

respect or fails to comply with any of the requirements of 38 U.S.C. 3712 and the §36.4200 series with respect to:

(1) Obtaining and retaining a lien of the dignity prescribed on all property upon which a lien is required by 38 U.S.C. 3712 or the §36.4200 series,

(2) Inclusion of power to substitute trustees,

(3) The procurement and maintenance of insurance coverage,

(4) Advice to Secretary as to default,

(5) Notice of intention to begin action,

(6) Notice to the Secretary in any suit or action, or notice of sale,

(7) The release, conveyance, substitution, or exchange of security,

(8) Lack of legal capacity of a party to the transaction incident to which the guaranty is granted,

(9) Failure of the lender to see that any escrowed or earmarked account is expended in accordance with the agreement,

(10) The taking into consideration of limitations upon the quantum or quality of the estate or property,

(11) Any other requirement of 38 U.S.C. 3712 or the §36.4200 series which does not by the terms of said section or regulations result in relieving the Secretary of all liability with respect to the loan,

no claim on the guaranty shall be paid on account of the loan with respect to which such failure occurred, or in respect to which an unwillful misrepresentation occurred, until the amount by which the ultimate liability of the Secretary would thereby be increased has been ascertained. The burden of proof shall be upon the holder to establish that no increase of ultimate liability is attributable to such failure or misrepresentation. The amount of increased liability of the Secretary shall be offset by deduction from the amount of the guaranty otherwise payable, or if consequent upon loss of security shall be offset by crediting to the indebtedness the amount of the impairment as proceeds of the sale of security in the final accounting to the Secretary. To the extent the loss resultant from the failure of misrepresentation prejudices the Secretary's right of subrogation acceptance by the holder of the guaranty payment shall subordi-

nate the holder's right to those of the Secretary.

(c) If after the payment of a guaranty, or after a loan is transferred pursuant to §36.4281, the fraud, misrepresentation, or failure to comply with the regulations concerning guaranty of loans to veterans as provided in this section is discovered and the Secretary determines that an increased loss to the Government resulted therefrom, the transferee or person to whom such payment was made shall be liable to the Secretary for the amount of the loss caused by such misrepresentation or failure.

#### §36.4287 Substitution of trustees.

In jurisdictions in which valid, any deed of trust or mortgage securing a guaranteed loan, if it names trustees or confers a power of sale otherwise, shall contain a provision empowering any holder of the indebtedness to appoint substitute trustees or other person with such power to sell, who shall succeed to all the rights, powers, and duties of the trustees, or other person, originally designated.

#### GUARANTY OR INSURANCE OF LOANS TO VETERANS

AUTHORITY: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 101, 501, 3701-3704, 3710, 3712-3714, 3720, 3729, 3732, unless otherwise noted.

NOTE: Those requirements, conditions, or limitations which are expressly set forth in 38 U.S.C. chapter 37 are not restated in these regulations and must be taken into consideration in conjunction with §§36.4300 to 36.4393 of this part, inclusive.

[53 FR 1350, Jan. 19, 1988]

#### §36.4300 Applicability of §§36.4300 to 36.4393, inclusive.

(a) Sections 36.4300 to 36.4393 of this part, inclusive, shall be applicable to each loan entitled to an automatic guaranty, or otherwise guaranteed or insured, on or after the date of publication in the FEDERAL REGISTER, and shall be applicable to such loans previously guaranteed or insured to the extent that no legal rights vested under the regulations are impaired.

(b) Title 38 U.S.C., chapter 37, is a continuation and restatement of the

provisions of Title III of the Servicemen's Readjustment Act of 1944, and may be considered an amendment to such Title III. References to the sections or chapters of title 38 U.S.C., shall, where applicable, be deemed to refer to the prior corresponding provisions of the law.

(Authority: 38 U.S.C. 501, 3703(c), 3712(g))  
[53 FR 1350, Jan. 19, 1988]

**§ 36.4301 Definitions.**

Whenever used in 38 U.S.C. chapter 37 or §§ 36.4300 to 36.4375 of this part, inclusive, and §§ 36.4390 through 36.4393 of this part, unless the context otherwise requires, the terms defined in this section shall have the following meaning:

*A period of more than 180 days.* For the purposes of sections 3707 and 3702(a)(2)(C) of title 38 U.S.C., the term *a period of more than 180 days* shall mean 181 or more calendar days of continuous active duty.

*Acquisition and improvement loan.* A loan to purchase an existing property which includes additional funds for the purpose of installing energy conservation improvements or making other alterations, improvements, or repairs.

(Authority: 38 U.S.C. 3703(c)(1), 3710(a) (1), (4), and (7))

*Alterations.* Any structural changes or additions to existing improved realty.

*Automatic lender.* A lender that may process a loan or assumption <sup>1</sup>/<sub>4</sub>without submitting the credit package to the Department of Veterans Affairs for underwriting review. Pursuant to 38 U.S.C. 3702(d) there are two categories of lenders who may process loans automatically: (1) Entities such as banks, savings and loan associations, and mortgage and loan companies that are subject to examination by an agency of the United States or any State and (2) lenders approved by the Department of Veterans Affairs pursuant to standards established by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 3702(d))

*Condominium.* Unless otherwise provided by State law, a condominium is a form of ownership where the buyer receives title to a three dimensional air space containing the individual living

unit together with an undivided interest or share in the ownership of common elements.

*Cost* means the entire consideration paid or payable for or on account of the application of materials and labor to tangible property.

*Credit package.* Any information, reports or verifications used by a lender, holder or authorized servicing agent to determine the creditworthiness of an applicant for a Department of Veterans Affairs guaranteed loan or the assumer of such a loan.

(Authority: 38 U.S.C. 3710 and 3714)

*Date of first uncured default* means the due date of the earliest payment not fully satisfied by the proper application of available credits or deposits.

*Default* means failure of a borrower to comply with the terms of a loan agreement.

*Designated appraiser* means a person requested by the Secretary to render an estimate of the reasonable value of a property, or of a specified type of property, within a stated area for the purpose of justifying the extension of credit to an eligible veteran for any of the purposes stated in 38 U.S.C. Chapter 37. An appraiser on a fee basis is not an agent of the Secretary.

*Discharge or release.* For purposes of basic eligibility a person will be considered discharged or released if the veteran was issued a discharge certificate under conditions other than dishonorable (38 U.S.C. 3702(c)). The term *discharge or release* includes (1) retirement from the active military, naval, or air service, and (2) the satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable.

(Authority: 38 U.S.C. 101(18))

*Dwelling.* Any building designed primarily for use as a home consisting of not more than four family units plus

an added unit for each veteran if more than one eligible veteran participates in the ownership, except that in the case of a condominium housing development or project within the purview of 38 U.S.C. 3710(a)(6) and §§ 36.4356 through 36.4360(a) of this part the term is limited to a one single-family residential unit. Also, a manufactured home, permanently affixed to a lot owned by a veteran and classified as real property under the laws of the State where it is located.

(Authority: 38 U.S.C. 3710(a)(9) and (f))

*Economic readjustment* means rearrangement of an eligible veteran's indebtedness in a manner calculated to enable the veteran to meet obligations and thereby avoid imminent loss of the property which secures the delinquent obligation.

*Energy conservation improvement.* An improvement to an existing dwelling or farm residence through the installation of a solar heating system, a solar heating and cooling system, or a combined solar heating and cooling system or through application of a residential energy conservation measure as prescribed in 38 U.S.C. 3710(d) or by the Secretary.

(Authority: 38 U.S.C. 3710(a)(7))

*Full disbursement.* Payment by a lender of the entire proceeds of a loan or the purposes described in the report of the lender in respect of such loan to the Secretary either:

- (1) By payment to those contracting with the borrower for such purposes, or
- (2) By payment to the borrower, or
- (3) By transfer to an account against which the borrower can draw at will, or
- (4) By transfer to an escrow account, or
- (5) By transfer to an earmarked account if
  - (i) The amount is not in excess of 10 percent of the loan, or
  - (ii) The loan is an Acquisition and Improvement loan pursuant to § 36.4301, or
  - (iii) The loan is one submitted by a lender of the class specified in 38 U.S.C. 3702(d) or 3703(a)(2).

(Authority: 38 U.S.C. 3703(c)(1))

*Graduated payment mortgage loan.* A loan for the purpose of acquiring a sin-

gle-family dwelling unit involving a plan for repayment in which a portion of the interest due is deferred for a period of time. The interest so deferred is added to the principal balance thus resulting in a principal amount greater than at loan origination (negative amortization). The monthly payments increase on an annual basis (graduate) for a predetermined period of time until the payments reach a level which will fully amortize the loan during the remaining loan term.

(Authority: 38 U.S.C. 3703 (c) and (d))

*Guaranty* means the obligation of the United States, assumed by virtue of 38 U.S.C. Chapter 37, to repay a specified percentage of a loan upon the default of the primary debtor.

*Holder.* The lender or any subsequent assignee or transferee of the guaranteed obligation or the authorized servicing agent of the lender or of the assignee or transferee if the obligation has been assigned or transferred.

(Authority: 38 U.S.C. 3714)

*Home* means place of residence.

*Improvements.* Any alteration that improves the property for the purpose for which it is occupied.

*Indebtedness.* The unpaid principal and interest plus any other amounts allowable under the terms of a loan including those authorized by statute and consistent with §§ 36.4300 to 36.4393 of this part, inclusive, which have been paid and debited to the loan account as of the applicable date established pursuant to paragraph (f) of § 36.4319 or § 36.4321 of this part.

(Authority: 38 U.S.C. 3732)

*Insurance* means the obligation assumed by the United States to indemnify a lender to the extent specified in §§ 36.4300 to 36.4393, inclusive, for any loss incurred upon any loan insured under 38 U.S.C. 3703(a)(2).

*Insurance account* means the record of the amount available to a lender or purchaser for losses incurred on loans insured under 38 U.S.C. 3703(a).

*Lender.* The payee or assignee or transferee of an obligation at the time it is guaranteed or insured. This term also includes any sole proprietorship, partnership, or corporation and the owners, officers and employees of a sole

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proprietorship, partnership, or corporation engaged in the origination, procurement, transfer, servicing, or funding of a loan which is guaranteed or insured by VA.

(Authority: 38 U.S.C. 3704(d), 3712(g))

*Lien* means any interest in, or power over, real or personal property, reserved by the vendor, or created by the parties or by operation of law, chiefly or solely for the purpose of assuring the payment of the purchase price, or a debt, and irrespective of the identity of the party in whom title to the property is vested, including but not limited to mortgages, deeds with a defeasance therein or collaterally, deeds of trust, security deeds, mechanics' liens, lease-purchase contracts, conditional sales contracts, consignments.

*Liquidation sale.* Any judicial, contractual or statutory disposition of real property, under the terms of the loan instruments and applicable law, to liquidate a defaulted loan that is secured by such property. This includes a voluntary conveyance made to avoid such disposition of the obligation or of the security.

(Authority: 38 U.S.C. 3732)

*Lot.* A parcel of land acceptable to the Secretary as a manufactured home site.

(Authority: 38 U.S.C. 3710(a)(9))

*Manufactured home.* A moveable dwelling unit designed and constructed for year-round occupancy by a single family, on land, containing permanent eating, cooking, sleeping and sanitary facilities. A double-wide manufactured home is a moveable dwelling designed for occupancy by one family and consisting of: (1) Two or more units intended to be joined together horizontally when located on a site, but capable of independent movement or (2) a unit having a section or sections which unfold along the entire length of the unit. For the purposes of this section of VA regulations, manufactured home/lot loans guaranteed under the purview of §§ 36.4300 to 36.4393, inclusive, must be for units permanently affixed to a lot and considered to be real property under the laws of the State where it is located. If the loan is for the purchase

of a manufactured home and lot it must be considered as one loan.

(Authority: 38 U.S.C. 3710(a)(9))

*Net loss.* (insured loans) means the indebtedness, plus any other charges authorized under § 36.4313, remaining unsatisfied after the liquidation of all available security and recourse to all intangible rights of the holder against those obligated on the debt.

*Net value.* The fair market value of real property, minus the total of the costs the Secretary estimates would be incurred by VA resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, property improvement, administration, and resale. For purposes of determination of net value, *property improvement* is defined as any repair which must be completed to satisfy minimum property requirements for existing construction as prescribed by the Secretary. Costs other than property improvement will be estimated as a percentage of the fair market value. Each year VA will review the average operating expenses incurred for properties acquired under § 36.4320 of this part which were sold during the preceding 3 fiscal years and the average administrative cost to the government associated with the property management activity. The cost items reviewed will be:

(1) *Property operating expenses.* All disbursements made for payment of taxes, assessments, liens, property maintenance and related repairs, management broker's fees and commissions, and any other charges to the property account excluding property improvements and selling expenses.

(2) *Selling expenses.* All disbursements for sales commissions plus any other costs incurred and paid in connection with the sale of the property.

(3) *Administrative costs.* An estimate of the total cost for VA of personnel compensation and overhead (including all travel, transportation, standards level user charges (SLUC), communication, utilities, printing, supplies, equipment, insurance claims and other services) associated with the acquisition, management and disposition of property acquired under § 36.4320 of this

part. The average administrative costs will be determined by:

(i) Dividing the salary and benefits cost by the average number of properties on hand and adjusting this figure based on the average holding time for properties sold during the preceding fiscal year; then

(ii) Dividing part (i) by the VBA ratio of personal services to total obligations.

The three cost averages will be added and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the 3 preceding fiscal years to derive the percentage to be used in estimating net value. (The Secretary may, when determining property management costs, group properties in incremental value brackets.) The calculation of net value will be based on the actual costs incurred over the last 3 years. Based on fiscal year 1989 data, the percentage to be used when calculating net value will be 11.45 percent. The fiscal year and the percentage will be updated annually through a notice in the FEDERAL REGISTER.

(Authority: 38 U.S.C. 3732)

*Purchase price.* The entire legal consideration paid or payable upon or on account of the sale of property, exclusive of acquisition costs, or for the cost of materials and labor to be applied to the property.

*Real-estate loan.* Any obligation incurred for the purchase of real property or a leasehold estate as limited in §§ 36.4300 to 36.4393, inclusive, or for the construction of fixtures or appurtenances thereon or for alterations, improvements, or repairs thereon required by §§ 36.4300 to 36.4393, inclusive, to be secured by a lien on such property or is so secured. Loans for the purpose specified in 38 U.S.C. 3710(a)(5) (refinancing of mortgage loans or other liens on a dwelling or farm residence), loans for the purpose specified in 38 U.S.C. 3710(a)(8) (refinancing of a VA guaranteed, insured or direct loan to lower the interest rate), loans for the purposes specified in 38 U.S.C. 3710(a)(9) (purchase of manufactured homes/lots or the refinancing of such loans in order to reduce the interest rate or purchase a lot, in States in which man-

ufactured homes, when permanently affixed to a lot, are considered real property, and loans to purchase one-family residential units in condominium housing developments or projects within the purview of 38 U.S.C. 3710(a)(6) and §§ 36.4356 through 36.4360a shall also be considered real estate loans.

*Reasonable value* means that figure which represents the amount a reputable and qualified appraiser, unaffected by personal interest, bias, or prejudice, would recommend to a prospective purchaser as a proper price or cost in the light of prevailing conditions.

*Registered mail.* The term *registered mail* wherever used in the regulations concerning guaranty or insurance of loans to veterans shall include certified mail.

*Repairs.* Any alteration of existing improved realty or equipment which is necessary or advisable for protective, safety or restorative purposes.

*Repossession - repossessed* means recovery or acquisition of such physical control of property (pursuant to the provisions of the security instrument or as otherwise provided by law) as to make further legal or other action unnecessary in order to obtain actual possession of the property or to dispose of the same by sale or otherwise.

*Residential property.* (1) Any one-family residential unit in a condominium housing development within the purview of 38 U.S.C. 3710(a)(6) and §§ 36.4356 through 36.4360a, (2) any manufactured home permanently affixed to a lot owned or being purchased by a veteran and considered to be real property under the laws of the State where it is located, and (3) any improved real property (other than a condominium housing development or a manufactured home and/or lot) or leasehold estate therein as limited by §§ 36.4300 to 36.4393, inclusive, the primary use of which is for occupancy as a home, consisting of not more than four family units, plus an added unit for each eligible veteran if more than one participates in the ownership thereof, or (4) any land to be purchased out of the proceeds of a loan for the construction of a dwelling, and on which such dwelling is to be erected.

(Authority: 38 U.S.C. 3710(f)(2) and (3))

*Secretary.* The Secretary of Veterans Affairs, or any employee of the Department of Veterans Affairs authorized to act in the Secretary's stead.

*Servicing agent.* An agent designated by the loan holder as the entity to collect installments on the loan and/or perform other functions as necessary to protect the interests of the holder.

(Authority: 38 U.S.C. 3714)

*Specified amount.* A sum, equal to the lesser of the net value of real property or the total indebtedness secured thereby, which the Secretary designates as the minimum amount to be credited to the indebtedness incident to a liquidation sale.

(Authority: 38 U.S.C. 3732)

*Unguaranteed portion of the indebtedness.* The indebtedness computed as of the applicable date of under paragraph (f) of §36.4319 or §36.4321 of this part minus the amount of the guaranty payable as of such date.

(Authority: 38 U.S.C. 3732)

(Authority: 38 U.S.C. 501, 3703(c)(1))

[24 FR 2651, Apr. 7, 1959]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §36.4301, see the List of CFR Sections Affected in the Finding Aids section of this volume.

GENERAL PROVISIONS

**§36.4302 Computation of guaranties or insurance credits.**

(a) With respect to a loan to a veteran guaranteed under 38 U.S.C. 3710 the guaranty shall not exceed the lesser of the dollar amount of entitlement available to the veteran or

(1) 50 percent of the original principal loan amount where the loan amount is not more than \$45,000; or

(2) \$22,500 where the original principal loan exceeds \$45,000, but is not more than \$56,250; or

(3) Except as provided in subparagraph (4), the lesser of \$36,000 or 40 percent of the original principal loan amount where the loan amount exceeds \$56,250; or

(4) The lesser of \$50,750 or 25 percent of the original principal loan amount where the loan amount exceeds \$144,000 and the loan is for the purchase or con-

struction of a home or the purchase of a condominium unit.

(Authority: 38 U.S.C. 3703(a))

(b) With respect to an interest rate reduction refinancing loan guaranteed under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11), the dollar amount of guaranty may not exceed the greater of the original guaranty amount of the loan being refinanced, or 25 percent of the refinancing loan amount.

(Authority: 38 U.S.C. 3703, 3710)

(c) With respect to a loan for an energy efficient mortgage guaranteed under 38 U.S.C. 3710(d), the amount of the guaranty shall be in the same proportion as would have been provided if the energy efficient improvements were not added to the loan amount, and there shall be no additional charge to the veteran's entitlement as a result of the increased guaranty amount.

(Authority: 38 U.S.C. 3703, 3710)

(d) An amount equal to 15 percent of the original principal amount of each insured loan shall be credited to the insurance account of the lender and shall be charged against the guaranty entitlement of the borrower: *Provided*, That no loan may be insured unless the borrower has sufficient entitlement remaining to permit such credit.

(e) Subject to the provisions of §36.4303(g), the following formulas shall govern the computation of the amount of the guaranty or insurance entitlement which remains available to an eligible veteran after prior use of entitlement:

(1) If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from \$36,000. The sum remaining is the amount of available entitlement for use, except that:

(i) Entitlement may be increased by up to \$14,750 if the loan amount exceeds \$144,000 and the loan is for purchase or construction of a home or purchase of a condominium; and

(ii) Entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 3712 may not exceed \$20,000.