

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).

(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).

(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;
- (B) bear interest (exclusive of the guarantee fee under subsection (e) and service charges, if any) at a rate agreed upon by the borrower and the lender and determined by the Secretary to be reasonable, but not to 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); or
 - (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.

(d) Certificate of guarantee**(1) Approval process****(A) In general**

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.

(B) Approval

If the Secretary approves the application submitted under subparagraph (A), the Secretary shall issue a certificate under this subsection as evidence of the loan guarantee approved.

(2) Standard for approval

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

(3) Effect**(A) In general**

A certificate of guarantee issued under this subsection by the Secretary shall be conclusive evidence of the eligibility of the loan for guarantee under this section and the amount of that guarantee.

(B) Evidence

The evidence referred to in subparagraph (A) shall be incontestable in the hands of the bearer.

(C) Full faith and credit

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 the obligations made by the Secretary under this section.

(4) Fraud and misrepresentation

This subsection may not be construed—

- (A) to preclude the Secretary from establishing defenses against the original lender based on fraud or material misrepresentation; or
- (B) to bar the Secretary from establishing by regulations that are on the date of issuance or disbursement, whichever is earlier, partial defenses to the amount payable on the guarantee.

(e) Guarantee fee**(1) In general**

The Secretary shall fix and collect a guarantee fee for the guarantee of a loan under this section, which may not exceed the amount equal to 1 percent of the principal obligation of the loan.

(2) Payment

The fee under this subsection shall—

- (A) be paid by the lender at time of issuance of the guarantee; and
- (B) be adequate, in the determination of the Secretary, to cover expenses and probable losses.

(3) Deposit

The Secretary shall deposit any fees collected under this subsection in the Native Ha-

waiian Housing Loan Guarantee Fund established under subsection (j).

(f) 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 involved.

(g) Transfer and assumption

Notwithstanding any other provision of law, any loan guaranteed under this section, including 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.

(h) Disqualification of lenders and civil money penalties

(1) In general

(A) Grounds for action

The Secretary may take action under subparagraph (B) if the Secretary determines that any lender or holder of a guarantee certificate under subsection (d)—

(i) has failed—

(I) to maintain adequate accounting records;

(II) to service adequately loans guaranteed under this section; or

(III) to exercise proper credit or underwriting judgment; or

(ii) has engaged in practices otherwise detrimental to the interest of a borrower or the United States.

(B) Actions

Upon a determination by the Secretary that a holder of a guarantee certificate under subsection (d) has failed to carry out an activity described in subparagraph (A)(i) or has engaged in practices described in subparagraph (A)(ii), the Secretary may—

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

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

(iii) 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

(A) In general

The Secretary may impose a civil monetary penalty on a lender or holder of a guarantee certificate under subsection (d) if the Secretary determines that the holder or lender has intentionally failed—

(i) to maintain adequate accounting records;

(ii) to adequately service loans guaranteed under this section; or

(iii) to exercise proper credit or underwriting judgment.

(B) Penalties

A civil monetary penalty imposed under this paragraph shall be imposed in the manner and be in an amount provided under section 536 of the National Housing Act [12 U.S.C. 1735f-14] with respect to mortgagees and lenders under that Act.

(3) Payment on loans made in good faith

Notwithstanding paragraphs (1) and (2), if a loan was made in good faith, the Secretary may not refuse to pay a lender or holder of a valid guarantee on that loan, without regard to whether the lender or holder is barred under this subsection.

(i) Payment under guarantee

(1) Lender options

(A) In general

(i) Notification

If a borrower on a loan guaranteed under this section defaults on the loan, the holder of the guarantee certificate shall provide written notice of the default to the Secretary.

(ii) Payment

Upon providing the notice required under clause (i), 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

(aa) In general

The holder of the certificate may initiate foreclosure proceedings (after providing written notice of that action to the Secretary).

(bb) Payment

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 (f)) plus reasonable fees and expenses as approved by the Secretary.

(cc) Subrogation

The rights of the Secretary shall be subrogated to the rights of the holder of the guarantee. The holder shall assign the obligation and security to the Secretary.

(II) No foreclosure

(aa) In general

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 interest of the United States.

(bb) Payment

Upon assignment, the Secretary shall pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined under subsection (f)).

(cc) Subrogation

The rights of the Secretary shall be subrogated to the rights of the holder of the guarantee. 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 to be appropriate.

(2) Limitations on liquidation

(A) In general

If a borrower defaults on a loan guaranteed under this section that involves a security interest in restricted Hawaiian Home Land property, the mortgagee or the Secretary shall only pursue liquidation after offering to transfer the account to another eligible Hawaiian family or the Department of Hawaiian Home Lands.

(B) Limitation

If, after action is taken under subparagraph (A), 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 described in subparagraph (A) except to another eligible Hawaiian family or to the Department of Hawaiian Home Lands.

(j) Hawaiian Housing Loan Guarantee Fund

(1) Establishment

There is established in the Treasury of the United States the Hawaiian 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 amount, claims, notes, mortgages, contracts, and property acquired by the Secretary under this section, and any collections and proceeds therefrom;

(B) any amounts appropriated pursuant to paragraph (7);

(C) any guarantee fees collected under subsection (e); 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 appropriations Acts, for—

(A) fulfilling any obligations of the Secretary with respect to loans guaranteed under this section, including the costs (as that 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 at the time of the determination 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 appropriations Acts to cover the costs (as that 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 for each of fiscal years 2001, 2002, 2003, 2004, and 2005 with an aggregate outstanding principal amount not exceeding \$100,000,000 for each 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 2001, 2002, 2003, 2004, and 2005.

(k) Requirements for standard housing**(1) In general**

The Secretary shall, by regulation, establish housing safety and quality standards to be applied for use under this section.

(2) Standards

The standards referred to in paragraph (1) shall—

(A) provide sufficient flexibility to permit the use of various designs and materials in housing acquired with loans guaranteed under this section; and

(B) require each dwelling unit in any housing acquired in the manner described in subparagraph (A) to—

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

(ii) conform with applicable general construction standards for the region in which the housing is located;

(iii) contain a plumbing system that—

(I) uses a properly installed system of piping;

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

(III) uses water supply, plumbing, and sewage disposal systems that conform to any minimum standards established by the applicable county or State;

(iv) 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 appropriate county, State, or national code;

(v) be not less than the size provided under the applicable locally adopted standards for size of dwelling units, except that the Secretary, upon request of the Department of Hawaiian Home Lands may waive the size requirements under this paragraph; and

(vi) conform with the energy performance requirements for new construction established by the Secretary under section 526(a) of the National Housing Act [42 U.S.C. 1735f-4(a)], unless the Secretary determines that the requirements are not applicable.

(l) Applicability of civil rights statutes

To the extent that the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) or of the Fair Housing Act [42 U.S.C. 3601 et seq.] apply to a guarantee provided under this subsection, nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of the guarantee to an eligible entity on the basis that the entity serves Native Hawaiian families or is a Native Hawaiian family.

(Pub. L. 102-550, title I, §184A, as added Pub. L. 106-568, title II, §204, Dec. 27, 2000, 114 Stat. 2895,

and Pub. L. 106-569, title V, §514, Dec. 27, 2000, 114 Stat. 2989.)

REFERENCES IN TEXT

The Hawaiian Homes Commission Act, 1920, referred to in subsec. (a)(1), (5), is act July 9, 1921, ch. 42, 42 Stat. 108, as amended, which was classified generally to sections 691 to 718 of Title 48, Territories and Insular Possessions, and was omitted from the Code. Section 204 of the Act was classified to section 698 of Title 48.

The National Housing Act, referred to in subsecs. (c)(4)(B)(i) and (h)(2)(B), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§1701 et seq.). Title II of the Act is classified generally to this subchapter (§1707 et seq.). 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. (c)(4)(B)(iii), 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 Civil Rights Act of 1964, referred to in subsec. (l), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 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 2000a of Title 42 and Tables.

The Fair Housing Act, referred to in subsec. (l), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 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 3601 of Title 42 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.

Pub. L. 106-568, §204, and Pub. L. 106-569, §514, enacted substantially identical sections 184A to Pub. L. 102-550. This section is based on the text of section 184A of Pub. L. 102-550, as added by Pub. L. 106-569.

§ 1715z-14. Risk-sharing demonstration**(a) Demonstration mortgage risk-sharing program; areas; number of mortgages**

The purpose of this section is to authorize a demonstration mortgage risk-sharing program designed to test the feasibility of entering into risk-sharing contracts with private mortgage insurers and with insured community development financial institutions in order to reduce Government risk and administrative costs, and to speed mortgage processing. The Secretary shall limit the demonstration under this section to not more than four administrative regions of the Department of Housing and Urban Development, and shall assure that the program is in the financial interest of the Government and will not result in loss of employment by any employees of the Department of Housing and Urban Development before the expiration of the 5-year period beginning on December 21, 2000. The aggregate number of mortgages for which risk of nonpayment is shared under this section in any administrative region of the Department of Housing and Urban Development in any fiscal year may not exceed 20 percent of the aggregate number of mortgages and loans insured by the Secretary under this subchapter in such region during the preceding fiscal year.