

which are direct obligations of or obligations guaranteed as to principal or interest by the United States, be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission.

(June 27, 1934, ch. 847, title III, §311, as added Aug. 2, 1954, ch. 649, title II, §201, 68 Stat. 622; amended Pub. L. 88-560, title VII, §701(b)(1), Sept. 2, 1964, 78 Stat. 800; Pub. L. 90-448, title VIII, §802(ff), Aug. 1, 1968, 82 Stat. 542; Pub. L. 98-440, title II, §213(b), Oct. 3, 1984, 98 Stat. 1698; Pub. L. 102-550, title XIII, §1381(r), Oct. 28, 1992, 106 Stat. 4001.)

AMENDMENTS

1992—Pub. L. 102-550 struck out before period at end “; but all such issuances by the Association and all issuances of stock, and debt obligations convertible into stock, by the corporation shall be made only with the approval of the Secretary of Housing and Urban Development”.

1984—Pub. L. 98-440 inserted “by the Association and all issuances of stock, and debt obligations convertible into stock, by the corporation”.

1968—Pub. L. 90-448 substituted “either of the bodies corporate named in section 1717(a)(2) of this title” for “the Association,” and inserted provisions directing that all stock, obligations, securities, participations, or other instruments issued pursuant to this subchapter be deemed to be exempt securities, and requiring approval of the Secretary for all issuances.

1964—Pub. L. 88-560 inserted “, participations, or other instruments” after “obligations”.

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by title VIII of Pub. L. 90-448, see section 808 of Pub. L. 90-448, set out as an Effective Date note under section 1716b of this title.

§ 1723d. Transfer of certain functions to Association

The functions of the Housing and Home Finance Administrator (including the function of making payments to the Secretary of the Treasury) under section 2 of Reorganization Plan Numbered 22 of 1950, together with the notes and capital stock of the Federal National Mortgage Association held by said Administrator thereunder, are transferred to the Federal National Mortgage Association.

(Aug. 2, 1954, ch. 649, title II, §207, 68 Stat. 622.)

REFERENCES IN TEXT

Reorganization Plan Numbered 22 of 1950, referred to in text, is set out as a note under section 1717 of this title.

CODIFICATION

Section was enacted as part of the Housing Act of 1954, and not as part of the National Housing Act which comprises this chapter or of the Federal National Mortgage Charter Association Act which comprises this subchapter.

§ 1723e. Repealed. Pub. L. 98-181, title I [title IV, § 483(a)], Nov. 30, 1983, 97 Stat. 1240

Section, act June 27, 1934, ch. 847, title III, §313, as added Oct. 18, 1974, Pub. L. 93-449, §3(a), 88 Stat. 1364; amended July 2, 1975, Pub. L. 94-50, title II §§201-206, 89 Stat. 254, 255; Aug. 3, 1976, Pub. L. 94-375, §13(e)(1), 90 Stat. 1075; Oct. 12, 1977, Pub. L. 95-128, title IV, §407(a)-(d), 91 Stat. 1137, 1138; Oct. 8, 1980, Pub. L. 96-399, title III, §337(b), 94 Stat. 1655, related to the interim

mortgage and security purchasing authority of the Association.

SAVINGS PROVISION

For continued application of former sections 1720 and 1723e of this title to any purchase or commitment to purchase any mortgage made pursuant to those sections before Nov. 30, 1983, and the servicing and disposition of any such mortgage, see section 483(b) of Pub. L. 98-181, set out as a note under section 1720 of this title.

EFFECTIVE DATE

Pub. L. 93-449, §3(b), Oct. 18, 1974, 88 Stat. 1366, as amended by Pub. L. 94-50, title II, §207, July 2, 1975, 89 Stat. 256; Pub. L. 94-375, §13(d), Aug. 3, 1976, 90 Stat. 1075; Pub. L. 95-128, title IV, §407(e), Oct. 12, 1977, 91 Stat. 1138; Pub. L. 95-406, §3, Sept. 30, 1978, 92 Stat. 880; Pub. L. 95-557, title III, §303, Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96-71, §3, Sept. 28, 1979, 93 Stat. 502; Pub. L. 96-105, §3, Nov. 8, 1979, 93 Stat. 795; Pub. L. 96-153, title III, §303, Dec. 21, 1979, 93 Stat. 1112; Pub. L. 96-372, §4, Oct. 3, 1980, 94 Stat. 1364; Pub. L. 96-399, title III, §337(a), Oct. 8, 1980, 94 Stat. 1655, which related to the effective date of former section 1723e of this title, was repealed by Pub. L. 98-181, title I [title IV, §483(a)], Nov. 30, 1983, 97 Stat. 1240.

EMERGENCY MORTGAGE PURCHASE ASSISTANCE; TRANSFER OF FUNDS

Pub. L. 98-371, title I, July 18, 1984, 98 Stat. 1218, in part directed Secretary to transfer all assets acquired and liabilities incurred pursuant to this section to management and liquidating functions fund established pursuant to section 1721 of this title, and that on Oct. 1, 1984, each outstanding obligation issued by Secretary of Housing and Urban Development to Secretary of the Treasury pursuant to subsec. (c) of this section, together with any promise to repay principal and unpaid interest which had accrued on each obligation, and any other term or condition specified by each such obligation, was canceled.

§ 1723f. Repealed. Pub. L. 96-294, title V, § 533, June 30, 1980, 94 Stat. 740

Section, act June 27, 1934, ch. 847, title III, §314, as added Nov. 9, 1978, Pub. L. 95-619, title II, §242, 92 Stat. 3228, related to the purchase of energy conserving home improvement loans and advances of credit by the Association under the direction of the Secretary.

§§ 1723g, 1723h. Repealed. Pub. L. 102-550, title IX, § 912(i)(2), Oct. 28, 1992, 106 Stat. 3876

Section 1723g, act June 27, 1934, ch. 847, title III, §315, as added Nov. 9, 1978, Pub. L. 95-619, title II, §243, 92 Stat. 3230; amended June 30, 1980, Pub. L. 96-294, title V, §531, 94 Stat. 737; Oct. 17, 1984, Pub. L. 98-479, title II, §203(a)(4), 98 Stat. 2229, set out authority of Solar Energy and Energy Conservation Bank to purchase loans and advances of credit for energy conservation improvements or solar energy systems.

Section 1723h, act June 27, 1934, ch. 847, title III, §316, as added Nov. 9, 1978, Pub. L. 95-619, title II, §244, 92 Stat. 3231; amended June 30, 1980, Pub. L. 96-294, title V, §532, 94 Stat. 739; Oct. 17, 1984, Pub. L. 98-479, title II, §203(a)(5), 98 Stat. 2229, set out authority of Solar Energy and Energy Conservation Bank to purchase mortgages secured by newly constructed homes with solar energy systems.

§ 1723i. Civil money penalties against issuers

(a) In general

(1) Authority

Whenever an issuer or custodian approved under section 1721(g) of this title knowingly and materially violates any provisions of sub-

section (b), the Secretary of Housing and Urban Development may impose a civil money penalty on the issuer or the custodian in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty and may be imposed whether or not the Secretary imposes other administrative sanctions.

(2) Amount of penalty

The amount of the penalty, as determined by the Secretary, may not exceed \$5,000 for each violation, except that the maximum penalty for all violations by a particular issuer or custodian during any one-year period shall not exceed \$1,000,000. Each violation of a provision of subsection (b)(1) shall constitute a separate violation with respect to each pool of mortgages. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

(b) Violations for which penalty may be imposed

(1) Violations

The violations by an issuer or a custodian for which the Secretary may impose a civil money penalty under subsection (a) are the following:

(A) Failure to make timely payments of principal and interest to holders of securities guaranteed under section 1721(g) of this title.

(B) Failure to segregate cash flow from pooled mortgages or to deposit either principal and interest funds or escrow funds into special accounts with a depository institution whose accounts are insured by the National Credit Union Administration or by the Federal Deposit Insurance Corporation through the Deposit Insurance Fund.

(C) Use of escrow funds for any purpose other than that for which they were received.

(D) Transfer of servicing for a pool of mortgages to an issuer not approved under this subchapter, unless expressly permitted by statute, regulation, or contract approved by the Secretary.

(E) Failure to maintain a minimum net worth in accordance with requirements prescribed by the Association;

(F) Failure to promptly notify the Association in writing of any changes that materially affect the business status of an issuer.

(G) Submission to the Association of false information in connection with any securities guaranteed, or mortgages pooled, under section 1721(g) of this title.

(H) Hiring, or retaining in employment, an officer, director, principal, or employee whose duties involve, directly or indirectly, programs administered by the Association while such person was under suspension or debarment by the Secretary.

(I) Submission to the Association of a false certification either on its own behalf or on behalf of another person or entity.

(J) Failure to comply with an agreement, certification, or condition of approval set forth on, or applicable to, the application for

approval as an issuer of securities under section 1721(g) of this title.

(K) Violation of any provisions of this subchapter or any implementing regulation, handbook, or participant letter issued under authority of this subchapter.

(2) Notification to Attorney General

Before taking action to impose a civil money penalty for a violation under paragraph (1)(G) or paragraph (1)(I), the Secretary shall inform the Attorney General of the United States.

(c) Agency procedures

(1) Establishment

The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a). The standards and procedures—

(A) shall provide for the Secretary to make the determination to impose the penalty;

(B) shall provide for the imposition of a penalty only after an issuer or a custodian has been given notice of, and opportunity for, a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Final orders

If no hearing is requested within 15 days of receipt of a notice of opportunity for hearing, the imposition of a penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (a), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before December 15, 1989), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine by regulations.

(4) Reviewability of imposition of penalty

The Secretary's determination or order imposing a penalty under subsection (a) shall not be subject to review, except as provided in subsection (d).

(d) Judicial review of agency determination

(1) In general

After exhausting all administrative remedies established by the Secretary under subsection (c)(1), an issuer or a custodian against which the Secretary has imposed a civil money penalty under subsection (a) may obtain a review of the penalty and such ancillary issues as may be addressed in the notice provided under subsection (c)(1)(A) in the appropriate court of appeals of the United States,

by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

(2) Objections not raised in hearing

A court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (c)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence, which was not presented at such hearing, is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

(3) Scope of review

The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5.

(4) Order to pay penalty

Notwithstanding any other provision of law, the court shall have the power in any such review to order payment of the penalty imposed by the Secretary.

(e) Action to collect penalty

If any issuer or custodian fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (a), after the determination or order is no longer subject to review as provided by subsections (c)(1) and (d), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the issuer or custodian and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(f) Settlement by Secretary

The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(g) "Knowingly" defined

The term "knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(h) Regulations

The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(i) Deposit of penalties

The Secretary shall deposit all civil money penalties collected under this section into moneys of the Association pursuant to section 1722 of this title.

(June 27, 1934, ch. 847, title III, §317, as added Pub. L. 101-235, title I, §110(a), Dec. 15, 1989, 103

Stat. 2011; amended Pub. L. 104-208, div. A, title II, §2704(d)(13)(A), Sept. 30, 1996, 110 Stat. 3009-490; Pub. L. 109-171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109-173, §9(f)(1), Feb. 15, 2006, 119 Stat. 3618.)

AMENDMENTS

2006—Subsec. (b)(1)(B). Pub. L. 109-173 substituted "Deposit Insurance Fund" for "Bank Insurance Fund for banks or through the Savings Association Insurance Fund for savings associations".

Pub. L. 109-171 repealed Pub. L. 104-208, §2704(d)(13)(A). See 1996 Amendment note below.

1996—Subsec. (b)(1)(B). Pub. L. 104-208, §2704(d)(13)(A), which directed substitution of "Deposit Insurance Fund" for "Bank Insurance Fund for banks or through the Savings Association Insurance Fund for savings associations", was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109-173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109-171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109-171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104-208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE

Pub. L. 101-235, title I, §110(b), Dec. 15, 1989, 103 Stat. 2014, provided that: "The amendment made by subsection (a) [enacting this section] shall apply only with respect to—

"(1) violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989]; and

"(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation referred to in the amendment that occurs on or after such date."

SUBCHAPTER IV—INSURANCE OF SAVINGS AND LOAN ACCOUNTS

§§ 1724 to 1730d. Repealed. Pub. L. 101-73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363

Section 1724, acts June 27, 1934, ch. 847, title IV, §401, 48 Stat. 1255; July 16, 1952, ch. 883, 66 Stat. 727; July 28, 1959, Pub. L. 86-112, 73 Stat. 262; Oct. 16, 1966, Pub. L. 89-695, title III, §302(a), 80 Stat. 1055; Dec. 23, 1969, Pub. L. 91-151, title I, §8(a)(1), 83 Stat. 375; Oct. 28, 1974, Pub. L. 93-495, title I, §§101(b)(1), 103(a)(1), 88 Stat. 1501, 1503; Mar. 31, 1980, Pub. L. 96-221, title III, §308(b)(1)(A), 94 Stat. 147, defined terms used in this subchapter.

Section 1725, acts June 27, 1934, ch. 847, title IV, §402, 48 Stat. 1256; May 28, 1935, ch. 150, §22, 49 Stat. 298; 1947 Reorg. Plan No. 3, eff. July 29, 1947, 12 F.R. 4981, 61 Stat. 954; July 3, 1948, ch. 825, §2, 62 Stat. 1240; June 27, 1950, ch. 369, §§5, 6, 64 Stat. 258; Aug. 2, 1954, ch. 649, title V, §501(1), title VIII, §802(b), 68 Stat. 633, 642; June 11, 1960, Pub. L. 86-507, §1(12), 74 Stat. 200; Aug. 16, 1973, Pub. L. 93-100, §4, 87 Stat. 343; Oct. 28, 1974, Pub. L. 93-495, title I, §105(d), 88 Stat. 1504; Oct. 28, 1977, Pub. L. 95-147, §2(b), 91 Stat. 1227; Oct. 15, 1982, Pub. L. 97-320, title I, §125(a), (b), title III, §314, 96 Stat. 1485, 1499; Aug. 10, 1987, Pub. L. 100-86, title III, §§304, 306(b), (i), 101 Stat. 597, 601, 603, related to creation of Federal Savings and Loan Insurance Corporation.