

**§ 1715r. Requirement of builder's cost certification; definitions**

**(a) Requirement**

Except as provided in subsection (b) and notwithstanding any other provision of this chapter, no mortgage covering new or rehabilitated multifamily housing or a property or project described in subchapter IX-B shall be insured under this chapter unless the mortgagor has agreed (A) to certify, upon completion of the physical improvements on the mortgaged property or project and prior to final endorsement of the mortgage, either (i) that the approved percentage of actual cost (as those terms are herein defined) equaled or exceeded the proceeds of the mortgage loan or (ii) the amount by which the proceeds of the mortgage loan exceeded such approved percentage of actual cost, as the case may be, and (B) to pay forthwith to the mortgagee, for application to the reduction of the principal obligation of such mortgage, the amount, if any, certified to be in excess of such approved percentage of actual cost. Upon the Secretary's approval of the mortgagor's certification as required hereunder, such certification shall be final and incontestable, except for fraud or material misrepresentation on the part of the mortgagor.

**(b) Exemption for certain projects assisted with low-income housing tax credit**

In the case of any mortgage insured under any provision of this subchapter that is executed in connection with the construction, rehabilitation, purchase, or refinancing of a multifamily housing project for which equity<sup>1</sup> provided through any low-income housing tax credit pursuant to section 42 of title 26, if the Secretary determines at the time of issuance of the firm commitment for insurance that the ratio of the loan proceeds to the actual cost of the project is less than 80 percent, subsection (a) of this section shall not apply.

**(c) Definitions**

For purposes of this section, the following definitions shall apply:

(1) The term "new or rehabilitated multifamily housing" means a project or property approved for mortgage insurance prior to the construction or the repair and rehabilitation involved and covered by a mortgage insured or to be insured (i) under section 1713 of this title, (ii) under section 1715e of this title with respect to any property or project of a corporation or trust of the character described in paragraph (1) of subsection (a) of section 1715e of this title or with respect to any property or project of a mortgagor of the character described in paragraph (3) of subsection (a) thereof, (iii) under section 1715k of this title if the mortgage meets the requirements of paragraph (3)(B) of subsection (d) thereof, (iv) under section 1715l of this title if the mortgage meets the requirements of paragraph (3) or paragraph (4) of subsection (d) thereof, (v) under section 1715v of this title, (vi) under section 1715x of this title if the mortgage meets the requirements of subsection (b), (vii) under

section 1748h-2 of this title if the mortgage meets the requirements of subsection (f), (viii) under section 1715y(d) of this title, or (ix) under section 1715z-1 of this title;

(2) The term "approved percentage" means the percentage figure which, under applicable provisions of this chapter, the Secretary is authorized to apply to his estimate of value, cost, or replacement costs, as the case may be, of the property or project in determining the maximum insurable mortgage amount; except that if the mortgage is to assist the financing of repair or rehabilitation and no part of the proceeds will be used to finance the purchase of the land or structure involved, the approved percentage shall be 100 per centum; and

(3) The term "actual cost" has the following meaning: (i) in case the mortgage is to assist the financing of new construction, the term means the actual cost to the mortgagor of such construction, including amounts paid for labor, materials, construction contracts, off-site public utilities, streets, organizational and legal expenses, such allocations of general overhead items as are acceptable to the Secretary, and other items of expense approved by the Secretary, plus (I) a reasonable allowance for builder's profit if the mortgagor is also the builder as defined by the Secretary, and (II) an amount equal to the Secretary's estimate of the fair market value of any land (prior to the construction of the improvements built as a part of the project) in the property or project owned by the mortgagor in fee (or, in case the land in the property or project is held by the mortgagor under a leasehold or other interest less than a fee, such amount as the mortgagor paid for the acquisition of such leasehold or other interest but, in no event, in excess of the fair market value of such leasehold or other interest exclusive of the proposed improvements), but excluding the amount of any kickbacks, rebates, or trade discounts received in connection with the construction of the improvements, or (ii) in case the mortgage is to assist the financing of repair or rehabilitation the term means the actual cost to the mortgagor of such repair or rehabilitation, including the amounts paid for labor, materials, construction contracts, off-site public utilities, streets, organization and legal expenses, such allocations of general overhead items as are acceptable to the Secretary, and other items of expense approved by the Secretary, plus (I) a reasonable allowance for builder's profit if the mortgagor is also the builder as defined by the Secretary, and (II) an additional amount equal to (A) in case the land and improvements are to be acquired by the mortgagor and the purchase price thereof is to be financed with part of the proceeds of the mortgage, the purchase price of such land and improvements prior to such repair or rehabilitation, or (B) in case the land and improvements are owned by the mortgagor subject to an outstanding indebtedness to be refinanced with part of the proceeds of the mortgage, the amount of such outstanding indebtedness secured by such land and improvements, but excluding (for the purposes of this clause (ii)) the amount of any kickbacks, rebates, or trade discounts re-

<sup>1</sup> So in original. Probably should be followed by "is".

ceived in connection with the construction of the improvements: *Provided*, That such additional amount under (A) of this clause (ii) shall in no event exceed the Secretary's estimate of the fair market value of such land and improvements prior to such repair or rehabilitation, and such additional amount under (B) of this clause (ii) shall in no event exceed the approved percentage of the Secretary's estimate of the fair market value of such land and improvements prior to such repair or rehabilitation. In the case of a mortgage insured under section 1715k, 1715l(d)(3), 1715l(d)(4), 1715v, 1715x, or 1715z-1 of this title where the mortgagor is also the builder as defined by the Secretary, there shall be included in the actual cost, in lieu of the allowance for builder's profit under clause (i) or (ii) of the preceding sentence, an allowance for builder's and sponsor's profit and risk of 10 per centum (unless the Secretary, after finding that such allowance is unreasonable, shall by regulation prescribe a lesser percentage) of all other items entering into the term "actual cost" except land or amounts paid for a leasehold and amounts included under either (A) or (B) of clause (ii) of the preceding sentence. In the case of a mortgage insured under section 1715k, 1715l(d)(3), 1715l(d)(4), 1715v, 1715x, or 1715z-1 of this title, where the mortgagor is not also the builder as defined by the Secretary, there shall be included in the actual cost an allowance for sponsor's profit and risk of the said 10 per centum or lesser percentage of all other items entering into the term "actual cost" except land or amounts paid for a leasehold, amounts included under either (A) or (B) of the said clause (ii), and amounts paid by the mortgagor under a general construction contract.

(June 27, 1934, ch. 847, title II, §227, as added Aug. 2, 1954, ch. 649, title I, §126, 68 Stat. 607; amended Aug. 11, 1955, ch. 783, title I, §102(i), 69 Stat. 636; Aug. 7, 1956, ch. 1029, title I, §§105(d), 109, 70 Stat. 1094, 1095; Pub. L. 86-372, title I, §112, Sept. 23, 1959, 73 Stat. 661; Pub. L. 87-70, title VI, §612(k), June 30, 1961, 75 Stat. 183; Pub. L. 88-560, title I, §119(c), Sept. 2, 1964, 78 Stat. 782; Pub. L. 89-754, title V, §502(b), title X, §1020(b), Nov. 3, 1966, 80 Stat. 1277, 1295; Pub. L. 90-19, §1(a)(3), (4), May 25, 1967, 81 Stat. 17; Pub. L. 90-448, title II, §201(b)(2), (3), Aug. 1, 1968, 82 Stat. 502; Pub. L. 110-289, div. B, title VIII, §2834(b), July 30, 2008, 122 Stat. 2869.)

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c)(2), was in the original "this Act", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see Tables.

#### AMENDMENTS

2008—Pub. L. 110-289 designated introductory provisions as subsec. (a) and inserted heading, in subsec. (a), as redesignated, substituted "Except as provided in subsection (b) and notwithstanding" for "Notwithstanding", redesignated cls. (a) and (b) as cls. (A) and (B), respectively, and struck out "As used in this section—" at end, added subsec. (b), inserted heading and introductory provisions of subsec. (c), and designated former subsecs. (a) to (c) as pars. (1) to (3), respectively,

of subsec. (c) and subcls. (1) and (2) of cls. (i) and (ii) of former subsec. (c) as subcls. (I) and (II), respectively, of cls. (i) and (ii), respectively, of par. (3) of subsec. (c).

1968—Subsec. (a). Pub. L. 90-448, §201(b)(2), included mortgages insured or to be insured under section 1715z-1 of this title.

Subsec. (c). Pub. L. 90-448, §201(b)(3), substituted "section 1715x, or 1715z-1 of this title" for "section 1715x(b)(2) of this title", in two places.

1967—Pub. L. 90-19 substituted "Secretary" for "Commissioner" in subsecs. (b) and (c), and "Secretary's" for "Commissioner's" in text preceding subsec. (a) and in subsec. (c).

1966—Pub. L. 89-754, §502(b), made the certification requirement applicable to mortgage covering property or project described in subchapter IX-B.

Subsec. (a). Pub. L. 89-754, §1020(b), substituted "subsection (b)" for "subsection (b)(2)" in cl. (vi).

1964—Subsec. (a). Pub. L. 88-560 included mortgages insured or to be insured under section 1715y(d) of this title.

1961—Subsec. (a). Pub. L. 87-70, §612(k)(1), included property covered by a mortgage insured or to be insured under section 1715x of this title if the mortgage meets the requirements of subsection (b)(2).

Subsec. (b). Pub. L. 87-70, §612(k)(2), substituted "value, cost, or replacement cost" for "value or replacement cost".

Subsec. (c). Pub. L. 87-70, §612(k)(3), substituted "section 1715l(d)(3), 1715l(d)(4), 1715v, or 1715x(b)(2) of this title" for "section 1715l of this title if the mortgage meets the requirements of paragraph (4) of subsection (d) thereof, or section 1715v of this title" in second and third sentences.

1959—Subsec. (a). Pub. L. 86-372, §112(a), included mortgages insured or to be insured under subsec. (d)(4) of section 1715l of this title, under section 1715v of this title, and under section 1748h-2 of this title, and struck out provisions which related to mortgages insured or to be insured under sections 1748b, 1750b and 1750g of this title.

Subsec. (c). Pub. L. 86-372, §112(b), substituted "under section 1715k of this title, section 1715l of this title if the mortgage meets the requirements of paragraph (4) of subsection (d) thereof, or section 1715v of this title" for "under section 1715k of this title" in two places.

1956—Act Aug. 7, 1956, §109, inserted sentence preceding subsec. (a), that upon Commissioner's approval, certification shall be final and incontestable, except for fraud or misrepresentation by mortgagor.

Subsec. (a). Act Aug. 7, 1956, §105(d), inserted "or with respect to any property or project of a mortgagor of the character described in paragraph (3) of subsection (a) of section 1715e of this title," before "(iii)".

Subsec. (b). Act Aug. 7, 1956, §109, inserted provision that if the insured mortgage is to assist financing of repairs and no part of proceeds will be used to purchase the land or structure involved, the approved percentage shall be 100 percent.

Subsec. (c). Act Aug. 7, 1956, §109, inserted "such allocations of general overhead items as are acceptable to the Commissioner," after "legal expenses" wherever appearing; struck out "(without reduction by reason of the application of the approved percentage requirements of this section)" before "secured by such land and improvements," in cl. (ii)(B), amended proviso to provide that additional amount under (B) of cl. (ii) should not exceed the approved percentage of the Commissioner's estimate of the fair market value of the land and improvements; and inserted provisions at end relating to 10 percent allowance for builder's profit in mortgages issued under section 1715k.

1955—Act Aug. 11, 1955, substituted "under section 1715l of this title if the mortgage meets the requirements of paragraph (3) of subsection (d) of such section" for "under section 1715l of this title".

**§ 1715s. Treatment of mortgages covering tax credit projects**

**(a) Definition**

For purposes of this section, the term “insured mortgage covering a tax credit project” means a mortgage insured under any provision of this subchapter that is executed in connection with the construction, rehabilitation, purchase, or refinancing of a multifamily housing project for which equity<sup>1</sup> provided through any low-income housing tax credit pursuant to section 42 of title 26.

**(b) Acceptance of letters of credit**

In the case of an insured mortgage covering a tax credit project, the Secretary may not require the escrowing of equity provided by the sale of any low-income housing tax credits for the project pursuant to section 42 of title 26, or any other form of security, such as a letter of credit.

**(c) Asset management requirements**

In the case of an insured mortgage covering a tax credit project for which project the applicable tax credit allocating agency is causing to be performed periodic inspections in compliance with the requirements of section 42 of title 26, such project shall be exempt from requirements imposed by the Secretary regarding periodic inspections of the property by the mortgagee. To the extent that other compliance monitoring is being performed with respect to such a project by such an allocating agency pursuant to such section 42, the Secretary shall, to the extent that the Secretary determines such monitoring is sufficient to ensure compliance with any requirements established by the Secretary, accept such agency’s evidence of compliance for purposes of determining compliance with the Secretary’s requirements.

**(d) Streamlined processing pilot program**

**(1) In general**

The Secretary shall establish a pilot program to demonstrate the effectiveness of streamlining the review process, which shall include all applications for mortgage insurance under any provision of this subchapter for mortgages executed in connection with the construction, rehabilitation, purchase, or refinancing of a multifamily housing project for which equity<sup>1</sup> provided through any low-income housing tax credit pursuant to section 42 of title 26. The Secretary shall issue instructions for implementing the pilot program under this subsection not later than the expiration of the 180-day period beginning upon July 30, 2008.

**(2) Requirements**

Such pilot program shall provide for—

(A) the Secretary to appoint designated underwriters, who shall be responsible for reviewing such mortgage insurance applications and making determinations regarding the eligibility of such applications for such mortgage insurance in lieu of the processing functions regarding such applications that

are otherwise performed by other employees of the Department of Housing and Urban Development;

(B) submission of applications for such mortgage insurance by mortgagees who have previously been expressly approved by the Secretary; and

(C) determinations regarding the eligibility of such applications for such mortgage insurance to be made by the chief underwriter pursuant to requirements prescribed by the Secretary, which shall include requiring submission of reports regarding applications of proposed mortgagees by third-party entities expressly approved by the chief underwriter.

(June 27, 1934, ch. 847, title II, §228, as added Pub. L. 110-289, div. B, title VIII, §2834(c), July 30, 2008, 122 Stat. 2870.)

PRIOR PROVISIONS

A prior section 1715s, which was based in part on act Aug. 2, 1954, ch. 649, title VIII, §814, 68 Stat. 647, provided for the keeping of records with respect to multifamily housing and examination and audit thereof. Section 814 of act Aug. 2, 1954, was transferred and is classified in full to section 1434 of Title 42, The Public Health and Welfare.

APPROVALS BY DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Pub. L. 110-289, div. B, title VIII, §2832, July 30, 2008, 122 Stat. 2867, provided that:

“(a) ADMINISTRATIVE AND PROCEDURAL CHANGES.—

“(1) IN GENERAL.—The Secretary of Housing and Urban Development (in this section referred to as the ‘Secretary’) shall, not later than the expiration of the 6-month period beginning upon after [sic] the date of the enactment of this Act [July 30, 2008], implement administrative and procedural changes to expedite approval of multifamily housing projects under the jurisdiction of the Department of Housing and Urban Development that meet the requirements of the Secretary for such approvals.

“(2) PROJECTS.—The multifamily housing projects referred to in paragraph (1) shall include—

“(A) projects for which assistance is provided by such Department in conjunction with any low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 [26 U.S.C. 42] or tax-exempt housing bonds; and

“(B) existing public housing projects and assisted housing projects, for which approval of the Secretary is necessary for transactions, in conjunction with any such low-income housing tax credits or tax-exempt housing bonds, involving the preservation or rehabilitation of the project.

“(3) CHANGES.—The administrative and procedural changes referred to in paragraph (1) shall include all actions necessary to carry out paragraph (1), which may include—

“(A) improving the efficiency of approval procedures;

“(B) simplifying approval requirements,

“(C) establishing time deadlines or target deadlines for required approvals;

“(D) modifying division of approval authority between field and national offices;

“(E) improving outreach to project sponsors regarding information that is required to be submitted for such approvals;

“(F) requesting additional funding for increasing staff, if necessary; and

“(G) any other actions which would expedite approvals.

Any such changes shall be made in a manner that provides for full compliance with any existing re-

<sup>1</sup> So in original. Probably should be followed by “is”.