

§ 1715z-22. Multifamily mortgage credit programs

(a) In general

The Secretary of Housing and Urban Development (hereinafter referred to as the “Secretary”) shall carry out programs through the Federal Housing Administration to provide new forms of Federal credit enhancement for multifamily loans. In carrying out the programs, the Secretary shall include an evaluation of the effectiveness of entering into partnerships or other contractual arrangements including reinsurance and risk-sharing agreements with State or local housing finance agencies, the Federal Housing Finance Board, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, qualified financial institutions, and other State or local mortgage insurance companies or bank lending consortia.

(b) Risk-sharing program

(1) In general

The Secretary shall carry out a program in conjunction with qualified participating entities to provide Federal credit enhancement for loans for affordable multifamily housing through a system of risk-sharing agreements with such entities.

(2) Program requirements

(A) In general

In carrying out the program under this subsection, the Secretary shall enter into risk-sharing agreements with qualified participating entities.

(B) Mortgage insurance and reinsurance

Agreements under subparagraph (A) may provide for

- (i) mortgage insurance through the Federal Housing Administration of loans for affordable multifamily housing originated by or through, or purchased by, qualified participating entities, and
- (ii) reinsurance, including reinsurance of pools of loans, on affordable multifamily housing. In entering into risk-sharing agreements under this subsection covering mortgages, the Secretary may give preference to mortgages that are not already in the portfolios of qualified participating entities.

(C) Risk apportionment

Agreements entered into under this subsection between the Secretary and a qualified participating entity shall specify the percentage of loss that each of the parties to the agreement will assume in the event of default of the insured or reinsured multifamily mortgage. Such agreements shall specify that the qualified participating entity and the Secretary shall share any loss in accordance with the risk-sharing agreement.

(D) Reimbursement capacity

Agreements entered into under this subsection between the Secretary and a qualified participating entity shall provide evidence acceptable to the Secretary of the capacity of such entity to fulfill any reimbursement obligations made pursuant to this subsection. Evidence of such capacity which may be considered by the Secretary may include—

- (i) a pledge of the full faith and credit of a qualified participating entity to fulfill any obligations entered into by the entity;
- (ii) reserves pledged or otherwise restricted by the qualified participating entity in an amount equal to an agreed upon percentage of the loss assumed by the entity under subparagraph (C);

- (iii) funds pledged through a State or local guarantee fund; or
- (iv) any other form of evidence mutually agreed upon by the Secretary and the qualified participating entity.

(E) Underwriting standards

The Secretary shall allow any qualified participating entity to use its own underwriting standards and loan terms and conditions for purposes of underwriting loans to be insured under this subsection, except as provided in this section, without further review by the Secretary, except that the Secretary may impose additional underwriting criteria and loan terms and conditions for contractual agreements where the Secretary retains more than 50 percent of the risk of loss. Any financing permitted on property insured under this subsection other than the first mortgage shall be expressly subordinate to the insured mortgage.

(F) Authority of Secretary

The Secretary, upon request of a qualified participating entity, may insure or reinsure and make commitments to insure or reinsure under this section any mortgage, advance, loan, or pool of mortgages otherwise eligible under this section, pursuant to a risk-sharing agreement providing that the qualified participating entity will carry out (under a delegation or otherwise, and with or without compensation, but subject to audit, exception, or review requirements) such credit approval, appraisal, inspection, issuance of commitments, approval of insurance of advances, cost certification, servicing, property disposition, or other functions as the Secretary shall approve as consistent with the purpose of this section. All appraisals of property for mortgage insurance under this section shall be completed by a Certified General Appraiser in accordance with the Uniform Standards of Professional Appraisal Practice.

(G) Disclosure of records

Qualified participating entities shall make available to the Secretary or the Secretary's designee, at the Secretary's request, such financial and other records as the Secretary deems necessary for purposes of review and monitoring for the program under this section.

(3) Development of alternatives

The Secretary shall develop and assess a variety of risk-sharing alternatives, including arrangements under which the Secretary assumes an appropriate share of the risk related to long-term mortgage loans on newly constructed or acquired multifamily rental housing, mortgage refinancings, bridge financing for construction, and other forms of multifamily housing mortgage lending that the Secretary deems appropriate to carry out the purposes of this subsection. Such alternatives shall be designed—

- (A) to ensure that other parties bear a share of the risk, in percentage amount and in position of exposure, that is sufficient to create strong, market-oriented incentives for other participating parties to maintain sound underwriting and loan management practices;
- (B) to develop credit mechanisms, including sound underwriting criteria, processing methods, and credit enhancements, through which resources of the Federal Housing Administration can assist in increasing multifamily housing lending as needed to meet the expected need in the United States;
- (C) to provide a more adequate supply of mortgage credit for sound multifamily rental housing projects in underserved urban and rural markets;
- (D) to encourage major financial institutions to expand their participation in mortgage lending for sound multifamily housing, through means such as mitigating uncertainties regarding actions of the Federal Government (including the possible failure to renew short-term subsidy contracts);

(E) to increase the efficiency, and lower the costs to the Federal Government, of processing and servicing multifamily housing mortgage loans insured by the Federal Housing Administration; and

(F) to improve the quality and expertise of Federal Housing Administration staff and other resources, as required for sound management of reinsurance and other market-oriented forms of credit enhancement.

(4) Eligibility standards

The Secretary shall establish and enforce standards for eligibility under this subsection of qualified participating entities under this subsection, as the Secretary determines to be appropriate.

(5) Insurance authority

Using any authority provided in appropriation Acts to insure mortgages under the National Housing Act [12 U.S.C. 1701 et seq.], the Secretary may enter into commitments under this subsection for risk-sharing units.

(6) Fees

The Secretary shall establish and collect premiums and fees under this subsection as the Secretary determines appropriate to

(A) achieve the purpose of this subsection, and

(B) compensate the Federal Housing Administration for the risks assumed and related administrative costs.

(7) Non-Federal participation

The Secretary shall carry out this subsection, to the maximum extent practicable, with the participation of well-established residential mortgage originators, financial institutions that invest in multifamily housing mortgages, multifamily housing sponsors, and such other private sector experts in multifamily housing finance as the Secretary determines to be appropriate.

(8) Prohibition on Ginnie Mae securitization

The Government National Mortgage Association shall not securitize any multifamily loans insured or reinsured under this subsection.

(9) Qualification as affordable housing

Multifamily housing securing loans insured or reinsured under this subsection shall qualify as affordable only if the housing is occupied by families and bears rents not greater than the gross rent for rent-restricted residential units as determined under section 42 (g) of title 26.

(10) Certification of subsidy layering compliance

The requirements of section 3545 (d) of title 42 may be satisfied in connection with a commitment to insure a mortgage under this subsection by a certification by a housing credit agency (including an entity established by a State that provides mortgage insurance) to the Secretary that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which a mortgage is to be insured shall not be any greater than is necessary to provide affordable housing.

(11) Implementation

The Secretary shall take any administrative actions necessary to initiate the program under this subsection.

(c) Housing finance agency program

(1) In general

The Secretary shall carry out a specific program in conjunction with qualified housing finance agencies (including entities established by States that provide mortgage insurance) to provide Federal credit enhancement for loans for affordable multifamily housing through a system of risk-sharing agreements with such agencies.

(2) Program requirements

(A) In general

In carrying out the program authorized under this subsection, the Secretary shall enter into risk-sharing agreements with qualified housing finance agencies.

(B) Mortgage insurance

Agreements under subparagraph (A) shall provide for full mortgage insurance through the Federal Housing Administration of the loans for affordable multifamily housing originated by or through qualified housing finance agencies and for reimbursement to the Secretary by such agencies for either all or a portion of the losses incurred on the loans insured.

(C) Risk apportionment

Agreements entered into under this subsection between the Secretary and a qualified housing finance agency shall specify the percentage of loss that each of the parties to the agreement will assume in the event of default of the insured multifamily mortgage. Such agreements shall specify that the qualified housing finance agency and the Secretary shall share any loss in accordance with the risk-sharing agreement.

(D) Reimbursement capacity

Agreements entered into under this subsection between the Secretary and a qualified housing finance agency shall provide evidence of the capacity of such agency to fulfill any reimbursement obligations made pursuant to this subsection. Evidence of such capacity may include—

- (i) a pledge of the full faith and credit of a qualified State or local agency to fulfill any obligations entered into by the qualified housing finance agency;
- (ii) reserves pledged or otherwise restricted by the qualified housing finance agency in an amount equal to an agreed upon percentage of the loss assumed by the housing finance agency under subparagraph (C);
- (iii) funds pledged through a State or local guarantee fund; or
- (iv) any other form of evidence mutually agreed upon by the Secretary and the qualified housing finance agency.

(E) Underwriting standards

The Secretary shall allow any qualified housing finance agency to use its own underwriting standards and loan terms and conditions for purposes of underwriting loans to be insured under this subsection without further review by the Secretary, except that the Secretary may impose additional underwriting criteria and loan terms and conditions for contractual agreements where the Secretary retains more than 50 percent of the risk of loss.

(F) Disclosure of records

Qualified housing finance agencies shall make available to the Secretary such financial and other records as the Secretary deems necessary for program review and monitoring purposes.

(3) Mortgage insurance premiums

The Secretary shall establish a schedule of insurance premium payments for mortgages insured under this subsection based on the percentage of loss the Secretary may assume. Such schedule shall reflect lower or nominal premiums for qualified housing finance agencies that assume a greater share of the risk apportioned according to paragraph (2)(C).

(4) Insurance authority

Using any authority provided in appropriation Acts to insure mortgages under the National Housing Act [12 U.S.C. 1701 et seq.], the Secretary may enter into commitments under this subsection for risk-sharing units.

(5) Identity of interest

Notwithstanding any other provision of law, the Secretary shall not apply identity of interest provisions to agreements entered into with qualified State housing finance agencies under this subsection.

(6) Prohibition on Ginnie Mae securitization

The Government National Mortgage Association shall not securitize any multifamily loans insured under this subsection.

(7) Qualification as affordable housing

Multifamily housing securing loans insured under this subsection shall qualify as affordable only if the housing is occupied by families and bears rents not greater than the gross rent for rent-restricted residential units as determined under section 42 (g) of title 26.

(8) Regulations

Not later than 90 days after October 28, 1992, the Secretary shall issue such regulations as may be necessary to carry out this subsection.

(9) Environmental and other reviews

(A) Environmental reviews

(i) In general

(I) In order to assure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the insurance of mortgages under subsection (c)(2) of this section, and to assure to the public undiminished protection of the environment, the Secretary may, under such regulations, in lieu of the environmental protection procedures otherwise applicable, provide for agreements to endorse for insurance mortgages under subsection (c)(2) of this section upon the request of qualified housing finance agencies under this subsection, if the State or unit of general local government, as designated by the Secretary in accordance with regulations, assumes all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary may specify, that would otherwise apply to the Secretary with respect to the insurance of mortgages on particular properties.

(II) The Secretary shall issue regulations to carry out this subparagraph only after consultation with the Council on Environmental Quality. Such regulations shall, among other matters, provide—

(aa) for the monitoring of the performance of environmental reviews under this subparagraph;

(bb) subject to the discretion of the Secretary, for the provision or facilitation of training for such performance; and

(cc) subject to the discretion of the Secretary, for the suspension or termination by the Secretary of the qualified housing finance agency's responsibilities under subclause (I).

(III) The Secretary's duty under subclause (II) shall not be construed to limit any responsibility assumed by a State or unit of general local government with respect to any particular property under subclause (I).

(ii) Procedure The Secretary shall approve a mortgage for the provision of mortgage insurance subject to the procedures authorized by this paragraph only if, not less than 15 days prior to such approval, prior to any approval, commitment, or endorsement of mortgage insurance on the property on behalf of the Secretary, and prior to any commitment by the qualified housing finance agency to provide financing under the risk-sharing agreement with respect to the property, the

qualified housing finance agency submits to the Secretary a request for such approval, accompanied by a certification of the State or unit of general local government that meets the requirements of clause (iii). The Secretary's approval of any such certification shall be deemed to satisfy the Secretary's responsibilities under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the provision of mortgage insurance on the property that is covered by such certification.

(iii) Certification A certification under the procedures authorized by this paragraph shall—

(I) be in a form acceptable to the Secretary;

(II) be executed by the chief executive officer or other officer of the State or unit of general local government who qualifies under regulations of the Secretary;

(III) specify that the State or unit of general local government under this section has fully carried out its responsibilities as described under clause (i); and

(IV) specify that the certifying officer consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and under each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or such other provisions of law apply pursuant to clause (i), and is authorized and consents on behalf of the State or unit of general local government and himself or herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities as such an official.

(iv) Approval by States In cases in which a unit of general local government carries out the responsibilities described in clause (i), the Secretary may permit the State to perform those actions of the Secretary described in clause (ii) and the performance of such actions by the State, where permitted by the Secretary, shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of clause (ii).

(B) Lead-based paint poisoning prevention

In carrying out the requirements of section 302 of the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. 4822], the Secretary may provide by regulation for the assumption of all or part of the Secretary's duties under such Act [42 U.S.C. 4801 et seq.] by qualified housing finance agencies, for purposes of this section.

(C) Certification of subsidy layering compliance

The requirements of section 3545 (d) of title 42 may be satisfied in connection with a commitment to insure a mortgage under this subsection by a certification by a housing credit agency (including an entity established by a State that provides mortgage insurance) to the Secretary that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which a mortgage is to be insured shall not be any greater than is necessary to provide affordable housing.

(10) Definitions

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

(A) Mortgage

The term "mortgage" means a first mortgage on real estate that is—

(i) owned in fee simple; or

(ii) subject to a leasehold interest that—

- (I) has a term of not less than 99 years and is renewable; or
- (II) has a remaining term that extends beyond the maturity of the mortgage for a period of not less than 10 years.

(B) First mortgage

The term "first mortgage" means a single first lien given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instrument, if any, secured thereby. Any other financing permitted on property insured under this section must be expressly subordinate to the insured mortgage.

(C) Unit of general local government; State

The terms "unit of general local government" and "State" have the same meanings as in section [5302 \(a\)](#) of title [42](#).