

holder shall obtain the required lien on real property the title to which is such as to be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally in the community in which the property is situated: *Provided*, That a title will not be unacceptable by reason of any of the limitations on the quantum or quality of the property or title stated in § 36.4253. If such holder fails in this 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 subordinate 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.

Subpart B—Guaranty or Insurance of Loans to Veterans With Electronic Reporting

SOURCE: 73 FR 6310, Feb. 1, 2008, unless otherwise noted. Redesignated at 75 FR 33705, June 15, 2010.

§ 36.4300 Applicability and qualified mortgage status.

(a) *Applicability to guaranteed loans.* This subpart applies to loans serviced by a mortgage servicing industry segment on or after the date that VA issues a FEDERAL REGISTER notice making this subpart applicable to that segment. This includes loans entitled to an automatic guaranty, or otherwise

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guaranteed or insured, on or after the date assigned in the FEDERAL REGISTER, and loans that were previously guaranteed or insured to the extent that no legal rights vested under the regulations are impaired.

(b) *Safe harbor qualified mortgage*—(1) *Defined.* A safe harbor qualified mortgage meets the Ability-to-Repay requirements of sections 129B and 129C of the Truth-in-Lending Act (TILA) regardless of whether the loan might be considered a high cost mortgage transaction as defined by section 103bb of TILA (15 U.S.C. 1602bb).

(2) *General.* Subject to paragraphs (c) and (d) of this section, any guaranteed or insured loan made in compliance with this subpart is a safe harbor qualified mortgage.

(3) *Exempted transactions.* The following loans are not subject to challenge under the ability-to-repay requirements of the Truth-in-Lending Act (15 U.S.C. 1639C).

(i) A temporary or “bridge” loan with a term of 12 months or less, such as a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling within 12 months or a loan to finance the initial construction of a dwelling;

(ii) A construction phase of 12 months or less of a construction-to-permanent loan;

(iii) An extension of credit made pursuant to a program administered by a Housing Finance Agency, as defined under 24 CFR 266.5;

(iv) An extension of credit made by:

(A) A creditor designated as a Community Development Financial Institution, as defined under 12 CFR 1805.104(h);

(B) A creditor designated as a Downpayment Assistance through Secondary Financing Provider, pursuant to 24 CFR 200.194(a), operating in accordance with regulations prescribed by the U.S. Department of Housing and Urban Development applicable to such persons;

(C) A creditor designated as a Community Housing Development Organization provided that the creditor has entered into a commitment with a participating jurisdiction and is undertaking a project under the HOME program, pursuant to the provisions of 24

CFR 92.300(a), and as the terms community housing development organization, commitment, participating jurisdiction, and project are defined under 24 CFR 92.2; or

(D) A creditor with a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3); 26 CFR 1.501(c)(3)–(1), provided that:

(I) During the calendar year preceding receipt of the consumer’s application, the creditor extended credit secured by a dwelling no more than 200 times;

(2) During the calendar year preceding receipt of the consumer’s application, the creditor extended credit secured by a dwelling only to consumers with income that did not exceed the low- and moderate-income household limit as established pursuant to section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20)) and amended from time to time by the U.S. Department of Housing and Urban Development, pursuant to 24 CFR 570.3;

(3) The extension of credit is to a consumer with income that does not exceed the household limit specified in 12 CFR 1026.43(a)(3); and

(4) The creditor determines, in accordance with written procedures, that the consumer has a reasonable ability to repay the extension of credit.

(v) An extension of credit made pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211; 5219);

(c) *Interest rate reduction refinancing loans (IRRRLs)*—(1) *Safe harbor.* A streamlined refinance loan made pursuant to 38 U.S.C. 3710(a)(8) and (e) is a safe harbor qualified mortgage, as defined in paragraph (b) of this section, if all of the following conditions are met:

(i) The loan being refinanced was originated at least 6 months before the date of the new loan’s closing date, and the veteran has not been more than 30 days past due during such 6-month period;

(ii) The recoupment period for all fees and charges financed as part of the loan or paid at closing does not exceed thirty-six (36) months;

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(iii) The streamlined refinance loan is either exempt from income verification requirements pursuant to 38 CFR 36.4307 or the refinance loan complies with other income verification requirements pursuant to 38 CFR 36.4340, as well as the Truth-in-Lending Act (15 U.S.C. 1639C) and its implementing regulations; and

(iv) All other applicable requirements of this subpart are met.

(Authority: 15 U.S.C. 1639C(b)(3)(B)(ii), 38 U.S.C. 3710)

(2) *Rebuttable presumption.* A streamlined refinance that does not meet all of the requirements of safe harbor in paragraph (c)(1), is a qualified mortgage for which there is a presumption that the borrower had the ability to repay the loan at the time of consummation, if such streamlined refinance, at the time of consummation, satisfies the requirements of (c)(1)(iii) and (iv) of this section.

(d) *Effect of indemnification on qualified mortgage status.* An indemnification demand or resolution of a demand that relates to whether the loan satisfied relevant eligibility and underwriting requirements at the time of consummation may result from facts that could allow a change to qualified mortgage status, but the existence of an indemnification does not per se remove qualified mortgage status.

(Authority: 15 U.S.C. 1639C(b)(3)(B)(ii), 38 U.S.C. 3710, 3720)

(e) *Restatement.* 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. 3703(c)(1))

[73 FR 6310, Feb. 1, 2008. Redesignated at 75 FR 33705, June 15, 2010, as amended at 79 FR 26627, May 9, 2014]

§ 36.4301 Definitions.

Whenever used in 38 U.S.C. chapter 37 or subpart F 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 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))

Compromise sale. A sale to a third party for an amount less than is sufficient to repay the unpaid balance on the loan where the holder has agreed in advance to release the lien in exchange for the proceeds of such sale.

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. 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,