buyer.”

Subsecs. (f), (g). Pub. L. 100-233, §614(4), added subsecs. (f) and (g).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-127 effective Apr. 4, 1996, but not applicable with respect to complete application to acquire inventory property submitted prior to Apr. 4, 1996, see section 663(a), (c) of Pub. L. 104-127, set out as a note under section 1922 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-552, title V, §516(j)(2), Oct. 28, 1992, 106 Stat. 4138, provided that: “The amendment made by paragraph (1) of this subsection [amending this section] shall take effect at the same time as the amendments made by section 501(f) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1867) [amending section 1985 of this title] took effect.”

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 701(h)(2) of Pub. L. 102-237 to any provision specified therein effective as if included

in act that added provision so specified at the time such act became law, see section 1101(c) of Pub. L. 102-237, set out as a note under section 1421 of this title.

§ 2001. Debt restructuring and loan servicing

(a) In general

The Secretary shall modify delinquent farmer program loans made or insured under this chapter, or purchased from the lender or the Federal Deposit Insurance Corporation under section 1929b of this title, to the maximum extent possible—

(1) to avoid losses to the Secretary on such loans, with priority consideration being placed on writing-down the loan principal and interest (subject to subsections (d) and (e) of this section), and debt set-aside (subject to subsection (e) of this section), whenever these procedures would facilitate keeping the borrower on the farm or ranch, or otherwise through the use of primary loan service programs as provided in this section; and

(2) to ensure that borrowers are able to continue farming or ranching operations.

(b) Eligibility

To be eligible to obtain assistance under subsection (a) of this section—

(1) the delinquency must be due to circumstances beyond the control of the borrower, as defined in regulations issued by the Secretary, except that the regulations shall require that, if the value of the assets calculated under subsection (c)(2)(A)(ii) of this section that may be realized through liquidation or other methods would produce enough income to make the delinquent loan current, the borrower shall not be eligible for assistance under subsection (a) of this section;

(2) the borrower must have acted in good faith with the Secretary in connection with the loan as defined in regulations issued by the Secretary;

(3) the borrower must present a preliminary plan to the Secretary that contains reasonable assumptions that demonstrate that the borrower will be able to—

(A) meet the necessary family living and farm operating expenses; and

(B) service all debts, including those of the loans restructured; and

(4) the loan, if restructured, must result in a net recovery to the Federal Government, during the term of the loan as restructured, that would be more than or equal to the net recovery to the Federal Government from an involuntary liquidation or foreclosure on the property securing the loan.

(c) Restructuring determinations

(1) Determination of net recovery

In determining the net recovery from the involuntary liquidation of a loan under this section, the Secretary shall calculate—

(A) the recovery value of the collateral securing the loan, in accordance with paragraph (2); and

(B) the value of the restructured loan, in accordance with paragraph (3).