

default, and that trust fund or tribal income is available under subsection (b)(3)(B) of this section, the Secretary shall commence proceedings for the garnishment of the mortgagor's distributed share of tribal or trust fund income in order to collect loan payments that are past due. Proceedings under this paragraph may be instituted in a tribal court, court of competent jurisdiction designated by the tribe, or Federal district court.

(5) If the Secretary determines such action is necessary to protect the General Insurance Fund from undue loss, the Secretary may initiate foreclosure proceedings with respect to any mortgage acquired under this subsection. Such proceeding may take place in a tribal court, a court of competent jurisdiction, or Federal district court. Any such court shall have jurisdiction to convey to the Secretary the remaining life of a lease on the real property and to order eviction of the delinquent mortgagor.

(h) Premium charge for insurance; report to Congress

In the administration of this section, the Secretary shall establish a premium charge for insurance that will be sufficient to cover the full costs of the mortgage insurance program under this section, except that such charge may not exceed 3 percent per annum of the principal amount of the mortgage outstanding at any time. Not later than September 30, 1984, the Secretary shall determine and report to the Congress on the feasibility of eliminating any excess amount of the premium under this section over the premium under section 1709 of this title. In the event such premiums are not sufficient to cover the full costs of the mortgage insurance program under this section, the Secretary shall make recommendations to the Congress about changes to the program.

(i) "Indian tribe" and "trust or otherwise restricted land" defined

For purposes of this section:

(1) The term "Indian tribe" means any Indian or Alaska native tribe, band, nation, or other organized group or community of Indians or Alaska natives recognized as eligible for the services provided to Indians or Alaska natives by the Secretary of the Interior because of its status as such an entity, or that was an eligible recipient under chapter 67 of title 31, prior to the repeal of such chapter.

(2) The term "trust or otherwise restricted land" means (A) that area of land, as defined by the Secretary of the Interior, over which an Indian tribe is recognized by the United States as having governmental jurisdiction; (B) land held in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation; or (C) land acquired by Alaska natives under the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] or any other land acquired by Alaska natives pursuant to statute by virtue of their unique status as Alaska natives.

(June 27, 1934, ch. 847, title II, §248, as added Pub. L. 98-181, title I [title IV, §422], Nov. 30, 1983, 97 Stat. 1214; amended Pub. L. 99-272, title

XIV, §14001(b)(7), Apr. 7, 1986, 100 Stat. 329; Pub. L. 100-242, title IV, §§413(c), 429(i), Feb. 5, 1988, 101 Stat. 1906, 1919; Pub. L. 110-289, div. B, title I, §2119(b), July 30, 2008, 122 Stat. 2835.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsec. (b)(3)(A), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§5301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42 and Tables.

Chapter 67 of title 31, referred to in subsec. (i)(1), was repealed by Pub. L. 99-272, title XIV, §14001(a)(1), Apr. 7, 1986, 100 Stat. 327. A new chapter 67 of Title 31, Money and Finance, was added by Pub. L. 103-322, title III, §31001(a), Sept. 13, 1994, 108 Stat. 1859.

The Alaska Native Claims Settlement Act, referred to in subsec. (i)(2), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

2008—Subsec. (f). Pub. L. 110-289 substituted "Mutual Mortgage Insurance Fund" for "General Insurance Fund established in section 1735c of this title" and struck out "(1) all references in section 1710 of this title to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund; and (2)" after "except that".

1988—Subsec. (a)(1). Pub. L. 100-242, §429(i)(1), substituted "land" for "lands".

Subsec. (a)(2). Pub. L. 100-242, §429(i)(2), substituted "on trust or otherwise restricted land" for "on trust lands or otherwise restricted land".

Subsec. (d). Pub. L. 100-242, §429(i)(3), substituted "trust or otherwise restricted land" for "tribal or trust land".

Subsec. (f). Pub. L. 100-242, §413(c)(3), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 100-242, §413(c)(1), (2), redesignated former subsec. (f) as (g) and substituted "General Insurance Fund" for "insurance fund" in pars. (3) and (5). Former subsec. (g) redesignated (h).

Subsecs. (h), (i). Pub. L. 100-242, §413(c)(2), redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

1986—Subsec. (h)(1). Pub. L. 99-272 substituted "was an eligible recipient under chapter 67 of title 31, prior to the repeal of such chapter" for "is an eligible recipient under chapter 67 of title 31".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99-272.

§ 1715z-13a. Loan guarantees for Indian housing

(a) Authority

To provide access to sources of private financing to Indian families, Indian housing authorities, and Indian tribes, who otherwise could not acquire housing financing because of the unique legal status of Indian lands, the Secretary may guarantee not to exceed 100 percent of the unpaid principal and interest due on any loan eligible under subsection (b) of this section made to an Indian family, Indian housing authority, or Indian tribe.

(b) Eligible loans

Loans guaranteed pursuant to this section shall meet the following requirements:

(1) Eligible borrowers

The loans shall be made only to borrowers who are Indian families, Indian housing authorities, or Indian tribes.

(2) Eligible housing

The loan shall be used to construct, acquire, refinance, or rehabilitate 1- to 4-family dwellings that are standard housing and are located on trust land or land located in an Indian or Alaska Native area.

(3) Security

The loan may be secured by any collateral authorized under existing Federal law or applicable State or tribal law.

(4) Lenders

The loan shall be made only by a lender approved by and meeting qualifications established by the Secretary, except that loans otherwise insured or guaranteed by an agency of the Federal Government or made by an organization of Indians from amounts borrowed from the United States shall not be eligible for guarantee under this section. The following lenders are deemed to be approved under this paragraph:

(A) Any mortgagee approved by the Secretary of Housing and Urban Development for participation in the single family mortgage insurance program under title II of the National Housing Act [12 U.S.C. 1707 et seq.].

(B) Any lender whose housing loans under chapter 37 of title 38 are automatically guaranteed pursuant to section 1802(d)¹ of such title.

(C) Any lender approved by the Secretary of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949 [42 U.S.C. 1441 et seq.].

(D) Any other lender that is supervised, approved, regulated, or insured by any agency of the Federal Government.

(5) Terms

The loan shall—

(A) be made for a term not exceeding 30 years;

(B) bear interest (exclusive of the guarantee fee under section 404² and service charges, if any) at a rate agreed upon by the borrower and the lender and determined by the Secretary to be reasonable, which may not exceed the rate generally charged in the area (as determined by the Secretary) for home mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal Government;

(C) involve a principal obligation not exceeding—

(i) 97.75 percent of the appraised value of the property as of the date the loan is accepted for guarantee (or 98.75 percent if the value of the property is \$50,000 or less); and

(ii) the amount approved by the Secretary under this section; and

(D) involve a payment on account of the property (i) in cash or its equivalent, or (ii)

through the value of any improvements to the property made through the skilled or unskilled labor of the borrower, as the Secretary shall provide.

(c) Certificate of guarantee**(1) Approval process**

Before the Secretary approves any loan for guarantee under this section, the lender shall submit the application for the loan to the Secretary for examination. If the Secretary approves the loan for guarantee, the Secretary shall issue a certificate under this paragraph as evidence of the guarantee.

(2) Standard for approval

The Secretary may approve a loan for guarantee under this section and issue a certificate under this paragraph only if the Secretary determines there is a reasonable prospect of repayment of the loan.

(3) Effect

A certificate of guarantee issued under this paragraph by the Secretary shall be conclusive evidence of the eligibility of the loan for guarantee under the provisions of this section and the amount of such guarantee. Such evidence shall be incontestable in the hands of the bearer and the full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Secretary as security for such obligations.

(4) Fraud and misrepresentation

This subsection may not be construed to preclude the Secretary from establishing defenses against the original lender based on fraud or material misrepresentation or to bar the Secretary from establishing by regulations in effect on the date of issuance or disbursement, whichever is earlier, partial defenses to the amount payable on the guarantee.

(d) Guarantee fee

The Secretary shall establish and collect, at the time of issuance of the guarantee, a fee for the guarantee of loans under this section, in an amount not exceeding 3 percent of the principal obligation of the loan. The Secretary may also establish and collect annual premium payments in an amount not exceeding 1 percent of the remaining guaranteed balance (excluding the portion of the remaining balance attributable to the fee collected at the time of issuance of the guarantee). The Secretary shall establish the amount of the fees and premiums by publishing a notice in the Federal Register. The Secretary shall deposit any fees and premiums collected under this subsection in the Indian Housing Loan Guarantee Fund established under subsection (i).

(e) Liability under guarantee

The liability under a guarantee provided under this section shall decrease or increase on a pro rata basis according to any decrease or increase in the amount of the unpaid obligation under the provisions of the loan agreement.

(f) Transfer and assumption

Notwithstanding any other provision of law, any loan guaranteed under this section, includ-

¹ So in original. Probably should be section "3702(d)".

² So in original. Probably should be "subsection (d) of this section".

ing the security given for the loan, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the Federal Government or of any State or the District of Columbia.

(g) Disqualification of lenders and civil money penalties

(1) In general

If the Secretary determines that any lender or holder of a guarantee certificate under subsection (c) of this section has failed to maintain adequate accounting records, to adequately service loans guaranteed under this section, to exercise proper credit or underwriting judgment, or has engaged in practices otherwise detrimental to the interest of a borrower or the United States, the Secretary may—

(A) refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder;

(B) bar such lender or holder from acquiring additional loans guaranteed under this section; and

(C) require that such lender or holder assume not less than 10 percent of any loss on further loans made or held by the lender or holder that are guaranteed under this section.

(2) Civil money penalties for intentional violations

If the Secretary determines that any lender or holder of a guarantee certificate under subsection (c) of this section has intentionally failed to maintain adequate accounting records, to adequately service loans guaranteed under this section, or to exercise proper credit or underwriting judgment, the Secretary may impose a civil money penalty on such lender or holder in the manner and amount provided under section 536 of the National Housing Act [12 U.S.C. 1735f-14] with respect to mortgagees and lenders under such Act.

(3) Payment on loans made in good faith

Notwithstanding paragraphs (1) and (2), the Secretary may not refuse to pay pursuant to a valid guarantee on loans of a lender or holder barred under this subsection if the loans were previously made in good faith.

(h) Payment under guarantee

(1) Lender options

(A) In general

In the event of default by the borrower on a loan guaranteed under this section, the holder of the guarantee certificate shall provide written notice of the default to the Secretary. Upon providing such notice, the holder of the guarantee certificate shall be entitled to payment under the guarantee (subject to the provisions of this section) and may proceed to obtain payment in one of the following manners:

(i) Foreclosure

The holder of the certificate may initiate foreclosure proceedings (after providing written notice of such action to the

Secretary) and upon a final order by the court authorizing foreclosure and submission to the Secretary of a claim for payment under the guarantee, the Secretary shall pay to the holder of the certificate the pro rata portion of the amount guaranteed (as determined pursuant to subsection (e) of this section) plus reasonable fees and expenses as approved by the Secretary. The Secretary shall be subrogated to the rights of the holder of the guarantee and the lender holder shall assign the obligation and security to the Secretary.

(ii) No foreclosure

Without seeking foreclosure (or in any case in which a foreclosure proceeding initiated under clause (i) continues for a period in excess of 1 year), the holder of the guarantee may submit to the Secretary a request to assign the obligation and security interest to the Secretary in return for payment of the claim under the guarantee. The Secretary may accept assignment of the loan if the Secretary determines that the assignment is in the best interests of the United States. Upon assignment, the Secretary shall pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined under subsection (e) of this section). The Secretary shall be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Secretary.

(B) Requirements

Before any payment under a guarantee is made under subparagraph (A), the holder of the guarantee shall exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note or judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States. The Secretary shall then take such action to collect as the Secretary determines appropriate.

(2) Limitations on liquidation

In the event of a default by the borrower on a loan guaranteed under this section involving a security interest in restricted Indian land, the mortgagee or the Secretary shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe or tribes. If the mortgagee or the Secretary subsequently proceeds to liquidate the account, the mortgagee or the Secretary shall not sell, transfer, or otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

(i) Indian Housing Loan Guarantee Fund

(1) Establishment

There is established in the Treasury of the United States the Indian Housing Loan Guarantee Fund for the purpose of providing loan guarantees under this section.

(2) Credits

The Guarantee Fund shall be credited with—

(A) any amounts, claims, notes, mortgages, contracts, and property acquired by the Secretary under this section, and any collections and proceeds therefrom;

(B) any amounts appropriated under paragraph (7);

(C) any guarantee fees collected under subsection (d) of this section; and

(D) any interest or earnings on amounts invested under paragraph (4).

(3) Use

Amounts in the Guarantee Fund shall be available, to the extent provided in appropriation Acts, for—

(A) fulfilling any obligations of the Secretary with respect to loans guaranteed under this section, including the costs (as such term is defined in section 661a of title 2) of such loans;

(B) paying taxes, insurance, prior liens, expenses necessary to make fiscal adjustment in connection with the application and transmittal of collections, and other expenses and advances to protect the Secretary for loans which are guaranteed under this section or held by the Secretary;

(C) acquiring such security property at foreclosure sales or otherwise;

(D) paying administrative expenses in connection with this section; and

(E) reasonable and necessary costs of rehabilitation and repair to properties that the Secretary holds or owns pursuant to this section.

(4) Investment

Any amounts in the Guarantee Fund determined by the Secretary to be in excess of amounts currently required to carry out this section may be invested in obligations of the United States.

(5) Limitation on commitments to guarantee loans and mortgages

(A) Requirement of appropriations

The authority of the Secretary to enter into commitments to guarantee loans under this section shall be effective for any fiscal year to the extent or in such amounts as are or have been provided in appropriations Acts, without regard to the fiscal year for which such amounts were appropriated.

(B) Limitations on costs of guarantees

The authority of the Secretary to enter into commitments to guarantee loans under this section shall be effective for any fiscal year only to the extent that amounts in the Guarantee Fund are or have been made available in appropriation Acts to cover the costs (as such term is defined in section 661a of title 2) of such loan guarantees for such fiscal year. Any amounts appropriated pursuant to this subparagraph shall remain available until expended.

(C) Limitation on outstanding aggregate principal amount

Subject to the limitations in subparagraphs (A) and (B), the Secretary may enter into commitments to guarantee loans under

this section in each of fiscal years 2008 through 2012 with an aggregate outstanding principal amount not exceeding such amount as may be provided in appropriation Acts for such fiscal year.

(6) Liabilities

All liabilities and obligations of the assets credited to the Guarantee Fund under paragraph (2)(A) shall be liabilities and obligations of the Guarantee Fund.

(7) Authorization of appropriations

There are authorized to be appropriated to the Guarantee Fund to carry out this section such sums as may be necessary for each of fiscal years 2008 through 2012.

(j) Requirements for standard housing

The Secretary shall, by regulation, establish housing safety and quality standards for use under this section. Such standards shall provide sufficient flexibility to permit the use of various designs and materials in housing acquired with loans guaranteed under this section. The standards shall require each dwelling unit in any housing so acquired to—

(1) be decent, safe, sanitary, and modest in size and design;

(2) conform with applicable general construction standards for the region;

(3) contain a heating system that—

(A) has the capacity to maintain a minimum temperature in the dwelling of 65 degrees Fahrenheit during the coldest weather in the area;

(B) is safe to operate and maintain;

(C) delivers a uniform distribution of heat; and

(D) conforms to any applicable tribal heating code or, if there is no applicable tribal code, an appropriate county, State, or National code;

(4) contain a plumbing system that—

(A) uses a properly installed system of piping;

(B) includes a kitchen sink and a partitioned bathroom with lavatory, toilet, and bath or shower; and

(C) uses water supply, plumbing, and sewage disposal systems that conform to any applicable tribal code or, if there is no applicable tribal code, the minimum standards established by the applicable county or State;

(5) contain an electrical system using wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any applicable tribal code or, if there is no applicable tribal code, an appropriate county, State, or National code;

(6) be not less than—

(A)(i) 570 square feet in size, if designed for a family of not more than 4 persons;

(ii) 850 square feet in size, if designed for a family of not less than 5 and not more than 7 persons; and

(iii) 1020 square feet in size, if designed for a family of not less than 8 persons, or

(B) the size provided under the applicable locally adopted standards for size of dwelling units;

except that the Secretary, upon the request of a tribe or Indian housing authority, may waive the size requirements under this paragraph; and

(7) conform with the energy performance requirements for new construction established by the Secretary under section 526(a) of the National Housing Act [12 U.S.C. 1735f-4(a)].

(k) Environmental review

For purposes of environmental,³ review, decisionmaking, and action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any other law that furthers the purposes of that Act, a loan guarantee under this section shall—

(1) be treated as a grant under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.); and

(2) be subject to the regulations promulgated by the Secretary to carry out section 105 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4115).

(l) Definitions

For purposes of this section:

(1) The term “family” means 1 or more persons maintaining a household, as the Secretary shall by regulation provide.

(2) The term “Guarantee Fund” means the Indian Housing Loan Guarantee Fund established under subsection (i) of this section.

(3) The term “Indian” means person recognized as being Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

(4) The term “Indian area” means the area within which an Indian housing authority or Indian tribe is authorized to provide housing.

(5) The term “Indian housing authority” means any entity that—

(A) is authorized to engage in or assist in the development or operation of—

- (i) low-income housing for Indians; or
- (ii) housing subject to the provisions of this section; and

(B) is established—

- (i) by exercise of the power of self-government of an Indian tribe independent of State law; or
- (ii) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

The term includes tribally designated housing entities under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.].

(6) The term “Secretary” means the Secretary of Housing and Urban Development.

(7) The term “standard housing” means a dwelling unit or housing that complies with the requirements established under subsection (j) of this section.

(8) **TRIBE; INDIAN TRIBE.**—The term “tribe” or “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native

village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975 [25 U.S.C. 450 et seq.].

(9) The term “trust land” means land title to which is held by the United States for the benefit of an Indian or Indian tribe or title to which is held by an Indian tribe subject to a restriction against alienation imposed by the United States.

(Pub. L. 102-550, title I, §184, Oct. 28, 1992, 106 Stat. 3739; Pub. L. 104-330, title VII, §701(a)-(j), Oct. 26, 1996, 110 Stat. 4048-4050; Pub. L. 105-276, title V, §595(e)(11)-(13), Oct. 21, 1998, 112 Stat. 2658; Pub. L. 106-377, §1(a)(1) [title II, §227], Oct. 27, 2000, 114 Stat. 1441, 1441A-30; Pub. L. 106-568, title X, §1002, Dec. 27, 2000, 114 Stat. 2925; Pub. L. 106-569, title V, §502, Dec. 27, 2000, 114 Stat. 2961; Pub. L. 107-292, §2(d), Nov. 13, 2002, 116 Stat. 2053; Pub. L. 110-37, §2, June 18, 2007, 121 Stat. 229; Pub. L. 113-6, div. F, title VIII, §1806, Mar. 26, 2013, 127 Stat. 433.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b)(4)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified generally to subchapter II (§1707 et seq.) of this chapter. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing Act of 1949, referred to in subsec. (b)(4)(C), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, which is classified principally to chapter 8A (§1441 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (k), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsecs. (k)(1) and (l)(5), is Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (l)(8), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (l)(8), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1992, and not as part of the National Housing Act which comprises this chapter.

³ So in original. The comma probably should not appear.

AMENDMENTS

2013—Subsec. (d). Pub. L. 113-6 amended subsec. (d) generally. Prior to amendment, text read as follows: “The Secretary shall fix and collect a guarantee fee for the guarantee of loans under this section, which may not exceed the amount equal to 1 percent of the principal obligation of the loan. The fee shall be paid by the lender at time of issuance of the guarantee and shall be adequate, in the determination of the Secretary, to cover expenses and probable losses. The Secretary shall deposit any fees collected under this subsection in the Indian Housing Loan Guarantee Fund established under subsection (i) of this section.”

2007—Subsec. (i)(5)(C),(7). Pub. L. 110-37 substituted “fiscal years 2008 through 2012” for “fiscal years 1997 through 2007”.

2002—Subsec. (i)(5)(C), (7). Pub. L. 107-292 substituted “each of fiscal years 1997 through 2007” for “each fiscal year”.

2000—Subsec. (a). Pub. L. 106-377, §1(a)(1) [title II, §227(1)], struck out “or as a result of a lack of access to private financial markets” after “legal status of Indian lands”.

Subsec. (b)(2). Pub. L. 106-377, §1(a)(1) [title II, §227(2)], inserted “refinance,” after “acquire.”

Subsec. (i)(5)(C). Pub. L. 106-568, §1002(1), and Pub. L. 106-569, §502(1), amended par. (5) identically, adding subpar. (C) and striking out heading and text of former subpar. (C). Text read as follows: “Subject to the limitations in subparagraphs (A) and (B), the Secretary may enter into commitments to guarantee loans under this section in each of fiscal years 1997, 1998, 1999, 2000, and 2001 with an aggregate outstanding principal amount not exceeding \$400,000,000 for each such fiscal year.”

Subsec. (i)(7). Pub. L. 106-568, §1002(2), and Pub. L. 106-569, §502(2), amended par. (7) identically, substituting “each fiscal year” for “each of fiscal years 1997, 1998, 1999, 2000, and 2001”.

1998—Subsec. (b)(2). Pub. L. 105-276, §595(e)(11), struck out before period at end “that is under the jurisdiction of an Indian tribe for which an Indian housing plan has been submitted and approved pursuant to sections 102 and 103 of the Native American Housing Assistance and Self-Determination Act of 1996 that provides for the use of loan guarantees under this section to provide affordable homeownership housing in such areas.”

Subsec. (i)(5)(C). Pub. L. 105-276, §595(e)(12), substituted “not” for “note”.

Subsecs. (k), (l). Pub. L. 105-276, §595(e)(13), added subsec. (k) and redesignated former subsec. (k) as (l).

1996—Subsec. (a). Pub. L. 104-330, §701(a)(1), (b), substituted “, Indian housing authorities, and Indian tribes,” for “and Indian housing authorities”, “lands or as a result of a lack of access to private financial markets” for “trust land”, and “, Indian housing authority, or Indian tribe” for “or Indian housing authority”.

Subsec. (b)(1). Pub. L. 104-330, §701(a)(2), substituted “, Indian housing authorities, or Indian tribes” for “or Indian housing authorities”.

Subsec. (b)(2). Pub. L. 104-330, §701(c), inserted before period at end “that is under the jurisdiction of an Indian tribe for which an Indian housing plan has been submitted and approved pursuant to sections 102 and 103 of the Native American Housing Assistance and Self-Determination Act of 1996 that provides for the use of loan guarantees under this section to provide affordable homeownership housing in such areas”.

Subsec. (b)(5)(C)(i). Pub. L. 104-330, §701(i), added cl. (i) and struck out former cl. (i) which read as follows: “an amount equal to the sum of (I) 97 percent of \$25,000 of the appraised value of the property, as of the date the loan is accepted for guarantee, and (II) 95 percent of such value in excess of \$25,000; and”.

Subsec. (h)(1)(A)(i). Pub. L. 104-330, §701(d)(1)(A), struck out “in a court of competent jurisdiction” after “foreclosure proceedings” in first sentence.

Subsec. (h)(1)(A)(ii). Pub. L. 104-330, §701(d)(1)(B), added cl. (ii) and struck out heading and text of former

cl. (ii). Text read as follows: “Without seeking a judicial foreclosure (or in any case in which a foreclosure proceeding initiated under clause (i) continues for a period in excess of 1 year), the holder of the guarantee may submit to the Secretary a claim for payment under the guarantee and the Secretary shall only pay to such holder for a loss on any single loan an amount equal to 90 percent of the pro rata portion of the amount guaranteed (as determined under subsection (e) of this section). The Secretary shall be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Secretary.”

Subsec. (h)(2), (3). Pub. L. 104-330, §701(d)(2), (3), (e), redesignated par. (3) as (2), in first sentence substituted “restricted Indian land, the mortgagee or” for “tribal allotted or trust land,” in second sentence substituted “mortgagee or the Secretary” for “Secretary” in two places, and struck out heading and text of former par. (2). Text read as follows: “Notwithstanding paragraph (1), upon receiving notice of default on a loan guaranteed under this section from the holder of the guarantee, the Secretary may accept assignment of the loan if the Secretary determines that the assignment is in the best interests of the United States. Upon assignment the Secretary shall pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined under subsection (e) of this section). The Secretary shall be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Secretary.”

Subsec. (i)(5)(A). Pub. L. 104-330, §701(j)(1), added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: “The authority of the Secretary to enter into commitments to guarantee loans under this section shall be effective for any fiscal year only to the extent or in such amounts as are or have been provided in appropriations Acts for such fiscal year.”

Subsec. (i)(5)(B). Pub. L. 104-330, §701(j)(2), inserted at end “Any amounts appropriated pursuant to this subparagraph shall remain available until expended.”

Subsec. (i)(5)(C). Pub. L. 104-330, §701(f), substituted “1997, 1998, 1999, 2000, and 2001 with an aggregate outstanding principal amount not exceeding \$400,000,000 for each such fiscal year” for “1993 and 1994 with an aggregate outstanding principal amount not exceeding such amount as may be provided in appropriation Acts for each such year”.

Subsec. (i)(7). Pub. L. 104-330, §701(g), substituted “such sums as may be necessary for each of fiscal years 1997, 1998, 1999, 2000, and 2001” for “such sums as may be necessary for fiscal year 1993 and \$50,000,000 for fiscal year 1994”.

Subsec. (k)(4). Pub. L. 104-330, §701(h)(1), inserted “or Indian tribe” after “authority”.

Subsec. (k)(5). Pub. L. 104-330, §701(h)(2), inserted concluding provisions, added subpar. (A), and struck out former subpar. (A) which read as follows: “is authorized to engage in or assist in the development or operation of low-income housing for Indians; and”.

Subsec. (k)(8). Pub. L. 104-330, §701(h)(3), added par. (8) and struck out former par. (8) which read as follows: “The term ‘tribe’ means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.”

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-276, title V, §595(f), Oct. 21, 1998, 112 Stat. 2659, provided that: “The amendments made by this section [enacting section 4168 of Title 25, Indians, amending this section, sections 4103, 4111 to 4113, 4131, 4135 to 4139 of Title 25, and sections 1437e and 12899h-1 of Title 42, The Public Health and Welfare, and repealing provisions set out as a note under section 1437 of Title 42] are made and shall apply beginning upon the date of the enactment of this Act [Oct. 21, 1998].”

§ 1715z-13b. Loan guarantees for Native Hawaiian housing

(a) Definitions

In this section:

(1) Department of Hawaiian Home Lands

The term “Department of Hawaiian Home Lands” means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.).

(2) Eligible entity

The term “eligible entity” means a Native Hawaiian family, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and private nonprofit or private for-profit organizations experienced in the planning and development of affordable housing for Native Hawaiians.

(3) Family

The term “family” means one or more persons maintaining a household, as the Secretary shall by regulation provide.

(4) Guarantee Fund

The term “Guarantee Fund” means the Native Hawaiian Housing Loan Guarantee Fund established under subsection (j) of this section.

(5) Hawaiian Home Lands

The term “Hawaiian Home Lands” means lands that—

- (A) have the status of Hawaiian Home Lands under section 204 of the Hawaiian Homes Commission Act (42 Stat. 110); or
- (B) are acquired pursuant to that Act.

(6) Native Hawaiian

The term “Native Hawaiian” means any individual who is—

- (A) a citizen of the United States; and
- (B) a descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by—
 - (i) genealogical records;
 - (ii) verification by kupuna (elders) or kama’aina (long-term community residents); or
 - (iii) birth records of the State of Hawaii.

(7) Office of Hawaiian Affairs

The term “Office of Hawaiian Affairs” means the entity of that name established under the constitution of the State of Hawaii.

(b) Authority

To provide access to sources of private financing to Native Hawaiian families who otherwise could not acquire housing financing because of the unique legal status of the Hawaiian Home Lands or as a result of a lack of access to private financial markets, the Secretary may guarantee an amount not to exceed 100 percent of the unpaid principal and interest that is due on an eligible loan under subsection (c) of this section.

(c) Eligible loans

Under this section, a loan is an eligible loan if that loan meets the following requirements:

(1) Eligible borrowers

The loan is made only to a borrower who is—

- (A) a Native Hawaiian family;
- (B) the Department of Hawaiian Home Lands;
- (C) the Office of Hawaiian Affairs; or
- (D) a private nonprofit organization experienced in the planning and development of affordable housing for Native Hawaiians.

(2) Eligible housing

(A) In general

The loan will be used to construct, acquire, or rehabilitate not more than 4-family dwellings that are standard housing and are located on Hawaiian Home Lands for which a housing plan described in subparagraph (B) applies.

(B) Housing plan

A housing plan described in this subparagraph is a housing plan that—

- (i) has been submitted and approved by the Secretary under section 4223 of title 25; and
- (ii) provides for the use of loan guarantees under this section to provide affordable homeownership housing on Hawaiian Home Lands.

(3) Security

The loan may be secured by any collateral authorized under applicable Federal or State law.

(4) Lenders

(A) In general

The loan shall be made only by a lender approved by, and meeting qualifications established by, the Secretary, including any lender described in subparagraph (B), except that a loan otherwise insured or guaranteed by an agency of the Federal Government or made by the Department of Hawaiian Home Lands from amounts borrowed from the United States shall not be eligible for a guarantee under this section.

(B) Approval

The following lenders shall be considered to be lenders that have been approved by the Secretary:

- (i) Any mortgagee approved by the Secretary for participation in the single family mortgage insurance program under title II of the National Housing Act [12 U.S.C. 1707 et seq.].
- (ii) Any lender that makes housing loans under chapter 37 of title 38 that are automatically guaranteed under section 3702(d) of title 38.
- (iii) Any lender approved by the Secretary of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949 [42 U.S.C. 1441 et seq.].
- (iv) Any other lender that is supervised, approved, regulated, or insured by any agency of the Federal Government.

(5) Terms

The loan shall—

- (A) be made for a term not exceeding 30 years;