

REGULATIONS GOVERNING THE VA LOAN GUARANTY PROGRAM

CONTENTS

PART IV. TITLE 38 CFR 36.4300 SERIES

GUARANTY OR INSURANCE OF LOANS TO VETERANS

| SECTION   | PAGE  |
|---|-------|
| 36.4300 Applicability of 36.4300 to 36.4393, Inclusive                      | IV-1  |
| 36.4301 Definitions   | IV-1  |
| General Provisions  |       |
| 36.4302 Computation of Guaranties or Insurance Credits                      | IV-9  |
| 36.4303 Reporting Requirements  | IV-12 |
| 36.4304 Deviations, Changes of Identity                                     | IV-17 |
| 36.4305 Partial Disbursement  | IV-18 |
| 36.4306 Refinancing of Mortgage or Other Lien Indebtedness                  | IV-19 |
| 36.4306a Interest Rate Reduction Refinancing Loan                           | IV-20 |
| 36.4307 Joint Loans   | IV-22 |
| 36.4308 Transfer of Title by Borrower or Maturity by Demand or Acceleration | IV-23 |
| 36.4309 Amortization  | IV-25 |
| 36.4310 Prepayment  | IV-27 |
| 36.4311 Interest Rates  | IV-27 |
| 36.4312 Charges and Fees  | IV-28 |
| 36.4313 Advances and Other Charges  | IV-33 |
| 36.4314 Extensions and Reamortizations                                      | IV-34 |
| 36.4315 Notice of Default and Acceptability of Partial Payments             | IV-35 |
| 36.4316 Continued Default   | IV-36 |
| 36.4317 Notice of Intention to Foreclose                                    | IV-37 |
| 36.4318 Refunding of Loans in Default                                       | IV-37 |
| 36.4319 Legal Proceedings   | IV-37 |
| 36.4320 Sale of Security  | IV-39 |
| 36.4321 Computation of Guaranty Claims; Subsequent Accounting               | IV-47 |
| 36.4322 Computation of Indebtedness   | IV-49 |
| 36.4323 Subrogation and Indemnity   | IV-49 |
| 36.4324 Release of Security   | IV-53 |
| 36.4325 Partial or Total Loss of Guaranty or Insurance                      | IV-54 |
| 36.4326 Hazard Insurance  | IV-56 |
| 36.4327 Substitution of Trustees  | IV-57 |
| 36.4328 Capacity of Parties to Contract                                     | IV-57 |
| 36.4329 Geographical Limits   | IV-57 |
| 36.4330 Accounting Records  | IV-57 |
| 36.4331 Disqualification of Lenders   | IV-58 |
| 36.4332 Delivery of Notice  | IV-61 |
| 36.4333 Satisfaction of Indebtedness  | IV-61 |
| 36.4334 Incorporation by Reference  | IV-61 |
| 36.4335 Supplementary Administrative Action                                 | IV-61 |
| 36.4336 Eligibility of Loans; Reasonable Value Requirements                 | IV-62 |
| 36.4337 Canceled  |       |
| 36.4338 Death or Insolvency of Holder                                       | IV-64 |
| 36.4339 Qualification for Designated Fee Appraiser                          | IV-64 |

CONTENTS

PART IV. TITLE 38 CFR 36.4300 SERIES

GUARANTY OR INSURANCE OF LOANS TO VETERANS--Continued

| SECTION  | PAGE   |
|--|--------|
| 36.4340 Restriction on Designated Fee Appraisers   | IV-65  |
| 36.4341 Suspension or Removal of Appraisers  | IV-65  |
| 36.4342 Delegation of Authority  | IV-65  |
| 36.4343 Cooperative Loans  | IV-66  |
| 36.4344 Lenders Appraisal Processing Program   | IV-68  |
| 36.4345 Waivers, Consents, and Approvals; When Effective   | IV-73  |
| 36.4346 Canceled   |        |
| 36.4347 Minimum Property and Construction Requirements   | IV-74  |
| 36.4348 Canceled   |        |
| 36.4349 Canceled   |        |
| 36.4350 Estate of Veteran in Real Property   | IV-74  |
| 36.4351 Loans, First, Second or Unsecured  | IV-78  |
| 36.4352 Tax, Special Assessment and Other Liens  | IV-79  |
| 36.4353 Combination Residential and Business Property  | IV-79  |
| 36.4354 Canceled   |        |
| 36.4355 Supplemental Loans   | IV-79  |
| 36.4356 Condominium Loans-General  | IV-80  |
| 36.4357 Acceptable Ownership Arrangements and Documentation  | IV-83  |
| 36.4358 Rights and Restrictions  | IV-85  |
| 36.4359 Miscellaneous Legal Requirements   | IV-89  |
| 36.4360 Documentation and Related Requirements-Flexible<br>Condominiums and Condominiums with Offsite Facilities | IV-90  |
| 36.4360a Appraisal Requirements  | IV-92  |
| 36.4361 Right of the Secretary to Refuse to Appraise Residential<br>Properties                                   | IV-98  |
| 36.4362 Requirement of Construction Warranty   | IV-99  |
| 36.4363 Nondiscrimination and Equal Opportunity in Housing<br>Certification Requirements                         | IV-99  |
| 36.4364 Correction of Structural Defects   | IV-100 |
| 36.4365 Canceled   |        |
| Loans Under 38 U.S.C. 1815   |        |
| 36.4370 Insured Loan and Insurance Account   | IV-102 |
| 36.4372 Transfer of Insured Loans  | IV-102 |
| 36.4373 Debits and Credits to Insurance Account Under 36.4318  | IV-103 |
| 36.4374 Payment of Insurance   | IV-103 |
| 36.4375 Reports of Insured Institutions  | IV-103 |
| 36.4380 through 36.4389 Canceled   |        |

IV-ii

CONTENTS

PART IV. TITLE 38 CFR 36.4300 SERIES

GUARANTY OR INSURANCE OF LOANS TO VETERANS--Continued

Federally Assisted Construction Contracts -  
 Nondiscrimination in Employment-Executive Orders  
 11246 and 11375

|         |                                 |        |
|---------|---------------------------------|--------|
| 36.4390 | Purpose                         | IV-104 |
| 36.4391 | Applicability                   | IV-104 |
| 36.4392 | Certification Requirements      | IV-105 |
| 36.4393 | Complaint and Hearing Procedure | IV-107 |

IV-iii

PART IV. TITLE 38 CFR 36.4300 SERIES

GUARANTY OR INSURANCE OF LOANS TO VETERANS

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 sections 36.4300 to 36.4393 of this part, inclusive.

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, United States Code, 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, United States Code, shall, where applicable, be deemed to refer to the prior corresponding provisions of the law.

(Authority: 38 U.S.C. 210(c), 1803(c), 1819(g))

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 and 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 1807 and 1802(a)(2)(C) of title 38, United States Code, 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. 1803(c)(1), 1810(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. 1802(d) there are two categories of lenders who may process loans automatically: (1) Entities such as banks, savings and loan

IV-1

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. 1802(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. 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. 1810 and 1814)

Date of First Uncured Default. The due date of the earliest payment not fully satisfied by the proper application of available credits or deposits.

Default. Failure of a borrower to comply with the terms of a loan agreement.

Designated Appraiser. 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. 1802(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 period 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))

IV-2

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. 1810(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. 1810(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. 1810(d) or by the Secretary.

(Authority: 38 U.S.C. 1810(a)(7))

Full Disbursement. Payment by a lender of the entire proceeds of a loan for 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. 1802(d) or 1803(a)(2).

(Authority: 38 U.S.C. 1803(c)(1))

IV-3

Graduated Payment Mortgage Loan. A loan for the purpose of acquiring a single-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. 1803(c) and (d))

Guaranty. 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 on any subsequent assignee or transferee of the guaranteed or insured obligation. For purposes of the assumption review required by 38 U.S.C. 1814, the term "holder" shall also apply to the servicer of a loan guaranteed or insured under 38 U.S.C., chapter 37.

(Authority: 38 U.S.C. 1814)

Home. 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. 1832)

Insurance. 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. 1803(a)(2).

Insurance Account. The record of the amount available to a lender or purchaser for losses incurred on loans insured under 38 U.S.C. 1815.

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 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. 1804(d); 1812(g))

IV-4

Lien. 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. 1832)

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

(Authority: 38 U.S.C. 1810(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 the 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. 1810(a)(9))

Net Loss (insured loans). 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 described 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

IV-5

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:

(Authority: 38 U.S.C. 1832)

(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 costs for VA of personnel compensation and overhead (including all travel, transportation, standard 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 cost 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. 1832)

(4) Government Cost of Funds. The estimated interest cost of funds payable for property acquisition is determined by multiplying the average holding time (expressed in years) from property acquisition to resale for properties acquired under 36.4320 of this part which were sold during the preceding fiscal year by an interest rate equivalent to the yield on Treasury obligations with a maturity

IV-6

comparable to such average holding time. This yield is calculated from the "Treasury Market Bid Yields at Constant Maturities: Bills, Notes and Bonds" as prepared by the Department of the Treasury showing the average yields on Treasury obligations for selected maturities. Source data for the calculation are the average yields during the last month of the preceding fiscal year for the next lower and next higher maturities as compared to the average holding time. The yield for the average holding time is interpolated from the yields for these maturities. Based on fiscal year 1988 data, the percentage of fair market value representing the Government's cost of funds will be 4.45 percent. The fiscal year and the percentage will be updated annually through a notice in the Federal Register. The first 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, and the percentage of fair market value representing the Government's cost of funds will be added to the quotient, 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 cost incurred over the last 3 years plus the estimated interest cost to the Government of funds payable for property acquisition in the current fiscal year. Based on fiscal year 1988 data, the percentage to be used when calculating net value will be 15.08 percent, which consists of 10.63 percent representing estimated actual costs plus 4.45 percent representing estimated interest costs. The fiscal year and the percentages will be updated annually through a notice in the Federal Register.

(Authority: 38 U.S.C. 1832)

**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. 1810(a)(5) (refinancing of mortgage loans or other liens on a dwelling or farm residence), loan for the purpose specified in 38 U.S.C. 1810(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. 1810(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 manufactured 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. 1810(a)(6) and 36.4356 through 36.4360a shall also be considered real estate loans.

IV-7

**Reasonable Value.** 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 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.** 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. 1810(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. 1810(f)(2))

Secretary. The Secretary of Veterans Affairs, or any employee of VA 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. 1814)

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. 1832)

IV-8

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. 1816)

#### 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. 1810 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 \$46,000 or 25 percent of the original principal loan

amount where the loan amount exceeds \$144,000 and the loan is for the purchase or construction of a home or the purchase of a condominium unit.

(Authority: 38 U.S.C. 1803(a))

(b) With respect to a loan guaranteed under 38 U.S.C. 1810(a)(8) or (9)(B)(i) the dollar amount of guaranty may not exceed the original dollar amount of guaranty on the loan being refinanced.

(Authority: 38 U.S.C. 1803(a))

(c) 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.

(d) Subject to the provisions of paragraph (g) of 36.4303, 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

IV-9

up to \$10,000 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. 1812 may not exceed \$20,000.

(2) If a veteran previously secured a realty (home) loan, the amount of realty (home) loan entitlement used is 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 \$10,000 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. 1812 may not exceed \$20,000.

(3) If a veteran previously secured a manufactured home loan under 38 U.S.C. 1812; the amount of entitlement used for that loan is subtracted from \$36,000. The sum remaining is the amount of available entitlement for home loans or manufactured home/lot loans guaranteed under 38 U.S.C. 1810, except that entitlement may be increased by up to \$10,000 if the loan amount exceeds \$144,000 and the loan is for purchase or construction of a home or purchase of a condominium. To determine the amount of entitlement available for manufactured home loans, processed under 38 U.S.C. 1812, the amount of entitlement previously used for that purpose is subtracted from \$20,000. The sum remaining is the amount of available entitlement for use for manufactured home loan purposes under 38 U.S.C. 1812.

(Authority: 38 U.S.C. 1803(a), 1812(c)(4))

(e) For the purpose of computing the remaining guaranty or insurance

benefit to which a veteran is entitled, loans guaranteed prior to the effective date of 36.4300 to 36.4393, inclusive, shall be taken into consideration as if made subsequent thereto.

(f) A loan eligible for insurance may be either guaranteed or insured at the option of the borrower and the lender: Provided, That if the Secretary is not advised of the exercise of such option at the time the loan is reported pursuant to 36.4303, such loan will not be eligible for insurance.

(g) A guaranty is reduced or increased pro rata with any deduction or increase in the amount of the guaranteed indebtedness, but in no event will the amount payable on a guaranty or the percentage of the indebtedness corresponding to that of the original guaranty whichever is less. However, on a graduated payment mortgage loan, the percentage of guaranty applicable to the original loan amount pursuant to paragraph (a) of this section shall apply to the loan indebtedness to the extent scheduled deferred interest is added to principal during the graduation period without regard to the original maximum dollar amount of guaranty.

(Authority: 38 U.S.C. 1803(b) and (d))

IV-10

(h) The amount of any guaranty or the amount credited to a lender's insurance account in relation to any insured loan shall be charged against the original or remainder of the guaranty benefit of the borrower. Complete or partial liquidation, by payment or otherwise, of the veteran's guaranteed or insured indebtedness does not increase the remainder of the guaranty benefit, if any, otherwise available to the veteran. When the maximum amount of guaranty or insurance legally available to a veteran shall have been granted, no further guaranty or insurance is available to the veteran.

(i) Notwithstanding the provisions of paragraph (g) of this section, the Secretary may exclude the amount of guaranty or insurance entitlement used for any guaranteed or insured loan provided:

(1) The property which served as security for the loan has been disposed of by the veteran, or has been destroyed by fire or other natural hazard; and

(2) The loan has been repaid in full, or the Secretary has been released from liability as to the loan, or if the Secretary has suffered a loss on said loan, such loss has been paid in full; or

(3) A veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of his or her entitlement to the extent the entitlement of the veteran-transferor has been used originally.

(4) The loan has been repaid in full, and the loan for which the veteran seeks to use entitlement is secured by the same property which secured the fully repaid loan.

(Authority: 38 U.S.C. 1810(e)(3))

(j)(1) The amount of guaranty entitlement, available and unused, of an eligible unmarried surviving spouse (whose eligibility does not result from his or her own service) is determinable in the same manner as in the case of

any veteran, and any entitlement which the decedent (who was his or her spouse) used shall be disregarded. A certificate as to the eligibility of such surviving spouse, issued by the Secretary, shall be a condition precedent to the guaranty or insurance of any loan made to a surviving spouse in such capacity.

(Authority: 38 U.S.C. 1801(a))

(2) An unmarried surviving spouse who was a co-obligor under an existing VA guaranteed, insured or direct loan shall be considered to be a veteran eligible for an interest rate reduction refinancing loan pursuant to 38 U.S.C. 1810(a)(8) or (9)(B)(i).

(Authority: 38 U.S.C. 1810(e)(3))

(Authority: 38 U.S.C. 210(c), 1803(c)(1))

IV-11

#### 36.4303 REPORTING REQUIREMENTS

(a) With respect to loans automatically guaranteed under 38 U.S.C. 1803(a)(1) evidence of the guaranty will be issuable to a lender of a class described under 38 U.S.C. 1802(d) if the loan is reported to the Secretary within 60 days following full disbursement, and upon the certification of the lender that:

(1) No default exists thereunder which has continued for more than 30 days;

(2) Except for acquisition and improvement loans as defined in 36.4301, any construction, repairs, alterations, or improvements effected subsequent to the appraisal of reasonable value, and paid for out of the proceeds of the loan, which have not been inspected and approved upon completion by a compliance inspector designated by the Secretary have been completed properly in full accordance with the plans and specifications upon which the original appraisal was based, and any deviations or changes of identity in said property have been approved as required in 36.4304 concerning guaranty or insurance of loans to veterans;

(3) The loan conforms otherwise with the applicable provisions of 38 U.S.C., chapter 37 and of the regulations concerning guaranty or insurance of loans to veterans.

(Authority: 38 U.S.C. 1803(c)(1))

(b) Loans made pursuant to 38 U.S.C. 1815 although not entitled to automatic insurance thereunder may, when made by a lender of a class described in 38 U.S.C. 1802(d)(1), be reported for issuance of an insurance credit.

(Authority: 38 U.S.C. 1802(d), 1815)

(c) Each loan proposed to be made to an eligible veteran by a lender not within a class described in 38 U.S.C. 1802(d) shall be submitted to the Secretary for approval prior to closing. Lenders described in 38 U.S.C. 1802(d) shall have the optional right to submit any loan for such prior approval. The Secretary upon determining any loan so submitted to be eligible

for a guaranty, or for insurance, will issue a certificate of commitment with respect thereto.

(d) A certificate of commitment shall entitle the holder to the issuance of the evidence of guaranty or insurance upon the ultimate actual payment of the full proceeds of the loan for the purposes described in the original report and upon the submission within 60 days thereafter of a supplemental report showing that fact and:

(1) The identity of any property purchased therewith,

(2) That all property purchased or acquired with the proceeds of the loan has been encumbered as required by the regulations concerning guaranty or insurance of loans to veterans,

IV-12

(3) Except for acquisition and improvement loans as defined in 36.4301, any construction, repairs, alterations, or improvements paid for out of the proceeds of the loan which have not been inspected and approved subsequent to completion by a compliance inspector designated by the Secretary have been completed properly in full accordance with the plans and specifications upon which the original appraisal was based and that any deviations or changes of identity in said property have been approved as required by 36.4304;  
and

(4) That the loan conforms otherwise with the applicable provisions of 38 U.S.C., chapter 37 and the regulations concerning guaranty or insurance of loans to veterans.

(Authority: 38 U.S.C. 1803(c)(1))

(e) Upon the failure of the lender to report in accordance with the provisions of paragraph (d) of this section the certificate of commitment shall have no further effect, or the amount of guaranty or insurance shall be reduced pro rata, as may be appropriate under the facts of the case: Provided, nevertheless, That if the loan otherwise meets the requirements of this section, said certificate of commitment may be given effect by the Secretary, notwithstanding the report is received after the date otherwise required.

(f) Evidence of a guaranty will be issued by the Secretary by appropriate endorsement on the note or other instrument evidencing the obligation, or by a separate certificate at the option of the lender. Notice of credit to an insurance account will be given to the lender. Unused certificates of eligibility issued prior to March 1, 1946, are void. No certificate of commitment shall be issued and no loan shall be guaranteed or insured unless the lender, the veteran, and the loan are shown to be eligible. Evidence of guaranty or insurance will not be issued on any loan for the purchase or construction of residential property unless the veteran, or the veteran's spouse in the case of a veteran who cannot occupy the property because of active duty status with the Armed Forces, certifies in such form as the Secretary shall prescribe, that the veteran, or spouse of the active duty veteran, intends to occupy the property as his or her home. Guaranty or insurance evidence will not be issued on any loan for the alteration, improvement, or repair of any residential property or on a refinancing loan

unless the veteran, or spouse of an active duty service member, certifies that he or she presently occupies the property as his or her home. An exception to this is if the home improvement or refinancing loan is for extensive changes to the property which will prevent the veteran or the spouse of the active duty veteran from occupying the property while the work is being completed. In such case the veteran or spouse of the active duty veteran must certify that he or she intends to occupy or to reoccupy the property as his or her home upon completion of the substantial improvements or repairs. All of the mentioned certifications must make place at the time of loan

IV-13

application and closing except in the case of loans automatically guaranteed, in which case veterans or in the case of an active duty veteran, the veteran's spouse shall make the required certifications only at the time the loan is closed.

(Authority: 38 U.S.C. 1804(c))

(g) Subject to compliance with the regulations concerning guaranty or insurance of loans to veterans, the certificate of guaranty or the evidence of insurance credit will be issuable within the available entitlement of the veteran on the basis of the loan stated in the final loan report or certification of loan disbursement, except for refinancing loans for interest rate reductions. The available entitlement of a veteran will be determined by the Secretary as of the date of receipt of an application for guaranty or insurance of a loan or of a loan report. Such date of receipt shall be the date the application or loan report is date stamped into the Department of Veterans Affairs. Eligibility derived from the most recent period of service.

(1) Shall cancel any unused entitlement derived from any earlier period of service, and

(2) Shall be reduced by the amount by which entitlement from service during any earlier period has been used to obtain a direct, guaranteed, or insured loan.

(i) On property which the veteran owns at the time of application, or

(ii) As to which the Secretary has incurred actual liability or loss, unless in the event of loss or the incurrence and payment of such liability by the Secretary the resulting indebtedness of the veteran to the United States has been paid in full.

Provided, That if the Secretary issues or has issued a certificate of commitment covering the loan described in the application for guaranty or insurance or in the loan report, the amount and percentage of guaranty or the amount of the insurance credit contemplated by the certificate of commitment shall not be subject to reduction if the loan has been or is closed on a date which is not later than the expiration date of the certificate of commitment, notwithstanding that the Secretary in the meantime and prior to the issuance of the evidence of guaranty or insurance shall have incurred actual liability or loss on a direct, guaranteed, or insured loan previously obtained by the borrower. For the purposes of this paragraph, the Secretary will be deemed to have incurred actual loss on a guaranteed or insured loan if the Secretary has paid a guaranty or insurance claim thereon and the veteran's resultant indebtedness to the Government has not been paid in full, and to have incurred

actual liability on a guaranteed or insured loan if the Secretary is in receipt of a claim on the guaranty or insurance or is in receipt of a notice of default. In the case of a direct loan, the Secretary will be deemed to have incurred an actual

IV-14

loss if the loan is in default. A loan, the proceeds of which are to be disbursed progressively or at intervals, will be deemed to have been closed for the purposes of this paragraph if the loan has been completed in all respects excepting the actual "pay-out" of the entire loan proceeds.

(Authority: 38 U.S.C. 1802(a), 1810(c))

(h) Any amounts which are disbursed for an ineligible purpose shall be excluded in computing the amount of guaranty or insurance credit.

(i) Notwithstanding the lender has erroneously, but without intent to misrepresent, made certification with respect to paragraph (a)(1) of this section, the guaranty or insurance will become effective upon the curing of such default and its continuing current for a period of not less than 60 days thereafter. For the purpose of this paragraph a loan will be deemed current so long as the installment is received within 30 days after its due date.

(j) No guaranty or insurance commitment or evidence of guaranty or insurance will be issuable in respect to any loan to finance a contract which:

(1) Is for the purchase, construction, repair, alteration, or improvement of a dwelling or farm residence;

(2) Is dated on or after June 4, 1969;

(3) Provides for a purchase price or cost to the veteran in excess of the reasonable value established by the Secretary; and

(4) Was signed by the veteran prior to the veteran's receipt of notice of such reasonable value;

unless such contract includes, or is amended to include, a provision substantially as follows:

It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not incur any penalty by forfeiture of earnest money or otherwise or be obligated to complete the purchase of the property described herein, if the contract purchase price or cost exceeds the reasonable value of the property established by the Department of Veterans Affairs. The purchaser shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 210(c), 1803(c)(1))

(k) With respect to any loan for which a commitment was made on or after March 1, 1988, the Secretary must be notified whenever the holder receives knowledge of disposition of the residential property securing a Department of Veterans Affairs guaranteed loan.

(1) If the seller applies for prior approval of the assumption of the loan, then:

(i) A holder (or its authorized servicing agent) who is an automatic lender must examine the creditworthiness of the purchaser and determine compliance with the provisions of 38 U.S.C. 1814. The creditworthiness review must be performed by the party that has automatic authority. If both the holder and its servicing agent are automatic lenders, then they must decide between themselves which one will make the determination of creditworthiness, whether the loan is current and whether there is a contractual obligation to assume the loan, as required by 38 U.S.C. 1814. If the actual loan holder does not have automatic authority and its servicing agent is an automatic lender, then the servicing agent must make the determinations required by 38 U.S.C. 1814 on behalf of the holder. The actual holder will remain ultimately responsible for any failure of its servicing agent to comply with the applicable law and Department of Veterans Affairs regulations.

(A) If the assumption is approved and the transfer of the security is completed, then the notice required by this paragraph shall consist of the credit package (unless previously provided in accordance with paragraph (k)(1)(i)(B) of this section) and a copy of the executed deed and/or assumption agreement as required by the Department of Veterans Affairs office of jurisdiction. The notice shall be submitted to the Department of Veterans Affairs with the Department of Veterans Affairs receipt for the funding fee provided for in 36.4312(e)(3) of this part.

(B) If the application for assumption is disapproved, the holder shall notify the seller and the purchaser that the decision may be appealed to the Department of Veterans Affairs office of jurisdiction with 30 days. The holder shall make available to that Department of Veterans Affairs office all items used by the holder in making the holder's decision in case the decision is appealed to the Department of Veterans Affairs. If the application remains disapproved after 60 days (to allow time for appeal to and review by the Department of Veterans Affairs) then the holder must refund \$50 of any fee previously collected under the provisions of 36.4312(d)(8) of this part. If the application is subsequently approved and the sale is completed, then the holder (or its authorized servicing agent) shall provide the notice described in paragraph (k)(1)(i)(A) of this section.

(C) In performing the requirements of paragraphs (k)(1)(i)(A) or (k)(1)(i)(B) of this section the holder must complete its examination of the creditworthiness of the prospective purchaser and advise the seller no later than 45 days after the date of receipt by the holder of a complete application package for the approval of the assumption. The 45-day period may be extended by an interval not to exceed the time caused by delays in processing of the application which are documented as beyond the control of the holder, such as employers or dispositories not responding to requests for verifications, which were timely forwarded, or followups on those requests.

(ii) If neither the holder nor its authorized servicing agent is an automatic lender, the notice to the Department of Veterans Affairs shall include:

(A) Advice regarding whether the loan is current or in default;

(B) A copy of the purchase contract; and

(C) A complete credit package developed by the holder which the Secretary may use for determining the creditworthiness of the purchaser.

(D) The notice and documents required by this section must be submitted to the Department of Veterans Affairs office of jurisdiction no later than 35 days after the date of receipt by the holder of a complete application package for the approval of the assumption, subject to the same extensions as provided in paragraph (k)(1)(i) of this section. If the assumption is not automatically approved by the holder or its authorized agent, pursuant to the automatic authority provisions, \$50 of any fee collected in accordance with 36.4312(d)(8) of this part must be refunded. If the Department of Veterans Affairs does not approve the assumption, the holder will be notified and an additional \$50 of any fee collected under 36.4312(d)(8) of this section must be refunded following the expiration of the 30-day appeal period set out in paragraph (k)(1)(i)(B) of this section. If such an appeal is made to the Department of Veterans Affairs, then the review will be conducted at the Department of Veterans Affairs office of jurisdiction by an individual who was not involved in the original disapproval decision. If the application for assumption is approved and the transfer of security is completed, then the holder (or its authorized servicing agent) shall provide the notice required in paragraph (k)(1)(i)(A) of this section.

(2) If the seller fails to notify the holder before disposing of property securing the loan, the holder shall notify the Secretary within 60 days after learning of the transfer. Such notice shall advise whether or not the holder intends to exercise its option to immediately accelerate the loan and whether or not an opportunity will be extended to the transferor and transferee to apply for retroactive approval of the assumption under the terms of this paragraph.

(Authority: 38 U.S.C. 1814)

#### 36.4304 DEVIATIONS, CHANGES OF IDENTITY

A deviation of more than 5 percent between the estimates upon which a certificate of commitment has been issued and the report of final payment of the proceeds of the loan, or a change in the identity of the property upon which the original appraisal was based, will invalidate the certificate of commitment unless such deviation or change be approved by the Secretary. Any deviation in excess of 5 percent or change in the identity of the property upon

IV-17

which the original appraisal was based must be supported by a new or supplemental appraisal of reasonable value: Provided, That substitution of materials of equal or better quality and value approved by the veteran and the designated appraiser shall not be deemed a "change in the identify of the property" within the purview of this section. A deviation not in excess of 5 percent will not require the prior approval of the Secretary.

#### 36.4305 PARTIAL DISBURSEMENT

In cases where intervening circumstances make it impracticable to complete the actual paying out of the loan originally proposed, or justify the lender in declining to make further disbursements on a construction loan, evidence of guaranty or of insurance of the loan or the proper pro rata part thereof will be issuable if the loan is otherwise eligible for automatic guaranty or a certificate of commitment was issued thereon, Provided:

(a) A report of the loan is submitted to the Secretary within a reasonable time subsequent to the last disbursement, but in no event more than 90 days thereafter, unless report of the facts and circumstances is made and an extension of time obtained from the Secretary.

(b) There has been no default on the loan, except that the existence of a default shall not preclude issuance of a guaranty certificate or insurance advice if a certificate of commitment was issued with respect to the loan.

(c) The Secretary determines that a person of reasonable prudence similarly situated would not make further disbursements in the situation presented.

(d) There has been full compliance with the provisions of 38 U.S.C., chapter 37 and of the applicable regulations up to the time of the last disbursement.

(e) In the case of a construction loan when the construction is not fully completed, the amount and percentage of the guaranty and the amount of the loan for the purposes of insurance or accounting to the Secretary shall be based upon such portion of the amount disbursed out of the proceeds of the loan which, when added to any other payments made by or on behalf of the veteran to the builder or the contractor, does not exceed 80 percent of the value of that portion of the construction performed (basing value on the contract price) plus the sum, if any, disbursed by the lender out of the proceeds of the loan for the land on which the construction is situated: And provided further, That the lender shall certify as follows:

(1) Any amount advanced for land is protected by title or lien as provided in the regulations concerning guaranty or insurance of loans to veterans; and

IV-18

(2) No enforceable liens, for any work done or material furnished for that part of the construction completed and for which payment has been made out of the proceeds of the loan, exist or can come into existence.

#### 36.4306 REFINANCING OF MORTGAGE OR OTHER LIEN INDEBTEDNESS

(a) Any loan for the purpose of refinancing (38 U.S.C. 1810(a)(5)) an existing mortgage loan or other indebtedness secured by a lien of record on a dwelling or farm residence owned and occupied or to be reoccupied if the refinancing loan is for the completion of major alterations, repairs, or improvements to the property, by an eligible veteran as the veteran's home, or in the case of an eligible veteran unable to occupy the property because of active duty status in the Armed Forces, occupied or to be reoccupied by the veteran's spouse as the spouse's home, shall be eligible for guaranty in an amount as computed under 36.4302(a) provided that --

(1) The amount of the loan may not exceed an amount equal to 90 percent of the reasonable value of the dwelling or farm residence which will secure the loan, as determined by the Secretary.

(Authority: 38 U.S.C. 1810(e)(1) and 1810(h))

(2) The dollar amount of discount, if any, to be paid by the veteran is reasonable in amount as determined by the Secretary in accordance with 36.4312(d)(7)(i),

(3) The loan is otherwise eligible for guaranty.

(b) Reserved.

(c) Nothing shall preclude guaranty of a loan to an eligible veteran having home loan guaranty entitlement to refinance under the provisions of 38 U.S.C. 1810(a)(5) a VA guaranteed or insured (or direct) mortgage loan made to him or her which is outstanding on the dwelling or farm residence owned and occupied or to be reoccupied after the completion of major alterations, repairs, or improvements to the property, by the veteran as a home, or in the case of an eligible veteran unable to occupy the property because of active duty status in the Armed Forces, occupied or to be reoccupied by the veteran's spouse as the spouse's home.

(Authority: 38 U.S.C. 1810(e)(1))

(d) A refinancing loan may include contractual prepayment penalties, if any, due the holder of the mortgage or other lien indebtedness to be refinanced.

(e) Reserved.

IV-19

(f) Nothing in this section shall preclude the refinancing of the balance due for the purchase of land on which new construction is to be financed through the proceeds of the loan, or the refinancing of the balance due on an existing land sale contract relating to a veteran's dwelling or farm residence.

(g) A veteran may refinance (38 U.S.C. 1810(a)(9)(B)(ii)) an existing loan that was for the purchase of, and is secured by, a manufactured home in order to purchase the lot on which the manufactured home is or will be permanently affixed, provided the following requirements are met:

(1) The refinancing of a manufactured home and the purchase of a lot must be considered as one loan;

(2) The manufactured home upon being permanently affixed to the lot will be considered to be real property under the laws of the State where it is located;

(3) The loan must be secured by the same manufactured home which is being refinanced and the real property on which the manufactured home is or will be located;

(4) The amount of the loan may not exceed an amount equal to the sum of

the balance of the loan being refinanced; the purchase price, not to exceed the reasonable value of the lot; the costs of the necessary site preparation of the lot as determined by the Secretary; a reasonable discount as authorized in 36.4312(d)(6) with respect to that portion of the loan used to refinance the existing purchase money lien on the manufactured home, and closing costs as authorized in 36.4312.

(5) If the loan being refinanced was guaranteed by VA, the portion of the loan made for the purpose of refinancing an existing purchase money manufactured home loan may be guaranteed without regard to the outstanding guaranty entitlement available for use by the veteran, and the veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for the refinancing portion of the loan. For the purposes enumerated in 38 U.S.C. 1802(b) the refinancing portion of the loan shall be considered to have been obtained with the guaranty entitlement used to obtain the VA-guaranteed loan being refinanced. The total guaranty for the new loan shall be the sum of the guaranty entitlement used to obtain the VA-guaranteed loan being refinanced and any additional guaranty entitlement available to the veteran. However, the total guaranty may not exceed the guaranty amount as calculated under 36.4302(a) of this part.

#### 36.4306a INTEREST RATE REDUCTION REFINANCING LOAN

(a) Pursuant to 38 U.S.C. 1810(a)(8) and (9)(B)(i), a veteran may refinance an existing VA guaranteed, insured or direct loan to reduce the interest rate payable on the existing loan provided the following requirements are met:

IV-20

(1) The loan must be secured by the same dwelling or farm residence as the loan being refinanced; and

(2) The veteran must own the dwelling or farm residence securing the loan; and

(i) Must occupy the dwelling or residence as his or her home; or

(ii) Must have previously occupied the dwelling or residence as his or her home and must certify, in such form as the Secretary shall require, that he or she has previously occupied the dwelling or residence; or

(iii) In any case in which the veteran is on, or was on, active duty status as a member of the Armed Forces and is unable, or was unable, to occupy the residence or dwelling as a home because of such active duty status, the spouse of the veteran must occupy, or must have previously occupied, such dwelling or residence as the spouse's home and must certify to that occupancy in such form as the Secretary shall require.

(Authority: 38 U.S.C. 1810(e)(1))

(3) The amount of the refinancing loan may not exceed an amount equal to the sum of the balance of the loan being refinanced and such closing costs as authorized by 36.4312(d) and a discount not to exceed a dollar amount determined in accordance with

36.4312(d)(7)(i);

(4) The dollar amount of the guaranty of the 38 U.S.C. 1810(a)(8) or (9)(B)(i) loan may not exceed the original dollar amount of guaranty applicable to the loan being refinanced, less any dollar amount of guaranty previously paid as a claim on the loan being refinanced; and

(5) The term of the refinancing loan (38 U.S.C. 1810(a)(8)) may not exceed the original term of the loan being financed plus ten years or the maximum loan term allowed under 38 U.S.C. 1803(d)(1), whichever is less. For manufactured home loans that were previously guaranteed under 38 U.S.C. 1812 the loan term, if being refinanced under 38 U.S.C. 1810(a)(9)(B)(i), may exceed the original term of the loan but may not exceed the maximum loan term allowed under 38 U.S.C. 1803(d)(1).

(Authority: 38 U.S.C. 1810(e)(1))

(b) Notwithstanding any other regulatory provision, the interest rate reduction refinancing loan may be guaranteed without regard to the amount of guaranty entitlement available for use by the veteran, and the amount of the veteran's remaining guaranty entitlement, if any, shall not be charged for an interest rate reduction refinancing loan. The interest rate reduction refinancing loan will be guaranteed with the lesser of the entitlement used by the veteran to obtain the loan being refinanced or the amount of the guaranty as calculated under 36.4302(a) of this part. The veteran's loan

IV-21

guaranty entitlement originally used for the purpose as enumerated in 38 U.S.C. 1810(a)(1) through (7) and (9)(A)(i) and (ii) and subsequently transferred to an interest rate reduction refinancing loan (38 U.S.C. 1810(a)(8) or (9)(B)(i)) shall be eligible for restoration when the interest rate reduction refinancing loan or subsequent interest rate reduction refinancing loans on the same property meets the requirements of 36.4302(h).

(Authority: 38 U.S.C. 1803(a))

(c) Title to the estate which is refinanced for the purpose of an interest rate reduction must be in conformity with 36.4350.

(Authority: 38 U.S.C. 1810(a)(8), (9)(B)(i) and (e))

#### 36.4307 JOINT LOANS

(a) Except as provided in paragraph (b) of this section, the prior approval of the Secretary is required in respect to any loan to be made to two or more borrowers who become jointly and severally liable, or jointly liable therefor, and who will acquire an undivided interest in the property to be purchased or who will otherwise share in the proceeds of the loan, or in respect to any loan to be made to an eligible veteran whose interest in the property owned, or to be acquired with the loan proceeds, is an undivided interest only, unless such interest is at least a 50 percent interest in a partnership. The amount of the guaranty or insurance credit shall be computed in such cases only on that portion of the loan allocable to the eligible veteran which, taking into consideration all relevant factors, represents the proper contribution of the veteran to the transaction. Such loans shall be secured to the extent required by 38 U.S.C., chapter 37 and the regulations concerning guaranty or insurance of loans to veterans.

(b) Notwithstanding the provisions of paragraph (a) of this section, the joinder of the spouse of a veteran-borrower in the ownership of residential property shall not require prior approval or preclude the issuance of a guaranty or insurance credit based upon the entire amount of the loan. If both spouses be eligible veterans, either or both may, within permissible maxima, utilize available guaranty or insurance entitlement.

(c) For the purpose of determining the rights and the liabilities of the Secretary with respect to a loan subject to paragraph (a) of this section, credits legally applicable to the entire loan shall be applied as follows:

(1) Prepayments made expressly for credit to that portion of the indebtedness allocable to the veteran (including the gratuity paid pursuant to former provisions of law), shall be applied to such portion of the indebtedness. All other payments shall be applied ratably to those portions of the loan allocable respectively to the veteran and to the other debtors.

IV-22

(2) Proceeds of the sale or other liquidation of the security shall be applied ratably to the respective portions of the loan, such portion of the proceeds as represents the interest of the veteran being applied to that portion of the loan allocable to such veteran.

36.4308 TRANSFER OF TITLE BY BORROWER OR MATURITY BY DEMAND OR  
ACCELERATION

(a) Except as provided by paragraph (b) or (c) of this section the conveyance of or other transfer of title to property by operation of law or otherwise, after the creation of a lien thereon to secure a loan which is guaranteed or insured in whole or in part by the Secretary, shall not constitute an event of default, or acceleration of maturity, elective or otherwise, and shall not of itself terminate or otherwise affect the guaranty or insurance.

(b)(1) The Secretary may issue guaranty on loans in which a State, Territorial, or local governmental agency provides assistance to a veteran for the acquisition of a dwelling. Such loans will not be considered ineligible for guaranty if the State, Territorial, or local authority, by virtue of its laws or regulations or by virtue of Federal law, requires the acceleration of maturity of the loan upon the sale or conveyance of the security property to a person ineligible for assistance from such authority.

(2) At the time of application for a loan assisted by a State, Territorial, or local governmental agency, the veteran-applicant must be fully informed and consent in writing to the housing authority restrictions. A copy of the veteran's consent statement must be forwarded with the loan application or the report of a loan processed on the automatic basis.

(Authority: 38 U.S.C. 1803(c))

(c) Any housing loan which is financed under 38 U.S.C., chapter 37, and to which section 1814 of that chapter applies, shall include a provision in the security instrument that the holder may declare the loan immediately due and payable upon transfer of the property securing such loan to any transferee unless the acceptability of the assumption of the loan is established pursuant to section 1814.

(1) A holder may not exercise its option to accelerate a loan upon:

(i) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to the transfer of rights of occupancy in the property;

(ii) The creation of a purchase money security interest for household appliances;

(iii) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

IV-23

(iv) The granting of a leasehold interest of three years or less not containing an option to purchase;

(v) A transfer to a relative resulting from the death of a borrower;

(vi) A transfer where the spouse or children of the borrower become joint owners of the property with the borrower;

(vii) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse of the borrower becomes the sole owner of the property. In such a case the borrower shall have the option of applying directly to the Department of Veterans Affairs regional office of jurisdiction for a release of liability in accordance with 36.4323 of this part; or

(viii) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

(2) The mortgage or deed of trust and the promissory note or bond evidencing a loan to which this paragraph applies shall bear in a conspicuous position in capital letters on the first page of the document in type at least 2 1/2 times larger than the regular type on such page the following warning: "THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT." Due to the difficulty in obtaining some commercial type sizes which are exactly 2 1/2 times larger in height than other sizes, minor deviations in size will be permitted based on commercially available type sizes nearest to 2 1/2 times the size of the print on the document. A similar warning in regular size type must appear on every assumption statement provided on a loan to which this paragraph applies.

(Authority: 38 U.S.C. 1804 and 1814)

(d) The term of payment of any guaranteed or insured obligation shall bear a proper relation to the borrower's present and anticipated income and expenses (except loans pursuant to 38 U.S.C. 1810(a)(8) or (9)(B)(i)). In addition the terms of payment of any guaranteed or insured obligation shall provide for discharge of the obligation at a definite date or dates or intervals, in amounts specified on or computable from the face of the instrument. A loan which is payable on demand, or at sight, or on presentation, or at a time not specified or computable from the language in the note, mortgage, or other loan instrument, or which contemplates periodic

renewals at the option of the holder to satisfy the repayment requirements of this section, is not eligible for guaranty or insurance, except as provided in paragraph (f) of this section.

(e) No guaranteed or insured obligation shall contain a provision to the effect that the holder shall have the right to declare the indebtedness due, or to pursue one or more legal or equitable remedies, if holder "shall feel insecure," or upon the

IV-24

occurrence of one or more such conditions optional to the holder, without regard to an act or omission by the debtor, which condition by the terms of the note, mortgage, or other loan instrument would at the option of the holder afford a basis for declaring a default.

(f) Notwithstanding the inclusion in the guaranteed or insured obligation of a provision contrary to the provisions of this section, the right of the holder to payment of the guaranty or insurance shall not be thereby impaired, Provided:

(1) Default was declared or maturity was accelerated under some other provision of the note, mortgage, or other loan instrument, or

(2) Activation or enforcement of such provision is warranted under 36.4317(a), or

(3) The prior approval of the Secretary was obtained.

(g) The holder of any guaranteed or insured obligation shall have the right, notwithstanding the absence of express provision therefor in the instruments evidencing the indebtedness, to accelerate the maturity or such obligation at any time after the continuance of any default for the period specified in 36.4316.

(h) If sufficient funds are tendered to bring a delinquency current at any time prior to a judicial or statutory sale or other public sale under power of sale provisions contained in the loan instruments to liquidate any security for a guaranteed loan, the holder shall be obligated to accept the funds in payment of the delinquency unless

(1) The prior approval of the Secretary is obtained to do otherwise, or

(2) Reinstatement of the loan would adversely affect the dignity of the lien or be otherwise precluded by law.

A delinquency will include all installment payments (principal, interest, taxes, insurance, advances, etc.) due and unpaid and any accumulated late charges, plus any reasonable expenses incurred and paid by the holder if termination proceedings have begun (e.g., advertising costs, foreclosure costs, attorney or trustee fees, recording fees, etc.).

#### 36.4309 AMORTIZATION

(a) All loans, the maturity date of which is beyond 5 years from date of loan or date of assumption by the veteran, shall be amortized. Except as provided in paragraph (e) of this section, the schedule of payments thereon

shall be in accordance with any generally recognized plan of amortization requiring approximately equal periodic payments and shall require a principal reduction not less often than annually during the life of the loan. The final installment on any loan shall not be in excess of two times the

IV-25

average of the preceding installments, except that on a construction loan such installment may be for an amount not in excess of 5 per centum of the original principal amount of the loan. The limitations imposed herein on the amount of the final installment shall not apply in the case of any loan extended pursuant to 36.4314(a).

(b) Any plan of repayment on loans required to be amortized which does not provide for approximately equal periodic payments shall not be eligible unless the plan conforms with the provisions of paragraph (e) of this section, or is otherwise approved by the Secretary.

(c) Every guaranteed or insured loan shall be repayable within the estimated economic life of the property securing the loan.

(d) Subject to paragraph (a) of this section, any amounts which under the terms of a loan do not become due and payable on or before the last maturity date permissible for loans of its class under the limitations contained in 38 U.S.C., chapter 37 shall automatically fall due on such date. (See 36.4334.)

(e) A graduated payment mortgage loan, providing for deferrals of interest during the first 5 years of the loan and addition of the deferred amounts to principal shall be eligible, provided:

(1) The loan is for the purpose of acquiring a single-family dwelling unit, including a condominium unit or simultaneously acquiring and improving a previously occupied, existing single-family dwelling unit.

(2)(i) For proposed construction or existing homes not previously occupied (new homes), the maximum loan amount cannot exceed 97.5 percent of the lesser of the reasonable value of the property as of the time the loan is made or the purchase price.

(ii) For previously occupied, existing homes the maximum loan amount must be computed to assure that the principal amount of the loan, including all interest scheduled to be deferred and added to the loan principal, will not exceed the purchase price or reasonable value of the property, whichever is less, as of the time the loan is made;

(3) The increases in the monthly periodic payment amount occur annually on each of the first five annual anniversary dates of the first loan installment due date, at a rate of 7.5 percent over the preceding year's monthly payment amount;

(4) Beginning with the payment due on the fifth annual anniversary date of the first loan installment due date, all remaining monthly periodic payments are approximately equal in amount and amortize the loan fully in accordance with the requirements of this section, and

IV-26

(5) The plan is otherwise acceptable to the Secretary.

(Authority: 38 U.S.C. 210(c), 1803(c)(1) and (d))

#### 36.4310 PREPAYMENT

The debtor shall have the right to prepay at any time, without premium or fee, the entire indebtedness or any part thereof not less than the amount of one installment, or \$100, whichever is less. Any prepayment in full of the indebtedness shall be credited on the date received, and no interest may be charged thereafter. Any partial prepayment made on other than an installment due date need not be credited until the next following installment due date or 30 days after such prepayment, whichever is earlier. The holder and the debtor may agree at any time that any prepayment not previously applied in satisfaction of matured installments shall be reapplied for the purpose of curing or preventing any subsequent default.

#### 36.4311 INTEREST RATES

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by VA which specify an interest rate in excess of 9-1/2 per centum per annum, effective November 19, 1990, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 9-1/2 per centum per annum on the unpaid principal balance.

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by VA which specify an interest rate in excess of 9-3/4 per centum per annum, effective November 19, 1990, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 9-3/4 per centum per annum.

(Authority: 38 U.S.C. 1803(c)(1))

(c) Effective November 19, 1990, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs which is guaranteed or insured wholly or in part on or after such date may not exceed 11 per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

(d) Interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency or default: Provided, That a late charge not in excess of an amount equal to 4 percent on any installment paid more than 15 days after due date shall not be considered a violation of this limitation.

IV-27

(e) Refinancing loans for the purpose of an interest rate reduction (38 U.S.C. 1810(a)(8) or (9)(B)(i)) may specify an interest rate in excess of the rate specified in paragraph (a), (b) and (c) of this section provided the interest rate of the refinancing loan is less than the interest rate of the current VA loan being refinanced.

(Authority: 38 U.S.C. 1803(c)(1) and 1810(c))

36.4312 CHARGES AND FEES

(a) No charge shall be made against, or paid by, the borrower incident to the making of a guaranteed or insured loan other than those expressly permitted under paragraph (d) or (e) of this section, and no loan shall be guaranteed or insured unless the lender certifies to the Secretary that it has not imposed and will not impose any charges or fees against the borrower in excess of those permissible under paragraph (d) or (e) of this section. Any charge which is proper to make against the borrower under the provisions of this paragraph may be paid out of the proceeds of the loan: Provided, That if the purpose of the loan is to finance the purchase or construction of residential property the costs of closing the loan including the pro rata portion of the ground rents, hazard insurance premiums, current year's taxes, and other prepaid items normally involved in financing such transaction may not be included in the loan.

(b) Except as provided in the regulations concerning the guaranty or insurance of loans to veterans, no brokerage or service charge or their equivalent may be charged against the debtor or the proceeds of the loan either initially, periodically, or otherwise.

(c) Brokerage or other charges shall not be made against the veteran for obtaining any guaranty or insurance under 38 U.S.C., chapter 37, nor shall any premiums for insurance on the life of the borrower be paid out of the proceeds of a loan.

(d) The following schedule of permissible fees and charges shall be applicable to all VA guaranteed or insured loans:

(1) The veteran may pay reasonable and customary amounts for any of the following items:

(i) Fees of VA appraiser and of compliance inspectors designated by VA except appraisal fees incurred for the predetermination of reasonable value requested by others than veteran or lender.

(ii) Recording fees and recording taxes or other charges incident to recordation.

(iii) Credit report.

(iv) That portion of taxes, assessments, and other similar items for the current year chargeable to the borrower and an initial deposit (lump-sum payment) for the tax and insurance account.

IV-28

(v) Hazard insurance required by 36.4326.

(vi) Survey, if required by lender or veteran; except that any charge for a survey in connection with a loan under 36.4356 through 36.4360a (condominium loans) must have the prior approval of the Secretary.

(vii) Title examination and title insurance, if any.

(viii) Such other items as may be authorized in advance by the Chief Benefits Director as appropriate for inclusion under this paragraph as proper local variances.

(2) A lender may charge and the veteran may pay a flat charge not exceeding 1 percent of the amount of the loan, provided that such flat charge shall be in lieu of all other charges relating to costs of origination not expressly specified and allowed in this schedule.

(3) In cases where a lender makes advances to a veteran during the progress of construction, alteration, improvement, or repair, either under a commitment of the Department of Veterans Affairs to issue a guaranty certificate or insurance credit upon completion, or where the lender would be entitled to guaranty or insurance on such advances when reported under automatic procedure, the lender may make a charge against the veteran of not exceeding 2 percent of the amount of the loan for its services in supervising the making of advances and the progress of construction notwithstanding that the "holdback" or final advance is not actually paid out until after the construction, alteration, improvement, or repair is fully completed: Provided, That the major portion (51 percent or more) of the loan proceeds is paid out during the actual progress of the construction, alteration, improvement, or repair. Such charge may be in addition to the 1 percent charge allowed under paragraph (d)(2) of this section.

(4) In construction, alteration, improvement or repair loans, including supplemental loans made pursuant to 36.4355, where no charge is permissible under the provisions of paragraph (d)(3) of this section the lender may charge and the veteran may pay a flat sum not exceeding 1 percent of the amount of the loan. Such charge may be in addition to the 1 percent allowed under paragraph (d)(2) of this section.

(5) The fees and charges permitted under this paragraph are maximums and are not intended to preclude a lender from making alternative charges against the veteran which are not specifically authorized in the schedule provided the imposition of such alternative charges would not result in an aggregate charge or payment in excess of the prescribed maximum.

(6) Allowable Discounts. The veteran borrower subject to the limitations set forth in paragraphs (d)(6) and (7) of this section may pay a discount required by a lender when the proceeds of the loan will be used for any of the following purposes:

IV-29

(i) To refinance existing indebtedness pursuant to 38 U.S.C. 1810(a)(5), (8), or (9)(B)(i), or (ii);

(ii) To repair, alter or improve a dwelling owned by the veteran pursuant to 38 U.S.C. 1810(a)(4) or (7) if such loan is to be secured by a first lien;

(iii) To construct a dwelling or farm residence on land already owned or to be acquired by the veteran, provided that the veteran did not or will not acquire the land directly or indirectly from a builder or developer who will be constructing such dwelling or farm residence;

(iv) To purchase a dwelling from a class of sellers which the Secretary

determines are legally precluded under all circumstances from paying such a discount if the best interest of the veteran would be so served.

(7) Computation of Discounts

(i) Computation of Discount - Loans Secured by a First Lien. Unless otherwise approved by the Secretary, the discount, if any, to be paid by the borrower may not exceed the difference between the bid price, rounded to the lower whole number, and par value for GNMA (Government National Mortgage Association) 90-day forward bid closing price for pass through securities 1/2 percent less than the face note rate of the loan. Unless the lender and borrower negotiate a firm written commitment for a maximum amount of discount to be paid, the bid price to be used in the computation must be the GNMA 90-day forward bid closing quote for any day 1 to 4 business days prior to loan closing. "Loan closing" is defined for this purpose as the date on which the borrower's 3-day right of rescission commences pursuant to the Truth in Lending Act. If the lender and borrower choose to negotiate a firm discount commitment for a maximum amount of discount to be paid, the bid price to be used in establishing the maximum discount must be the closing quote for the business day prior to the date of the commitment. Lenders negotiating firm commitments must close that loan at a discount no higher than the firm commitment regardless of changes in the maximum allowable VA interest rate. If a lender's commitment expires prior to loan closing, the lender and borrower may negotiate a new firm commitment based on the procedure outlined in this paragraph (d)(7)(i) or may use the procedure for determining the discount based on the GNMA 90-day forward bid closing quote for any day 1 to 4 business days prior to loan closing.

(ii) Computation of Discount - Unsecured Loans or Loans Secured by Less than a First Lien. The borrower, subject to the limitations set forth in paragraph (d)(6) and (7) of this section, may pay a discount required by the lender when the proceeds of the loan will be used to repair, alter, or improve a dwelling owned by the veteran pursuant to 38 U.S.C. 1810(a)(4) or (7) if such loan is unsecured or secured by less than a first lien. No such discount may be charged unless:

IV-30

(A) The loan is submitted to the Secretary for prior approval;

(B) The dollar amount of the discount is disclosed to the Secretary and the veteran prior to the issuance by the Secretary of the certificate of commitment. Said certificate of commitment shall specify the discount to be paid by the veteran, and this discount may not be increased once the commitment is issued without the approval of the Secretary;

(C) The discount has been determined by the Secretary to be reasonable in amount.

(iii) A veteran may pay the discount on an acquisition and improvement loan (as defined in 36.4301) provided:

(A) The veteran pays no discount on the acquisition portion of the loan except in accordance with paragraph (d)(6)(iv) of this section; and

(B) The discount paid on the improvements portion of the loan does not exceed the percentage of discount paid on the acquisition portion of the loan.

Acquisition and improvement loans may be closed either on the automatic or prior approval basis.

(iv) Unless the Chief Benefits Director otherwise directs, all powers of the Secretary under paragraph (d)(6) and (7) of this section are hereby delegated to the officials designated by 36.4342(b).

(Authority: 38 U.S.C. 1803(c)(1) and (3), 1810(a))

(8) On any loan to which section 1814 of 38 U.S.C., chapter 37 applies, the holder may charge a reasonable fee, not to exceed the lesser of (i) \$300 and the actual cost of any credit report required, or (ii) any maximum prescribed by applicable State law, for processing an application for assumption and changing its records.

(Authority: 38 U.S.C. 1814)

(e)(1) Subject to the limitations set out in paragraphs (e)(4) and (e)(5) of this section, a fee must be paid to the Secretary. The fee shall be 1.25 percent of the total loan amount on all refinancing loans and for all loans for the purchase or construction of a home on which the veteran does not make a downpayment. On purchase or construction loans on which the veteran makes a downpayment of 5 percent or more, but less than 10 percent, the amount of the funding fee shall be 0.75 percent of the total loan amount. On purchase or construction loans on which the veteran makes a downpayment of 10 percent or more, the amount of the funding fee shall be 0.5 percent of the total loan amount. All or part of such fee may be paid in cash at loan closing or all or part of the

IV-31

fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 1829(a))

(2) Subject to the limitations set out in this section, a fee of one-half of one percent of the loan balance must be paid to the Secretary in a manner prescribed by the Secretary by a person assuming a loan to which section 1814 of title 38 U.S.C. applies. The instrument securing such a loan shall contain a provision describing the right of the holder to collect this fee as trustee for the Department of Veterans Affairs. The loan holder shall list the amount of this fee in every assumption statement provided and include a notice that the fee must be paid to the holder immediately following loan settlement. The fee must be transmitted to the Secretary within 15 days of the receipt by the holder of the notice of transfer.

(Authority: 38 U.S.C. 1814, 1829(d))

(3) The lender is required to pay to the Secretary the fee described in paragraph (e)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (e)(4) and (e)(5) of this section who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If

payment of the fee described in paragraph (e)(1) of this section is made more than 30 days after loan closing, interest will be assessed at a rate set in conformity with the Department of Treasury's Fiscal Requirements Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although the interest will be assessed only on funding fee payments received more than 30 days after closing.

(4) The fee described in paragraph (e)(1) and (e)(2) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in section 1801(b) of title 38, United States Code.

(Authority: 38 U.S.C. 1829(b))

(5) Collection of the loan fee in this paragraph does to apply to loans closed prior to August 17, 1984, between October 1 and October 15, 1987, inclusive, between November 16 and December 20, 1987, inclusive, nor to loans closed after September 30, 1989.

(Authority: 38 U.S.C. 1829(c))

IV-32

#### 36.4313 ADVANCES AND OTHER CHARGES

(a) A holder may advance any amount reasonably necessary and proper for the maintenance or repair of the security, or for the payment of accrued taxes, special assessments, ground or water rents, or premiums on fire or other casualty insurance against loss of or damage to such property and any such advance so made may be added to the guaranteed or insured indebtedness. A holder may also advance the one-half of one percent funding fee due on a transfer under 38 U.S.C. 1814 when this is not paid at the time of transfer. All security instruments for loans to which 38 U.S.C. 1814 applies must include a clause authorizing the collection of an assumption funding fee and an advance for this fee if it is not paid at the time of transfer.

(Authority: 38 U.S.C. 1814)

(b) In addition to advances allowable under paragraph (a) of this section, the holder may charge against the proceeds of the sale of the security; against gross amounts collected; in any accounting to the Secretary after payment of a claim under the guaranty in the computation of a claim under the guaranty, if lawfully authorized by the loan agreement and subject to 36.4321(a) or, in the computation of an insurance loss, any of the following items actually paid:

(1) Any expense which is reasonably necessary for preservation of the security,

(2) Court costs in a foreclosure or other prior judicial proceeding involving the security,

(3) Other expenses reasonably necessary for collecting the debt, or repossession or liquidation of the security,

(4) Reasonable trustee's fees or commissions not in excess of those allowed by statute and in no event in excess of 5 percent of the unpaid indebtedness,

(5) Reasonable amount for legal services actually performed not to exceed 10 percent of the unpaid indebtedness as of the date of the first uncured default, or \$700, whichever is less,

(6) The cost of a credit report(s) on the debtor(s), which is (are) to be forwarded to the Secretary in connection with the claim,

(7) Any other expense or fee that is approved in advance by the Secretary.

(Authority: 38 U.S.C. 1820(a)(3))

In no event may the combined total of the amounts claimed for trustee's fees and legal services (par. (b)(4) and (5) of this section) exceed \$700.

(Authority: 38 U.S.C. 1812(g), 1820(a)(3))

IV-33

(c) Any advances or charges enumerated in paragraph (a) or (b) of this section may be included as specified in the holder's accounting to the Secretary, but they are not chargeable to the debtor unless he or she otherwise be liable therefor.

(d) Advances of the type enumerated in paragraph (a) of this section and any other advances determined to be necessary and proper in order to preserve or protect the security may be authorized by employees designated in 36.4342(b) in the case of any property constituting the security for a loan acquired by the Secretary or constituting the security for the unpaid balance of the purchase price owing to the Secretary on account of the sale of such property. Such advances shall be secured to the extent legal and practicable by a lien on the property.

(e) Notwithstanding the provisions of paragraph (a) and (b) of this section, holders of condominium loans guaranteed or insured under 38 U.S.C. 1810(a)(6) shall not pay those assessments or charges allocable to the condominium unit which are provided for in the instruments establishing the condominium form of ownership in the absence of the prior approval of the Secretary.

#### 36.4314 EXTENSIONS AND REAMORTIZATIONS

(a) Provided the debtor(s) is (are) a reasonable credit risk(s), as determined by the holder based upon review of the debtor's(s') creditworthiness, including a review of a current credit report(s) on the debtor(s), the terms of repayment of any loan may, by written agreement between the holder and the debtor(s), be extended in the event of default, to avoid imminent default, or in any other case where the prior approval of the Secretary is obtained. Except with the prior approval of the Secretary, no such extension shall set a rate of amortization less than that sufficient to fully amortize at least 80 percent of the loan balance so extended within the maximum maturity prescribed for loans of its class.

(b) In the event of a partial prepayment pursuant to 36.4310 the balance of the indebtedness may, by written agreement between the holder the debtor(s), be reamortized, provided the reamortization schedule will result in full repayment of the loan within the original maturity, and provided the debtor(s) is (are) reasonable credit risk(s), as determined by the holder based upon review of the debtor's(s') creditworthiness, including a review of a current credit report(s) on the debtor(s).

(c) In the event an additional loan is proposed to be made pursuant to 36.4351 for the repair, alteration, or improvement of real property on which there is an existing loan guaranteed or insured under 38 U.S.C., chapter 37, the terms of repayment of the prior loan may, by written agreement between the holder and the debtor, be recast to combine the schedule of repayments on the two loans, provided the entire indebtedness is repayable within the permissible maximum maturity of the original loan.

IV-34

(d) Unless the prior approval of the Secretary has been obtained, any extension or reamortization agreed to by a holder which relieves any obligor from liability will release the liability of the Secretary under the guaranty or insurance on the entire loan. However, if such release of liability of an obligor results through operation of law by reason of an extension or other act of forbearance, the liability of the Secretary as guarantor or insurer will not be affected thereby, provided the required lien is maintained and the title holder is and will remain liable for the payment of the indebtedness: And further provided, That if such extension or act of forbearance will result in the release of the veteran, all delinquent installments, plus any foreclosure expenses which may have been incurred, shall have been fully paid.

(e) The holder shall promptly forward to the Secretary an advice of the terms of any agreement effecting a reamortization or extension of a guaranteed or insured loan, together with a copy(ies) of the credit report(s) obtained on the debtor(s).

(Authority: 38 U.S.C. 1803(c)(1))

#### 36.4315 NOTICE OF DEFAULT AND ACCEPTABILITY OF PARTIAL PAYMENTS

(a) Reporting of Defaults. The holder of any guaranteed or insured loan shall give notice to the Secretary within 45 days after any debtor:

(1) Is in default by reason of nonpayment of any installment for a period of 60 days from the date of first uncured default (see 36.4301(f)); or

(2) Is in default by failing to comply with any other covenant or obligation of such guaranteed or insured loan which failure persists for a continuing period of 90 days after demand for compliance therewith has been made, except that if the default is due to nonpayment of real estate taxes, the notice shall not be required until the failure to pay when due has persisted for a continuing period of 180 days.

(b) Partial Payments. A partial payment is a remittance on a loan in default (as defined in 36.4301(g)) of any amount less than the full amount due under the terms of the loan and security instruments at the time the remittance is tendered.

(1) Except as provided in paragraph (b)(2) of this section, or upon the express waiver of the Secretary, the mortgage holder shall accept any partial payment and either apply it to the mortgagor's account or identify it with the mortgagor's account and hold it in a special account pending disposition. When partial payments held for disposition aggregate a full monthly installment, including escrow, they shall be applied to the mortgagor's account.

IV-35

(2) A partial payment may be returned to the mortgagor, within 10 calendar days from date of receipt of such payment, with a letter of explanation only if one or more of the following conditions exist:

(i) The property is wholly or partially tenant-occupied and rental payments are not being remitted to the holder for application to the loan account;

(ii) The payment is less than one full monthly installment, including escrows and late charge, if applicable, unless the lesser payment amount has been agreed to under a written repayment plan;

(iii) The payment is less than 50 percent of the total amount then due, unless the lesser payment amount has been agreed to under a written repayment plan;

(iv) The payment is less than the amount agreed to in a written repayment plan;

(v) The amount tendered is in the form of a personal check and the holder has previously notified the mortgagor in writing that only cash or certified remittances are acceptable;

(vi) A delinquency of any amount has continued for at least 6 months since the account first became delinquent and no written repayment plan has been arranged;

(vii) Foreclosure has been commenced by the taking of the first action required for foreclosure under local law;

(viii) The holder's lien position would be jeopardized by acceptance of the partial payment.

(3) A failure by the holder to comply with the provisions of this paragraph may result in a partial or total loss of guaranty or insurance pursuant to 36.4325(b), but such failure shall not constitute a defense to any legal action to terminate the loan.

36.4316 CONTINUED DEFAULT

(a) In the event any failure of the debtor to discharge the debtor's obligations under the loan continues for a period of 3 months, or for more than 1 month on an extended loan or on a term loan, the holder may at the holder's option then or thereafter, submit a claim for payment of the guaranty. The holder may also then or thereafter give the notice prescribed in 36.4317.

(b) A claim for the guaranty, or the notice prescribed in 36.4317 may be submitted prior to the time prescribed in paragraph (a) of this section in any case where any material prejudice to the rights of the holder or to the Secretary or hazard to the security warrants more prompt action.

IV-36

(c) A claim for the guaranty must include a copy(ies) or a current credit report(s) on the debtor(s).

(Authority: 38 U.S.C. 1832)

(Information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 2900-0480.)

#### 36.4317 NOTICE OF INTENTION TO FORECLOSE

(See also 36.4319.) Except upon the express waiver of the Secretary, a holder shall not begin proceedings in court or give notice of sale under power of sale, other otherwise take steps to terminate the debtor's rights in the security until the expiration of 30 days after delivery by registered mail to the Secretary of a notice of intention to take such action: Provided, That (a) immediate action may be taken if the property to be affected thereby has been abandoned by the debtor, or has been or may be otherwise subjected to extraordinary waste or hazard, or if there exist conditions justifying the appointment of a receiver for the property (without reference to any contractual provisions for such appointment), and (b) any right of a holder to repossess personal property may be exercised without prior notice to the Secretary; but notice of any such action taken shall be given by registered mail to the Secretary within 10 days thereafter.

#### 36.4318 REFUNDING OF LOANS IN DEFAULT

(a) Upon receiving a notice of default or a claim for a guaranty or a notice under 36.4317, the Secretary may within 30 days thereafter require the holder upon penalty of otherwise losing the guaranty or insurance to transfer and assign the loan and the security therefor to the Secretary or to another designated by the Secretary upon receipt of payment in full of the balance of the indebtedness remaining unpaid to the date of such assignment. Such assignment may be made without recourse but the transferor shall not thereby be relieved from the provisions of 36.4325.

(b) If the obligation is assigned or transferred to a third party pursuant to paragraph (a) of this section, the Secretary may continue in effect the guaranty or insurance issued with respect to the previous loan in such manner as to cover the assignee or transferee.

#### 36.4319 LEGAL PROCEEDINGS

(a) When the holder institutes suit or otherwise becomes a party in any legal or equitable proceeding brought on or in connection with the guaranteed or insured indebtedness, or involving title to, or other lien on, the security, such holder, within the time that would be required if the Secretary were a party to the proceeding, shall deliver to the Secretary, by mail or otherwise, by making such delivery to the Loan Guaranty Officer, at the office

which granted

IV-37

the guaranty or the insurance, or other office to which the holder has been notified the file is transferred, a copy of every procedural paper filed on behalf of holder, and shall also so deliver, as promptly as possible, a copy of each similar pleading served on holder or filed in the cause by any other party thereto. Notice of, or motion for, continuance and orders thereon are excepted from the foregoing.

(b) A copy of a notice of sale shall be similarly delivered by the holder, or the holder's agent or trustee, to the Secretary at the VA Regional Office of jurisdiction at least 30 days prior to the schedule liquidation sale, or within 5 days after the date of first publication of the notice, whichever is later. A copy of any other notice of sale or acquisition of the property served on the holder or advice of any sale of which the holder has knowledge shall be similarly delivered to the Secretary, including any such notice of a tax sale or other superior lien or judicial sale. Such notice shall be accompanied by a statement of the account indebtedness and a copy of the liquidation appraisal request, if not previously delivered.

(Authority: 38 U.S.C. 1832)

(c) The procedure prescribed in paragraph (a) and (b) of this section shall not be applicable in any proceeding to which the Secretary is a party, after the Secretary's appearance shall have been entered therein by a duly authorized attorney.

(d) In any legal or equitable proceeding (including probate and bankruptcy proceedings) to which the Secretary is a party, original process and any other process prior to appearance, proper to be served on the Secretary, shall be delivered to the Loan Guaranty Officer of the regional office of the VA having jurisdiction of the area in which the court is situated. Within the time required by applicable law, or rule of court, the Secretary will cause appropriate special or general appearance to be entered in the case by an authorized attorney.

(Authority: 38 U.S.C. 1832)

(e) After appearance of the Secretary by attorney all process and notice otherwise proper to serve on the Secretary before or after judgment, if served on the attorney of record, shall have the same effect as if the Secretary were personally served within the jurisdiction of the court.

(Authority: 38 U.S.C. 1832)

(f) If following a default, the holder does not bring appropriate action within 30 days after requested in writing by the Secretary to do so, or does not prosecute such action with reasonable diligence, the Secretary may at the Secretary's option fix a date beyond which no further charges may be included in the computation of the indebtedness for the purposes of accounting

IV-38

between the holder and the Secretary. The Secretary may also intervene in, or begin and prosecute to completion any action or proceeding, in the Secretary's

name or in the name of the holder, which the Secretary deems necessary or appropriate. The Secretary shall pay, in advance if necessary, any court costs or other expenses incurred by the Secretary or properly taxed against the Secretary in any such action to which the Secretary is a party, but may charge the same, and also a reasonable amount for legal services, against the guaranteed or insured indebtedness, or the proceeds of the sale of the security to the same extent as the holder (see 36.4313 of this part), or otherwise collect from the holder any such expenses incurred by the Secretary because of the neglect or failure of the holder to take or complete proper action. The rights and remedies herein reserved are without prejudice to any other rights, remedies, or defenses, in law or in equity, available to the Secretary.

(Authority: 38 U.S.C. 1832)

#### 36.4320 SALE OF SECURITY

(a) Upon receipt by the Secretary of notice of a liquidation sale of any security for a guaranteed or insured loan, the Secretary shall determine the net value of the security and shall notify the holder of the net value and of the regulatory provision which will govern the disposition of the security.

(1) If the net value of the real property securing a guaranteed or insured loan exceeds the unguaranteed portion of the indebtedness, the Secretary shall specify in advance of the liquidation sale the minimum amount which shall be credited to the indebtedness of the borrower on account of the value of the security to be sold, subject to the following:

(i) The specified amount in such cases shall be the lesser of the net value of the property or the total indebtedness,

(ii) If a minimum amount for credit to the indebtedness has been specified in relation to a liquidation sale of real property, and:

(A) The holder acquires the property, or the rights to the property, at the sale for an amount not in excess of such specified amount, the holder shall credit to the indebtedness the amount specified. The holder then may retain the property or, not later than 15 days after the date of sale, advise the Secretary of the holder's election to convey or transfer the property, or the rights to the property, to the Secretary;

(B) The holder acquires the property, or the rights to the property, at the liquidation sale for an amount in excess of the specified amount, the indebtedness shall be credited with the proceeds of the sale. The holder shall not have the option to convey the property to the Secretary unless a bid in excess of the specified amount was made pursuant to paragraph (a)(3) of this section;

IV-39

(C) A third party acquires the property, or the rights to the property, at the liquidation sale for an amount equal to or in excess of that specified, the holder shall credit to the indebtedness the net proceeds of the sale;

(D) A third party acquires the property, or the rights to the property, at the liquidation sale for an amount less than that specified, the holder shall credit to the indebtedness the amount specified.

(iii) If a minimum amount has been specified by the Secretary, the Secretary's liability under loan guaranty shall be the total indebtedness less the amount credited to the indebtedness under paragraph (a)(1)(ii) of this section, not to exceed the Secretary's maximum liability as computed under 36.4321 of this part.

(2) If the net value of the real property securing a guaranteed or insured loan does not exceed the unguaranteed portion of the indebtedness:

(i) The Secretary shall notify the holder that no minimum amount will be specified for credit to the indebtedness on account of the value of the security to be sold;

(ii) The Secretary may not accept conveyance or transfer of the property;

(iii) The holder shall credit against the indebtedness the net proceeds of the sale, and the Secretary's liability under loan guaranty shall be limited to the total indebtedness less the amount credited to the indebtedness not to exceed the Secretary's maximum liability as computed under 36.4321 of this part; and

(iv) The liability of the Secretary shall not be subject to adjustment by reason of any subsequent disposition of the property by the holder.

(3) If a minimum bid is required under applicable State law, or decree of foreclosure or order of sale, or other lawful order or decree, and:

(i) Such minimum bid exceeds an amount which has been specified by the Secretary under paragraph (a)(1) of this section; and

(ii) The holder acquires the property at the liquidation sale for an amount not exceeding the amount legally required; the holder may elect to convey the property to the Secretary pursuant to paragraph (a)(1)(ii)(A) of this section. The amount bid at the sale or the total indebtedness, whichever is less, shall govern instead of the specified amount and for the purpose of determining the Secretary's liability under loan guaranty.

(Authority: 38 U.S.C. 1832)

IV-40

(b) The holder should not carry out a liquidation sale until the Secretary has furnished the notice required under paragraph (a) of this section. In the event the holder carries out a liquidation sale prior to receiving such notice, the holder shall credit against the indebtedness the greater of:

(1) The net proceeds of the sale; or

(2) The amount of the indebtedness or the net value of the property, whichever is less.

The provisions of paragraph (a)(1)(ii)(A) of this section, which extends to the holder the option of conveying or transferring the property to the Secretary, shall not be applicable, and the Secretary's liability under the

loan guaranty shall be the total indebtedness less the amount credited to the indebtedness under paragraph (b)(1) or (2) of this section, not to exceed the Secretary's maximum liability as computed under 36.4321 of this part.

(Authority: 38 U.S.C. 1832)

(c) When a debtor proposes to convey or transfer any real property to a holder to avoid foreclosure or other judicial, contractual, or statutory disposition of the obligation or of the security, the consent of the Secretary to the terms of such proposal shall be obtained in advance of such conveyance or transfer. In consenting to the terms of the debtor's proposal the Secretary shall furnish the notice required under paragraph (a) of this section.

(Authority: 38 U.S.C. 1832)

(d) Upon receipt by the Secretary of notice of a judicial or statutory sale, or other public sale under power of sale contained in the loan instruments, to liquidate any personal property which is security for a guaranteed or insured loan, the Secretary may specify in advance of such sale the minimum amount which shall be credited to the indebtedness of the borrower on account of the value of the security to be sold.

(1) If a minimum amount has been specified by the Secretary, and

(i) The holder is the successful bidder at the sale for an amount not in excess of such minimum amount, the holder shall sell the property pursuant to paragraph (d)(3) of this section and the amount realized from the resale of the property shall govern, instead of the specified minimum amount, in the final accounting for determining the rights and liabilities of the holder and the Secretary,

(ii) A third party is the successful bidder at the sale for an amount equal to or in excess of that specified, the holder shall credit to the indebtedness the net proceeds of the sale,

IV-41

(iii) A third party is the successful bidder at the sale for an amount less than that specified, the holder shall credit to the indebtedness the amount specified,

(iv) The holder is the successful bidder at the sale for an amount in excess of the specified amount, the indebtedness shall be credited with the proceeds of the sale or the amount realized from the resale of the property pursuant to paragraph (d)(3) of this section, whichever is the greater, unless the bid in excess of the specified amount was made pursuant to paragraph (d)(4) of this section.

(2) If a minimum amount has not been specified by the Secretary under paragraph (d)(1) of this section, the holder shall credit against the indebtedness the net proceeds of the sale except as provided in paragraph (d)(4) of this section.

(3) If personal property has been repossessed or otherwise acquired by a holder and no public sale is proposed or required to be held to entitle the holder to effect a further disposition of such property, or if the holder is

the successful bidder at the sale of personal property as provided in paragraph (d)(1) of this section, the holder shall sell the property within a reasonable time. The holder shall submit to the Secretary a written advice setting forth the price, terms, conditions and the expenses of the proposed sale at least 10 days in advance, and the Secretary shall either assent to such sale in which event the holder shall credit against the indebtedness the net proceeds of the sale or, upon agreement to indemnify the holder to the extent of any increased or resultant loss, the Secretary may specify the minimum net price for which the security may be sold. If such amount has been specified, the holder shall sell the personal property within a reasonable time in the open market for the best price obtainable: Provided, that the prior approval of the Secretary shall be obtained if the property is to be sold for a net amount less than the specified amount, or if the property is to be sold on terms other than all cash. The ultimate net amount realized by the holder from such sale shall be reported by the holder to the Secretary in an accounting which will determine their respective rights and liabilities.

(4) If a minimum bid is required under applicable State law, or decree of foreclosure or order of sale, or other lawful order or decree, the holder may bid an amount not exceeding such amount legally required. If an amount has been specified by the Secretary and the holder is the successful bidder for an amount not exceeding the amount legally required, such specified amount shall govern for the purposes of this paragraph and for the purpose of computing the ultimate loss under the guaranty or insurance. In the event no amount is specified and the holder is the successful bidder for an amount not exceeding the amount legally required, the amount paid or payable by the Secretary under the guaranty shall not be subject to any adjustment by reason of such bid.

(Authority: 38 U.S.C. 1832)

IV-42

(e) If the Secretary has specified an amount as provided in this section, and the holder learns of any material damage to the property occurring prior to the foreclosure sale or to the acceptance of a deed in lieu of foreclosure or prior to any other event to which such specified amount is applicable, the holder shall promptly advise the Secretary of such damage.

(f) The holder in accounting to the Secretary in connection with the disposition of any property in accordance with paragraph (a), (b), or (d) of this section, may include as a part of the indebtedness all actual expenses or costs of the proceedings, paid by the holder, within the limits defined in 36.4313 of this part. In connection with the conveyance or transfer of property to the Secretary the holder may include in accounting to the Secretary the following expense items if actually paid by the holder, in addition to the consideration payable for the property under paragraph (g) of this section:

(Authority: 38 U.S.C. 1832)

(1) State and documentary stamp taxes as may be required.

(2) The customary cost of obtaining evidence of title in favor of the Secretary as specified in paragraph (h)(5) of this section but not including title evidence obtained incident to the making of the loan or any expenses incurred to clear title defects.

(3) Amount expended for taxes, special assessments, including such payments which are specified in paragraph (h)(4) of this section.

(4) Recording fees.

(5) Any other expenditures in connection with the property which are approved by the Secretary.

(g) In the event a holder elects to convey or transfer the property to the Secretary pursuant to paragraph (a), (b), or (c) of this section, the consideration to be paid by the Secretary in return for the property shall be the specified amount: Provided, that if a claim under the guaranty was previously paid, the consideration payable for the property shall be an amount equal to the indebtedness (less the amount previously paid on the guaranty) or the specified amount, whichever is less. If no claim under the guaranty was previously paid, the holder may, pursuant to 36.4321(b) submit a claim within the maximum guaranty liability for the difference between the specified amount and an amount equal to the indebtedness. In the case of an insured loan, the holder may submit a claim for the difference between an amount equal to the indebtedness and the specified amount pursuant to 36.4374.

(h) The conveyance or transfer of any property to the Secretary pursuant to paragraphs (a), (b), or (c) of this section shall be subject to the following provisions:

IV-43

(1) If the holder's notice to the Secretary electing to convey or transfer the property precedes the acquisition of the property by the holder and the holder then acquires the property, the holder shall promptly after such acquisition advise the Secretary of the acquisition. Such advice, or the notice of election if given subsequent to acquisition, shall state the amount of the successful bid (if the property was acquired by the holder at public sale) and shall state the insurance coverage then in force, specifying for each policy, the name of the insurance company, the hazard covered, the amount, and the expiration date.

(2) The holder shall not cancel any insurance in force when the holder acquires the property. Coincident with the notice of election to convey or transfer the property to the Secretary or with the acquisition of the property by the holder, following such notice, whichever is later, the holder shall obtain endorsements on all such insurance policies naming the Secretary as an assured, as his/her interest may appear. Such insurance policies shall be forwarded to the Secretary at the time of the conveyance or transfer of the property to the Secretary or as soon after that time as feasible.

(3) Occupancy of the property by anyone properly in possession by virtue of and during a period of redemption, or by any one else unless under a claim of title which makes the title sought to be conveyed by the holder of less dignity or quality than that required by this section, shall not preclude the holder from conveying or transferring the property to the Secretary. Except with the prior approval of the Secretary, the holder shall not rent the property to a new tenant, nor extend the term of an existing tenancy on other than a month-to-month basis.

(4) Any taxes, special assessments or ground rents due and payable within 30 days after date of conveyance or transfer to the Secretary shall be paid by the holder if bills therefor are obtainable before such conveyance or transfer.

(5) Each conveyance or transfer of real property to the Secretary pursuant to this section shall be acceptable if the holder thereby covenants or warrants against the acts of the holder and those claiming under the holder (e.g., by special warranty deed) and if it vests in the Secretary or will entitle the Secretary to such title as is or would be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally in the community in which the property is situated. Any title so acceptable will not be unacceptable to the Secretary by reason of any of the limitations on the quantum or quality of the property or title stated in 36.4350(b) of this part: Provided, that

(i) At the time of conveyance or transfer to the Secretary there has been no breach of any conditions affording a right to the exercise of any reverter, except that title will not be unacceptable

IV-44

to the Secretary by reason of a violation of a restriction based on race, color, creed, or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach.

(ii) With respect to any such limitations which came into existence subsequent to the making of the loan, full compliance was had with the requirements of 36.4324 of this part. The acceptability of a conveyance or transfer pursuant to the requirements of this paragraph will be established by delivery to the Secretary of any of the following evidence of title issued by an institution or person satisfactory to the Secretary, in form satisfactory to him/her showing that title to the property of the quality specified in this paragraph is or will be vested in the Secretary:

(A) A title policy insuring the Secretary in an amount approximately equal to the consideration for the property, or a commitment for such title policy; or

(B) A certificate of record title; or

(C) An abstract of title accompanied by a legal opinion as to the quality of such title of record; or

(D) A Torrens or similar title certificate; or

(E) Such other evidence of title as the Secretary may approve.

In lieu of such title evidence, the Secretary will accept a conveyance or transfer with general warranty with respect to the title from a holder described in 38 U.S.C. 1802(d) or from a holder of financial responsibility satisfactory to the Secretary. In any case where the holder does not deliver evidence of title of the character specified in this paragraph, the holder to aid the Secretary in determination of acceptability of title shall without expense to the Secretary furnish such evidence of title, including survey, if any, as may have been obtained by the holder incident to the making of the

loan or attendant to the foreclosure.

(6) Except with respect to matters covered by any covenants or warranties of the holder, the acceptance by the Secretary of a conveyance or transfer by the holder shall conclude the responsibility of the holder to the Secretary under the regulations of this subpart with respect to the title and in the event of the subsequent discovery of title defects, the Secretary shall have no recourse against the holder with respect to such title other than by reason of such covenants or warranties.

(7) As between the holder and the Secretary, the responsibility for any loss due to damage to or destruction of the property or due to personal injury sustained in respect to such property shall be governed by the provisions of this paragraph and paragraph (h)(10)

IV-45

of this section. Ordinary wear and tear excepted, the holder shall bear such risk of loss from the date of acquisition by the holder to the date such risk of loss is assumed by the Secretary. Such risk of loss is assumed by the Secretary from the date of receipt to the holder's election to convey or transfer the property to the Secretary or, in the event of receipt of notice of such election prior to acquisition, from the date of the Secretary's receipt of notice of acquisition by the holder: Provided that if custody over the property has not been delivered by the holder to the Secretary on the date when the Secretary otherwise would have assumed the risk of loss, the Secretary's assumption of the risk of loss will be deferred until such custody over the property is delivered, or until the property has been conveyed or transferred to the Secretary. The amount of any loss chargeable to the holder may be deducted from the amount payable by the Secretary at the time the property is transferred. In any case where pursuant to the VA regulations rejection of the title is legally proper, the Secretary may surrender custody of the property as of the date specified in the Secretary's notice to the holder. The Secretary's assumption of such risk shall terminate upon such surrender.

(8) The holder shall not be liable to the Secretary for any portion of the paid or unpaid taxes, special assessments, ground rents, insurance premiums, or other similar items.

(9) The Secretary shall be entitled to all rentals and other income collected from the property and to any insurance proceeds or refunds subsequent to the date of acquisition by the holder.

(10) In respect to a property which was the security for a condominium loan guaranteed or insured under 38 U.S.C. 1810(a)(6) the responsibility for any loss due to damage to or destruction of the property or due to personal injury sustained in respect to such property shall in no event pass to the Secretary until the Secretary expressly assumes such responsibility or until conveyance of the property to the Secretary, whichever first occurs. The holder shall have the right to convey such property to the Secretary only if the property (including elements of the development or project owned in common with other unit owners) is undamaged by fire, earthquake, windstorm, flooding or boiler explosion. The absence of a right in the holder to convey such property which is so damaged shall not preclude a conveyance, if the Secretary agrees in a given case to such a conveyance upon completion of repairs within a specified period of time and such repairs are so completed and the

conveyance is otherwise in order.

(i)(1) The terms "date of sale" or "date of acquisition" as used in this section are defined as the date of the event (e.g., sale, confirmation of sale when required under local practice, delivery of deed in case of voluntary conveyance, etc.) which fixes the rights of the parties in the property.

IV-46

(2) The term "property" or "real property" as used in this section shall include

(i) A leasehold estate which at the time of closing the loan was not less duration than prescribed by 36.4350(a)(2) of this part, and

(ii) The rights derived by the holder through a foreclosure sale of real estate whether or not such rights constitute an estate in real property under local law.

(j) Except as provided in paragraph (h)(6) of this section, the provisions of this section shall not be in derogation of any rights which the Secretary may have under 36.4325 of this part. The Chief Benefits Director, or the Director, Loan Guaranty Service, may authorize any deviation from the provisions of this section, within the limitations prescribed in 38 U.S.C., chapter 37, which may be necessary or desirable to accomplish the objectives of this section if such deviation is made necessary by reason of any laws or practice in any State or Territory or the District of Columbia: Provided, that no such deviation shall impair the rights of any holder not consenting to the deviation with respect to loans made or approved prior to the date the holder is notified of such action.

#### 36.4321 COMPUTATION OF GUARANTY CLAIMS; SUBSEQUENT ACCOUNTING

(a) Subject to the limitation that the total amounts payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the earliest of the following dates:

(1) The date of the liquidation sale; or,

(2) The cutoff date established under paragraph (f) of 36.4319 of this part; or,

(3) The cutoff date established under paragraph (b) of this section.

Deposits or other credits or setoffs legally applicable to the indebtedness on the date of computation shall be applied in reduction of the indebtedness on which the claim is based. Any escrowed or earmarked funds not subject to superior claims of third persons must likewise be so applied.

(b) In any case in which there is a delay in the liquidation sale caused by:

(1) The holder of the loan extending forbearance in excess of 30 days at the request of the Secretary, the cutoff date for computation of the indebtedness shall be 30 days after the date the Secretary determines the

liquidation sale would have taken place if

IV-47

there had been no such delay, provided: the net value of the real property securing the loan does not exceed the unguaranteed portion of the indebtedness as of the actual liquidation sale date and such net value will exceed the unguaranteed portion of the indebtedness as of the cutoff date;

(2) The Secretary, including the Secretary's failure to provide the holder with advice as to the net value of the security within two working days prior to a scheduled liquidation sale but excluding forbearance exercised at the request of the Secretary, with respect to a holder which has complied with the provisions of 36.4319(b) of this part, the cutoff date for computation of the indebtedness shall be the date the liquidation sale would have taken place if there had been no such delay;

(3) A voluntary case commenced under Title 11, United States Code (relating to bankruptcy), the cutoff date for computation of the indebtedness shall be 30 days after the date the Secretary determines the liquidation sale would have taken place if there had been no such delay, provided: the net value of the real property securing the loan does not exceed the unguaranteed portion of the indebtedness as of the actual liquidation sale date and such net value will exceed the unguaranteed portion of the indebtedness as of the cutoff date.

(c) Adjustment of cutoff dates:

(1) Any cutoff date established under 36.4319(f) of this part or paragraph (b) of this section will be adjusted by a period of months corresponding to the number of installment payments, if any, received by the holder and credited to the indebtedness after the cutoff date is established.

(2) When a cutoff date is established under paragraph (b)(2) of this section, the actual liquidation sale date will be used for purposes of computing the indebtedness in any subsequent accounting between the holder and the Secretary; if an earlier cutoff date is in effect at the time delay in liquidation sale is caused by the Secretary, such date will not be modified by application of the provisions of paragraph (b)(2) of this section, but will be extended by an interval corresponding to the delay in the liquidation sale caused by the Secretary for purposes of computing the indebtedness in any subsequent accounting between the holder and the Secretary.

(3) Any cutoff date established under 36.4319 of this part or paragraph (b) of this section will be considered to be the liquidation sale date. Such date will be modified in accordance with paragraph (b) of this section of the provisions of that paragraph are applicable after such date has been established.

(Authority: 38 U.S.C. 210(c))

IV-48

(d) Credits accruing from the proceeds of a sale or other disposition of the security subsequent to the date of computation, and prior to the submission of this claim, shall be reported to the Secretary incident to such submission, and the amount payable on the claim shall in no event exceed the

remaining balance of the indebtedness.

(Authority: 38 U.S.C. 210(c))

(e) The claimant shall be deemed to have received as trustee for the benefit of the United States any amounts received on account of the indebtedness after the date of the claim, from the proceeds of a sale of the security or otherwise, to the extent such credits exceed the balance of the indebtedness unsatisfied by the payment of the guaranty. The claimant shall immediately pay such amounts to the Secretary to the extent of the debtor's liability to the Secretary as guarantor.

(Authority: 38 U.S.C. 210(c))

#### 36.4322 COMPUTATION OF INDEBTEDNESS

In computing the indebtedness for the purpose of filing a claim for payment of a guaranty, or for payment of an insured loss, or in the event of a transfer of the loan under 36.4318(a), or other accounting to the Secretary, the holder shall not be entitled to treat repayments theretofore made as liquidated damages, or rentals, or otherwise than as payments on the indebtedness, notwithstanding any provision in the note, or mortgage, or otherwise, to the contrary.

#### 36.4323 SUBROGATION AND INDEMNITY

(a) The Secretary shall be subrogated to the contract and the lien or other rights of the holder to the extent of any sum paid on a guaranty or on account of an insured loss, which right shall be junior to the holder's rights as against the debtor or the encumbered property until the holder shall have received the full amount payable under the contract with the debtor. No partial or complete release by a creditor shall impair the rights of the Secretary with respect to the debtor's obligation.

(b) The holder, upon request, shall execute, acknowledge and deliver an appropriate instrument tendered for that purpose, evidencing any payment received from the Secretary and the Secretary's resulting right of subrogation.

(c) The Secretary shall cause the instrument required by paragraph (b) of this section to be filed for record in the office of the recorder of deeds, or other appropriate office of the proper county, town or State, in accordance with the applicable State law. The filing or failure to file such instrument for record shall have the legal results prescribed by the applicable law of the State where the real or personal property is situated, with respect to

IV-49

filing or failure to so file mortgages and other lien instruments and assignments thereof. The references herein to "filing for record" include "registration" or any similar transaction, by whatever name designated when title to the encumbered property has been "registered" pursuant to a Torrens or other similar title registration system provided by law.

(d) As a condition to paying a claim for an insured loss the Secretary may require that the loan, including any security or judgment held therefor, be assigned to the extent of such payment, and if any claim has been filed in

bankruptcy, insolvency, probate, or similar proceedings such claim may likewise be required to be so assigned.

(e) Any amounts paid by the Secretary on account of the liabilities of any veteran guaranteed or insured under the provisions of 38 U.S.C., chapter 37 shall constitute a debt owing to the United States by such veteran.

(Authority: 38 U.S.C. 1832)

(1) Prior to a liquidation sale, an official authorized to act for the Secretary under provisions of 36.4342 of this part may approve a complete release of the Secretary's right to collect a debt owing to the United States under this paragraph and/or under paragraph (a) of this section provided such official determines:

(i) The loan default was caused by circumstances beyond the control of the obligor;

(ii) There are no indications of fraud, misrepresentation or bad faith on the part of the obligor in obtaining the loan or in connection with the loan default;

(iii) The obligor cooperated with VA in exploring all realistic alternatives to termination of the loan through foreclosure; and, either

(iv) Review of the obligor's current financial situation and prospective earning potential and obligations indicates there are no realistic prospects that the obligor could repay all or part of the anticipated debt within six years of the liquidation sale while providing the necessities of life for himself or herself and his or her family; or,

(v) In consideration for a release of the Secretary's collection rights the obligor completes, or VA is enabled to authorize, an action which reduces the Government's claim liability sufficiently to offset the amount of the anticipated indebtedness which would otherwise be established pursuant to this paragraph and likely be collectable by VA after foreclosure in view of the obligor's financial situation; such actions would include termination of the loan by means of a deed in lieu of foreclosure, private sale of the

IV-50

property for less than the indebtedness with a reduced claim paid by VA for the balance due the loan holder or enabling VA to authorize the holder to elect a more expeditious foreclosure procedure when such an election would result in the legal release of the obligor's liability.

(2) Prior to a liquidation sale, an official authorized to act for the Secretary under provisions of 36.4342 of this part may approve a partial release of the Secretary's right to collect a debt owing to the United States under this paragraph and/or under paragraph (a) of this section provided such official determines:

(i) The loan default was caused by circumstances beyond the control of the obligor:

(ii) There are no indications of fraud, misrepresentation or bad faith on the part of the obligor in obtaining the loan or in connection with the

loan default;

(iii) The obligor cooperated with VA in exploring all realistic alternatives to termination of the loan through foreclosure;

(iv) Review of the obligor's current financial situation and prospective earning potential and obligations indicates there are no realistic prospects that the obligor could repay all of the anticipated debt within six years of the liquidation sale while providing the necessities of life for himself or herself and his or her family; and,

(v) The obligor executes a written agreement acknowledging his or her liability to VA under this paragraph and executes a promissory note which provides for regular amortized monthly payments of an amount determined by VA in accordance with paragraph (e)(3) of this section including interest on the total amount payable at the rate in effect for Loan Guaranty liability accounts at the time of execution, or, the obligor agrees to other terms of repayment acceptable to VA including payment of a lump sum in settlement of his or her obligation under this paragraph;

(3) For purposes of this paragraph a review of an obligor's financial situation will take into consideration:

(i) The obligor's current and anticipated family income based on employment skills and experience;

(ii) The obligor's current short-term and long-term financial obligations, including the obligation to repay the Government which must be afforded consideration at least equal to his or her consumer debt obligations;

(iii) A current credit report on the obligor;

(iv) The obligor's assets and net worth; and,

IV-51

(v) The required balance available for family support used in underwriting VA guaranteed loans in the area.

The amount of indebtedness established will be such that the obligor's financial situation permits repayment of the debt to the Government in regular monthly installments of principal plus interest over a five year period commencing within one year after the date the promissory note is executed, except in those cases in which a lump sum settlement appears to be in the best interest of the Government or in which it appears the obligor may reasonably expect significant changes in his or her financial situation which would permit higher payments to be made during later periods of the life of the note.

(4) Determinations made under paragraphs (e)(2) and (e)(3) of this section are intended for the benefit of the Government in reducing the amount of claim payable by VA and/or avoiding the establishment of uncollectable debts owing to the United States. Such determinations are discretionary on the part of VA and shall not constitute a defense to any legal action to terminate the loan nor vest any appellate right in an obligor which would require further review of the case.

(Authority: 38 U.S.C. 210(c), 1803(c)(1))

(f) Whenever any veteran disposes of residential property securing a guaranteed or insured loan obtained by him or her under 38 U.S.C., chapter 37, and for which the commitment to make the loan was made prior to March 1, 1988, the Secretary, upon application made by such veteran, shall issue to the veteran a release relieving him or her of all further liability to the Secretary on account of such loan (including liability for any loss resulting from any default of the transferee or any subsequent purchaser of such property) if the Secretary has determined, after such investigation as may be deemed appropriate, that there has been compliance with the conditions prescribed in 38 U.S.C. 1813. The assumption of full liability for repayment of the loan by the transferee of the property must be evidenced by an agreement in writing in such form as the Secretary may require. Release of the veteran from liability to the Secretary will not impair or otherwise affect the Secretary's guaranty or insurance liability on the loan, or the liability of the veteran to the holder. Any release of liability granted to a veteran by the Secretary shall inure to the spouse of such veteran. The release of the veteran from liability to the Secretary will constitute the Secretary's prior approval to a release of the veteran from liability on the loan by the holder thereof.

(Authority: 38 U.S.C. 1813)

(g) If, on or after July 1, 1972, any veteran disposes of residential property securing a guaranteed or insured loan obtained under 38 U.S.C., chapter 37, without receiving a release from liability with respect to such loan under 38 U.S.C. 1813 and a default subsequently occurs which results in liability of the veteran to the Secretary on account of the loan, the Secretary may relieve the veteran of such liability if it is determined that:

IV-52

(1) A transferee either immediate or remote is legally liable to the Secretary for the debt of the original veteran-borrower established after the termination of the loan, and

(2) The original loan was current at the time such transferee acquired the property, and

(3) The transferee who is liable to the Secretary is found to have been a satisfactory credit risk at the time he or she acquired the property.

(h) If a veteran or any other person disposes of residential property securing a guaranteed or insured loan for which a commitment was made on or after March 1, 1988, and the veteran or other person notifies the loan holder in writing before disposing of the property, the veteran or other person shall be relieved of all further liability to the Secretary with respect to the loan (including liability for any loss resulting from any default of the purchaser or any subsequent owner of the property) and the application for assumption shall be approved if the holder determines that:

(1) The proposed purchaser is creditworthy;

(2) The proposed purchaser is contractually obligated to assume the loan and the liability to indemnify the Department of Veterans Affairs for the amount of any claim paid under the guaranty as a result of a default on the

loan, or has already done so; and,

(3) The payments on the loan are current.

Should these requirements be satisfied, the holder may also release the veteran or other person from liability on the loan. This does not apply if the approval for the assumption is granted upon special appeal to avoid immediate foreclosure.

(Authority: 38 U.S.C. 1814)

#### 36.4324 RELEASE OF SECURITY

(a) Except upon full payment of the indebtedness the holder shall not release a lien or other right in or to real property held as security for a guaranteed or insured loan, or grant a fee or other interest in such property, without the prior approval of the Secretary, unless in the opinion of the holder such release does not involve a decrease in the value of the security in excess of \$2,500: Provided, that the aggregate of the reduction in the original value of the security resultant from such releases without the Secretary's prior approval does not exceed \$2,500.

(b) Holder may release from the lien personal property including crops without the prior approval of the Secretary.

IV-53

(c) Except upon full payment of the indebtedness or upon the prior approval of the Secretary, the holder shall not release a lien under paragraph (a) or (b) of this section unless the consideration received for the release is commensurate with the fair market value of the property released and the entire consideration is applied to the indebtedness, or if encumbrance on other property is accepted in lieu of that released it shall be the holder's duty to acquire such lien on property of substantially equal value which is reasonably capable of serving the purpose for which the property released was utilized.

(d) Failure of the holder to comply with the provisions of this section shall not in itself affect the validity of the title of a purchaser to the property released.

(e) The holder shall notify the Secretary of any such release or substitution of security within 30 days after completion of such transaction.

(f) The release of the personal liability of any obligor on a guaranteed or insured obligation resultant from the act or omission of any holder without the prior approval of the Secretary shall release the obligation of the Secretary as guarantor or insurer, except when such act or omission consists of (1) failure to establish the debt as a valid claim against the assets of the estate of any deceased obligor, provided no lien for the guaranteed or insured debt is thereby impaired or destroyed; or (2) an election and appropriate prosecution of legally available effective remedies with respect to the repossession or the liquidation of the security in any case, irrespective of the identity or the survival of the original or of any subsequent debtor, if holder shall have given such notice as required by 36.4317 of this part and if, after receiving such notice, the Secretary shall have failed to notify the holder within 15 days to proceed in such manner as

to effectively preserve the personal liability of the parties liable, or such of them as the Secretary indicates in such notice to the holder; or (3) the release of an obligor, or obligors, from liability on an obligation secured by a lien on property, which release is an incident of and contemporaneous with the sale of such property to an eligible veteran who assumed such obligation, which assumed obligation is guaranteed on the assuming veteran's account pursuant to 38 U.S.C., chapter 37; or (4) the release of an obligor or obligors as provided in 36.4314(d) of this part; or, the release of an obligor, or obligors, incident to the sale of property securing the loan which the holder is authorized to approve under the provisions of 38 U.S.C. 1814.

(Authority: 38 U.S.C. 1814)

#### 36.4325 PARTIAL OR TOTAL LOSS OF GUARANTY OR INSURANCE

(a) Subject to the incontestable provisions of 38 U.S.C. 1821 as to loans guaranteed or insured on or subsequent to July 1, 1948, there shall be no liability on account of a guaranty or insurance, or any certificate or other evidence thereof, with respect to a

IV-54

transaction in which a signature to the note, the mortgage, or any other loan papers, or the application for guaranty or insurance is a forgery; or in which the certificate of discharge or the certificate of eligibility is counterfeited, or falsified, or is not issued by the Government.

(1) Except as to a holder who acquired the loan instrument before maturity, for value, and without notice, and who has not directly or by agent participated in the fraud, or in the misrepresentation hereinafter specified, any willful and material misrepresentation or fraud by the lender, or by a holder, or the agent of either, in procuring the guaranty or the insurance credit, shall relieve the Secretary of liability, or, as to loans guaranteed or insured on or subsequent to July 1, 1948, shall constitute a defense against liability on account of the guaranty or insurance of the loan in respect to which the willful misrepresentation, or the fraud, is practiced: Provided, That if a misrepresentation, although material, is not made willfully, or with fraudulent intent, it shall have only the consequences prescribed in paragraphs (b) and (c) of this section.

(b) In taking security required by 38 U.S.C., chapter 37 and the regulations concerning guaranty or insurance of loans to veterans, a holder shall obtain the required lien on 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 36.4350(b) and if such holder fails in this respect or fails to comply with 38 U.S.C., chapter 37 and the regulations concerning guaranty or insurance of loans to veterans 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., chapter 37 or the regulations concerning guaranty or insurance of loans to veterans,

(2) Inclusion of power to substitute trustees ( 36.4327),

- (3) The procurement and maintenance of insurance coverage ( 36.4326),
- (4) Advice to Secretary as to default ( 36.4315),
- (5) Notice of intention to begin action ( 36.4317),
- (6) Notice to the Secretary in any suit or action, or notice of sale ( 36.4319),
- (7) The release, conveyance, substitution, or exchange of security ( 36.4324),

IV-55

- (8) Lack of legal capacity of a party to the transaction incident to which the guaranty or the insurance is granted ( 36.4328),
- (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 ( 36.4350(b)),
- (11) Any other requirement of 38 U.S.C., chapter 37 or the regulations concerning guaranty or insurance of loans to veterans which does not by the terms of said chapter or the regulations concerning guaranty or insurance of loans to veterans result in relieving the Secretary of all liability with respect to the loan, no claim on the guaranty or insurance 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 or insurance 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 or misrepresentation prejudices the Secretary's right of subrogation acceptance by the holder of the guaranty or insurance payment shall subordinate the holder's right to those of the Secretary.

(c) If after the payment of a guaranty or an insurance loss, or after a loan is transferred pursuant to 36.4318(a), the fraud, misrepresentation or failure to comply with the regulations in this subpart as provided in this section is discovered and the Secretary determines that an increased loss to the Government resulted therefrom, the transferor 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.

#### 36.4326 HAZARD INSURANCE

The holder shall require insurance policies to be procured and maintained in an amount sufficient to protect the security against the risks or hazards to which it may be subject to the extent customary in the locality.

Flood insurance will be required in respect to any loan closed on and after March 2, 1974, if the security is located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards and in which the sale of flood insurance is available under the National Flood Insurance Program. The amount of flood insurance required will be equal to the outstanding balance of the loan or the maximum limit of coverage available for the particular type of property

IV-56

under the National Flood Insurance Program, whichever is less. All moneys received under such policies covering payment of insured losses shall be applied to restoration of the security or to the loan balance.

#### 36.4327 SUBSTITUTION OF TRUSTEES

In jurisdictions in which valid, any deed of trust or mortgage securing a guaranteed or insured 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.

#### 36.4328 CAPACITY OF PARTIES TO CONTRACT

Nothing in 36.4300 to 36.4375, inclusive, shall be construed to relieve any lender of responsibility otherwise existing, for any loss caused by the lack of legal capacity of any person to contract, convey, or encumber, or caused by the existence of other legal disability or defects invalidating, or rendering unenforceable in whole or in part, either the loan obligation or the security therefor.

#### 36.4329 GEOGRAPHICAL LIMITS

Any real property purchased, constructed, altered, improved, or repaired with the proceeds of a guaranteed or insured loan shall be situated within the United States which for purposes of 38 U.S.C., chapter 37 is here defined as the several States, Territories and possessions, and the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

#### 36.4330 ACCOUNTING RECORDS

(a) The holder shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto and the dates thereof. This record shall be maintained until the Secretary ceases to be liable as guarantor or insurer of the loan. For the purpose of any accounting with the Secretary or computation of a claim any holder who fails to maintain such record shall be presumed to have received on the dates due all sums which by the terms of the contract are payable prior to date of claim for default, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such holder.

(b) The lender shall retain copies of all loan origination records on a VA guaranteed loan for at least one year from the date of loan closing. Loan origination records include the loan application, including any preliminary application, verifications of employment and deposit, all credit reports,

including preliminary credit reports, copies of each sales contract and addendums, letters of explanation for adverse credit items, discrepancies and the like,

IV-57

direct references from creditors, correspondence with employers, appraisal and compliance inspection reports, reports on termite and other inspections of the property, builder change orders, and all closing papers and documents.

(Authority: 38 U.S.C. 210(c), 1803(c)(1))

(c) The Secretary has the right to inspect, examine, or audit, at a reasonable time and place, the records or accounts of a holder pertaining to loans guaranteed or insured by the Secretary.

#### 36.4331 DISQUALIFICATION OF LENDERS

(a) A lender or holder may be suspended from obtaining guaranty or insurance of loans or from the right to the guaranty or insurance in respect to any loan made or purchased after the date of its suspension, except as provided in paragraph (h) of this section, whenever any of the employees designated in 36.4342(b) finds that the lender or holder (hereinafter referred to as lender) has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgment, or has declined to make a guaranteed or insured home loan to an eligible veteran because of the applicant's race, color, religion, sex, or national origin, or has willfully or negligently engaged in practices otherwise detrimental to the interests of veterans or of the Government, or has been refused the benefits of participation under the National Housing Act pursuant to a determination of the Secretary of Housing and Urban Development. Suspension of a lender shall be effected only when specifically authorized by the Secretary, the Assistant Secretary, or by the Chief Benefits Director, Veterans Benefits Administration. In any case in which suspension has been so authorized and (1) an indictment has been secured or a criminal information has been filed against the lender in connection with a transaction involving 38 U.S.C., chapter 37, or (2) is based upon action taken by the Secretary of Housing and Urban Development, an immediate suspension may be effected. A lender may also be suspended under this section if it is owned by, or employs as an officer, loan solicitor, loan processor, loan servicer, loan supervisor, office manager, or in any other position, a person who engages in or is responsible for the processing or servicing of VA guaranteed or insured loans if that person has been previously suspended by VA under this section. In any other case in which the Director of a regional office has obtained Central Office authorization to initiate suspension proceedings, prior written notice of intention to apply the suspension sanction shall be furnished to the lender concerned.

(Authority: 38 U.S.C. 1804(d); 1812(g))

(b) Where notice of intention to suspend is furnished a lender, the notice shall state the charges against the lender and the specifications on which the charges are based. Such notice shall also advise the lender that no later than 20 days from the date of the receipt of the notice it may file written answer to the charges with the Director and, if desired, may also file a written request

that lender be permitted to appear before the Department of Veterans Affairs and state why suspension should not be effected. In the event the lender does not file written answer to the charges against it and does not make or request permission to make an appearance before the Department of Veterans Affairs within the time specified, suspension may be effected immediately, without further authorization, by the Director who will advise the Chief Benefits Director of the action taken.

(c) If an appearance before the Department of Veterans Affairs is requested by the lender, the Director will arrange for and notify the lender of the time and place thereof and will appoint a committee of three the Department of Veterans Affairs employees to hear the lender's statement. The District Counsel or designee will represent the Department of Veterans Affairs at such appearance. The proceedings of the committee will be informal. The lender will be informed of the charges and specifications which constitute the basis of the contemplated suspension and will be afforded an opportunity to state either orally or in writing why suspension should not be effected. Written or oral statements of the lender, or its officers, agents, or representatives other than counsel may be required by said District Counsel or designee to be made under oath if in the discretion of said District Counsel or designee the nature of the statement is such as to make that procedure advisable. In the event an oral statement is made under oath, a verbatim transcript of such statement will be made. Authority is hereby delegated to the District Counsel or designee to administer oaths to each party making the statement under oath.

(d) If within the specified time written answer is filed with the Director or the lender makes an appearance, the Director will hold the suspension in abeyance and submit a full report to the Chief Benefits Director including recommendations as to the action to be taken in the case and will await instructions of the Chief Benefits Director before proceeding further.

(e) Where suspension is effected, the lender will be advised in writing of the effective date of the suspension and, unless such was previously furnished, will be given written notice of the charges against the lender and the specifications on which such charges are based. Any lender who is suspended shall have the right to apply to the Chief Benefits Director for termination or modification of the suspension and, except when the suspension is based upon action taken by the Secretary of Housing and Urban Development, shall also have the right to apply to the Chief Benefits Director for a formal hearing at which opportunity shall be afforded to show why suspension should be modified or terminated. The Chief Benefits Director may postpone the holding of a hearing for a reasonable period in any case in which the Department of Justice or U.S. attorney advises or requests postponement pending the trial of a criminal or civil case or the institution of criminal or civil proceedings against the lender. In the absence of such request, the Chief Benefits Director, as soon as it is feasible to do so, shall

designate such time and place as may be deemed appropriate for such hearing, shall notify the lender thereof, and shall appoint no fewer than three persons, who shall constitute the board, to conduct the hearing. The District Counsel or designee shall represent the Department of Veterans Affairs. Authority is hereby delegated to the presiding officer of the board designated

to conduct such hearing to administer oaths to witnesses. The Director may issue subpoenas for witnesses or records as provided in 38 U.S.C. 3311. The lender shall have the right to appear at such hearing in person or by attorney, or both, and to introduce evidence showing why such suspension should be modified or terminated. If the Department of Veterans Affairs has knowledge of a pending or contemplated civil or criminal action by the United States against the lender, arising from the facts on which the suspension of the lender was based, the District Counsel of the regional office concerned will inform the responsible U.S. attorney of the date and place of hearing and keep said U.S. attorney advised of all developments.

(f) As soon as is practicable after the conclusion of the hearing, the board will make findings of fact and recommendations in writing to the Chief Benefits Director. The lender will be furnished with a transcript of the hearing and with a statement of the board's findings of fact. The lender shall have the right within 14 days after receipt of such transcript and statement to file with the Chief Benefits Director a brief of either, or both, facts and law.

(g) Upon receipt of the transcript of the hearing, the findings and recommendations of the board, and the brief of the lender, if one is filed, the Chief Benefits Director shall make a determination in the case, basing such action on such record. Written notice of such determination shall be given to the lender. The lender shall have the right to appeal such decision to the Secretary by giving notice in writing to the Chief Benefits Director within 10 days after the receipt of notice of such determination. In the event of such appeal, the Secretary will decide the matter finally on the record and will notify the lender of the decision in writing. If the lender does not appeal to the Secretary within the period specified, the determination by the Chief Benefits Director shall be final.

(h) Except where acquisition is pursuant to a binding contract antedating the suspension, the purchase of a guaranteed or insured loan by a lender after the date of its suspension shall cancel the guaranty or insurance on such loan: Provided, the notice to the lender of the suspension expressly bars such lender from acquiring by purchase loans guaranteed or insured by the Secretary.

(i) If after determination by the Chief Benefits Director or the Secretary, as provided in paragraph (g) of this section, the suspension is terminated, all rights and interest of the lender shall be restored. However, any lender suspended by reason of action taken by the Secretary of Housing and Urban Development is not afforded the rights under paragraph (g) of this section and the

IV-60

suspension in any case will be terminated by the Chief Benefits Director only if the lender furnishes satisfactory evidence of his or her reinstatement by the Secretary of Housing and Urban Development.

#### 36.4332 DELIVERY OF NOTICE

Any notice required by 36.4300 to 36.4375, inclusive, to be given the Secretary must be in writing, and delivered, by mail or otherwise, to the Department of Veterans Affairs office at which the guaranty or insurance was issued, or to any changed address of which the holder has been given notice.

Such notice must plainly identify the case by setting forth the name of the original veteran-obligor and the file number assigned to the case by the Secretary, if available, or otherwise the name and serial number of the veteran. If mailed, the notice shall be by registered mail when so provided by 36.4300 to 36.4375, inclusive. This section does not apply to legal process. (See 36.4319).

#### 36.4333 SATISFACTION OF INDEBTEDNESS

Upon full satisfaction of a guaranteed loan by payment or otherwise it shall be the duty of the holder to cancel the endorsement, if any, of the Secretary; and forthwith inform the Secretary of such cancellation. In the event the Secretary's liability thereon is evidenced by an instrument separate from the instrument evidencing the debtor's obligation, the instrument evidencing the obligation of the Secretary shall be returned to the Department of Veterans Affairs office issuing same, or to the Central Office, with the holder's cancellation or endorsement of release thereon.

#### 36.4334 INCORPORATION BY REFERENCE

Regulations issued under 38 U.S.C., chapter 37, and in effect on the date of any loan which is submitted and accepted or approved for a guaranty or for insurance thereunder, shall govern the rights, duties, and liabilities of the parties to such loan and any provisions of the loan instruments inconsistent with such regulations are hereby amended and supplemented to conform thereto.

#### 36.4335 SUPPLEMENTARY ADMINISTRATIVE ACTION

Notwithstanding any requirement, condition, or limitation stated in or imposed by the regulations concerning the guaranty or insurance of loans to veterans, the Chief Benefits Director, or the Director, Loan Guaranty Service, within the limitations and conditions prescribed by the Secretary, is hereby authorized, if he or she finds the interests of the Government are not adversely affected, to relieve undue prejudice to a debtor, holder, or other person, which might otherwise result, provided no such action may be taken which would impair the vested rights of any person affected thereby. If such requirement, condition, or limitation is of an administrative or procedural (not substantive) nature, any employee

IV-61

designated in 36.4342 is hereby authorized to grant similar relief if he or she finds the failure or error of the lender was due to misunderstanding or mistake and that the interests of the Government are not adversely affected. Provisions of the regulations considered to be of an administrative or procedural (nonsubstantive) nature are limited to the following:

(a) The requirement in 36.4303(a) that a lender of a class described under 38 U.S.C. 1802(d) originating a loan under the automatic (nonprior approval) procedure report such loan for issuance of guaranty or insurance evidence within 60 days following full disbursement. Waiver of the lender's failure to report the loan within the 60-day period shall be confined to cases where the loan is not in default.

(b) The requirement in 36.4303(d) that a lender originating a loan under a certificate of commitment report the loan for issuance of guaranty or

insurance evidence within 60 days following actual payment of the full proceeds of the loan. In such cases it is not necessary that a finding be made that the loan is not in default.

(c) The requirement in 36.4314(e) that a holder promptly forward an advice of the terms of any agreement effecting a reamortization or extension of a loan.

(d) The 45-day requirement in 36.4315(a) concerning the giving of notice of default.

(e) The requirement in 36.4317 that a holder give 30 days advance notice of its intention to foreclose.

(f) The requirement in 36.4317(b) that a holder give notice of repossession of personal property within 10 days after such repossession has occurred.

(g) The requirement in 36.4307(a) that a lender obtain the prior approval of the Secretary before closing a joint loan if the lender or class of lenders is eligible or has been approved by the Secretary to close loans on the automatic basis pursuant to 38 U.S.C. 1802(d).

(Authority: 38 U.S.C. 1803(c)(1))

(h) The requirements in 36.4303(k) of this part concerning the giving of notice in assumption cases under 38 U.S.C. 1814.

(Authority: 38 U.S.C. 1814 and 1820)

#### 36.4336 ELIGIBILITY OF LOANS; REASONABLE VALUE REQUIREMENTS

(a) Evidence of guaranty or insurance shall be issued in respect to a loan for any of the purposes specified in 38 U.S.C. 1810(a) only if:

IV-62

(1) The proceeds of such loan have been used to pay for the property purchased, constructed, repaired, refinanced, altered, or improved and;

(2)(i) Except as to refinancing loans pursuant to 38 U.S.C. 1810(a)(8) or (9)(B)(i), the loan including any scheduled deferred interest added to principal, does not exceed the reasonable value of the property or projected reasonable value of a new home which is security for a Graduated Payment Mortgage loan, as appropriate, as determined by the Secretary, and

(ii) For the purpose of determining the reasonable value of a Graduated Payment Mortgage loan to purchase a new home, the reasonable value of the property as of the time the loan is made shall be calculated to increase at a rate not in excess of 2.5 percent per year, but in no event may the projected value of the property exceed 115 percent of the initially established reasonable value, and

(Authority: 38 U.S.C. 1803(d)(2))

(3) The veteran has certified, in such form as the Secretary may prescribe, that the veteran has paid in cash from his or her own resources on

account of such purchase, construction, alteration, repair, or improvement a sum equal to the difference, if any, between the purchase price or cost of the property and its reasonable value.

(b) Notwithstanding that the aggregate of the loan amount in the case of loans for the purposes specified in paragraph (a) of this section, and the amount remaining unpaid on taxes, special assessments, prior mortgage indebtedness, or other obligations of any character secured by enforceable superior liens or a right to such lien existing as of the date the loan is closed exceeds the reasonable value of such property as of said date and that evidence of guaranty or insurance credit is issued in respect thereof, as between the holder and Secretary (for the purpose of computing the claim on the guaranty or insurance and for the purposes of 36.4320, and all accountings), the indebtedness which is the subject of the guaranty or insurance shall be deemed to have been reduced as of the date of the loan by a sum equal to such excess, less any amounts secured by liens released or paid on the obligations secured by such superior liens or rights by a holder or others without expense to or obligation on the debtor resulting from such payment, or release of lien or right; and all payments made on the loan shall be applied to the indebtedness as so reduced. Nothing in this paragraph affects any right or liability resulting from fraud or willful misrepresentation.

36.4337 Canceled.

IV-63

36.4338 DEATH OR INSOLVENCY OF HOLDER

(a) Immediately upon the death of the holder and without the necessity of request or other action by the debtor or the Secretary, all sums then standing as a credit balance in a trust, or deposit, other account to cover taxes, insurance accruals, or other items in connection with the loan secured by the encumbered property, whether stated to be such or otherwise designated, and which have not been credited on the note shall, nevertheless, be treated as a setoff and shall be deemed to have been credited thereon as of the date of the last debit to such account, so that the unpaid balance of the note as of that date will be reduced by the amount of such credit balance: Provided, That any unpaid taxes, insurance premiums, ground rents, or advances may be paid by the holder of the indebtedness, at the holder's option, and the amount which otherwise would have been deemed to have been credited on the note reduced accordingly. This paragraph shall be applicable whether the estate of the deceased holder is solvent or insolvent.

(b) The provisions of paragraph (a) of this section shall also be applicable in the event of:

(1) Insolvency of holder;

(2) Initiation of any bankruptcy or reorganization, or liquidation proceedings as to the holder, whether voluntary or involuntary;

(3) Appointment of a general or ancillary receiver for the holder's property; or in any case

(4) Upon the written request of the debtor if all secured and due insurance premiums, taxes, and ground rents have been paid, and appropriate

provisions made for future accruals.

(c) Upon the occurrence of any of the events enumerated in paragraph (a) or (b) of this section, interest on the note and on the credit balance of the deposits mentioned in paragraph (a) shall be set off against each other at the rate payable on the principal of the note, as of the date of last debit to the deposit account. Any excess credit of interest shall be treated as a setoff against the unpaid advances, if any, and the unpaid balance of the note.

(d) The provisions of paragraphs (a), (b) and (c) of this section shall apply also to corporations. The dissolution thereof by expiration of charter, by forfeiture, or otherwise shall be treated as is the death of an individual as provided in paragraph (a).

#### 36.4339 QUALIFICATION FOR DESIGNATED FEE APPRAISER

To qualify for approval as a designated fee appraiser, an applicant must show to the satisfaction of the Secretary that his or her character, experience, and the type of work in which he or she

IV-64

has had experience for at least 5 years qualifies the applicant to competently appraise and value within a prescribed area the type of property to which the approval relates.

#### 36.4340 RESTRICTION ON DESIGNATED FEE APPRAISERS

(a) A designated fee appraiser shall not make an appraisal, excepting of alterations, improvements, or repairs to real property entailing a cost of not more than \$3,500; if such appraiser is an officer, director, trustee, employer, or employee of the lender, contractor, or vendor.

(b) An appraisal made by a designated fee appraiser shall be subject to review and adjustment by the Secretary. The amount determined to be proper upon any such review or adjustment shall constitute the "reasonable value" for the purpose of determining the eligibility of the related loan.

#### 36.4341 SUSPENSION OR REMOVAL OF APPRAISERS

Upon it appearing that an appraiser designated by the Secretary is not qualified to make appraisals of the type for which appointed or has engaged in any practice detrimental to the interests of the veteran, the lender, or the Government, the appraiser may be suspended or removed by the Secretary: Provided, That such action shall not prejudice the guaranty or insurance right of a lender who has in good faith acted in reliance upon a designation of such appraiser prior to receiving notice of such suspension or removal.

#### 36.4342 DELEGATION OF AUTHORITY

(a) Except as hereinafter provided, each employee of the Department of Veterans Affairs heretofore or hereafter appointed to, or lawfully filling, any position designated in paragraph (b) of this section is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect to the guaranty or insurance of loans and the rights and liabilities arising

therefrom, including but not limited to the adjudication and allowance, disallowance, and compromise of claims; the collection or compromise of amounts due, in money or other property; the extension, rearrangement, or acquisition of loans; the management and disposition of secured and unsecured notes and other property; and those functions expressly or impliedly embraced within paragraphs (2) to (6), inclusive, of 38 U.S.C. 1820(a). Incidental to the exercise and performance of the powers and functions hereby delegated, each such employee is authorized to execute and deliver (with or without acknowledgment) for, and on behalf of, the Secretary, evidence of guaranty or of insurance credits and such certificates, forms, conveyances, and other instruments as may be appropriate in connection with the acquisition, ownership, management, sale, transfer, assignment, encumbrance, rental, or other disposition of real or personal property or of any right, title, or interest therein, including, but

IV-65

not limited to, contracts of sale, installment contracts, deeds, leases, bills of sale, assignments, and releases; and to approve disbursements to be made for any purpose authorized by 38 U.S.C., chapter 37.

(b) Designated positions:

Chief Benefits Director  
Director, Loan Guaranty Service  
Director, Medical and Regional Office Center  
Director, Regional Office and Insurance Center  
Director, VA Regional Office  
Loan Guaranty Officer  
Assistant Loan Guaranty Officer

The authority hereby delegated to employees of the positions designated in this paragraph may, with the approval of the Chief Benefits Director, be redelegated.

(c) Nothing in this section shall be construed (1) to authorize any such employee to exercise the authority vested in the Secretary under 38 U.S.C. 210(c) or 1803(a)(2) or to sue, or enter appearance for and on behalf of the Secretary, or confess judgment against the Secretary in any court without the Secretary's prior authorization; or (2) to include the authority to exercise those powers delegated to the Chief Benefits Director, or the Director, Loan Guaranty Service, under 36.4320(j), 36.4335, or 36.4343: Provided, That, anything in the regulations concerning guaranty or insurance of loans to veterans to the contrary notwithstanding, any evidence of guaranty or insurance issued on or after July 1, 1948, by any of the employees designated in paragraph (b) of this section or by any employee designated an authorized agent or a loan guaranty agent shall be deemed to have been issued by the Secretary, subject to the defenses reserved in 38 U.S.C. 1821.

(d) Each regional office, regional office and insurance center, and medical and regional office center shall maintain and keep current a cumulative list of all employees of the office or center who, since May 1, 1980, have occupied the positions of Director, Loan Guaranty Officer, and Assistant Loan Guaranty Officer. This list will include each employee's name, title, date the employee assumed the position, and the termination date, if applicable, of the employee's tenure in such position. The list shall be available for public inspection and copying at the regional office, or center,

during normal business hours.

(Authority: 38 U.S.C. 210(c)(1), 1820(a)(5))

#### 36.4343 COOPERATIVE LOANS

(a) Any loan, which is (1) related to an enterprise in which more than 10 individuals will participate; or (2) to be made for the purchase or construction of residential units in any housing development, cooperative or otherwise, the title to which development or to the individual units therein is not to be held

IV-66

directly by the veteran-participants, or which contemplates the ownership or maintenance of more than three units or of their major appurtenances in common, to be eligible for guaranty or insurance shall require prior approval of the Chief Benefits Director, or the Director, Loan Guaranty Service, who may issue such approval upon such conditions and limitations deemed appropriate, not inconsistent with the provisions of 38 U.S.C., chapter 37 and regulations concerning guaranty or insurance of loans to veterans.

(b) The issuance of such approval with respect to residential development under paragraph (a)(2) of this section also shall be subject to such conditions and stipulation as in the judgment of the approving officer are possible and proper to (1) afford reasonable and feasible protection to the rights of the Government as guarantor or insurer, and as subrogee, and to each veteran-participant against loss of his or her respective equity consequent upon the failure of other participants to discharge their obligations; (2) provide for a reasonable and workable plan for the operation and management of the project; (3) limit the personal liability of each veteran-participant to those sums allocable on a proper ratable basis to the purchase, cost, and maintenance of his or her individual unit or participating interest; (4) limit commercial features to those reasonably calculated to promote the economic soundness of the project and the living convenience of the participants, retaining the essential character of a residential project.

(c) No such project, development, or enterprise may be approved which involves an initial grouping of more than 500 veterans, or a cost of more than five million dollars, unless it is conclusively shown to the satisfaction of the approving officer that a greater number of veterans or dollar amount will assure substantial advantages to the veteran-participants which could not be achieved in a smaller project.

(d) When approved as in this section provided, and upon performance of the conditions indicated in the prior approval, proper guaranty certificate or certificates may be issued in connection with the loan or loans to be guaranteed on behalf of eligible veterans participating in the project, development or enterprise not to exceed in total amount the sum of the guaranties applied for by the individual participants and for which guaranty each participant is then eligible.

(e) In lieu of guaranty as authorized in paragraph (d) of this section, insurance shall be available on application by the lender and all veterans concerned. In such case the insurance credit shall be limited to 15 percent of the obligation of the veteran-applicant (subject to available eligibility) and the total insurance credit in respect to the veterans' loans involved in

the project shall not exceed 15 percent of the aggregate of the principal sums of the individual indebtedness incurred by the veterans participating in the project for the purpose of acquiring their respective interests therein.

IV-67

36.4344 LENDER APPRAISAL PROCESSING PROGRAM

(a) Delegation of Authority to Lenders to Review Appraisals and Determine Reasonable Value

(1) To be eligible for delegation of authority to review VA appraisals and determine the reasonable value of properties to be purchased with VA guaranteed loans, a lender must (i) have automatic processing authority under 38 U.S.C. 1802(d), and (ii) employ one or more staff appraisal reviewers acceptable to the Secretary.

(2) To qualify as a lender's staff appraisal reviewer an applicant must be a full-time member of the lender's permanent staff and may not be employed by, or perform services for, any other mortgagee. The individual must not engage in any private pursuits in which there will be, or appear to be, any conflict of interest between those pursuits and his/her duties, responsibilities, and performance as a Lender Appraisal Processing Program (LAPP) staff appraisal reviewer. Three years of experience is necessary to qualify as a lender's staff appraisal reviewer. That experience must demonstrate a knowledge of, and the ability to apply industry-accepted principles, methods, practices and techniques of appraising, and the ability to competently determine the value of property within a prescribed geographical area. The individual must demonstrate the ability to review the work of others and to recognize deviations from accepted appraisal principles, practices, and techniques, errors in computations, and unjustifiable and unsupportable conclusions.

(3) Lenders that meet the requirements of 38 U.S.C. 1802(d), and have a staff appraisal reviewer determined acceptable by VA, will be authorized to review appraisals and make reasonable value determinations on properties that will be security for VA guaranteed loans. The lender's authorization will be subject to a one-year probationary period. Additionally, lenders must satisfy initial and subsequent VA office case review requirements prior to being allowed to determine reasonable value without VA involvement. The initial office case review requirement must be satisfied in the VA regional office in whose jurisdiction the lender's staff appraisal reviewer is located before the LAPP authority may be utilized by that lender in any other VA office's jurisdiction. To satisfy the initial office case review requirement, the first five cases of each lender staff appraisal reviewer involving properties in the regional office location where the staff appraisal reviewer is located will be processed by him or her up to the point where he or she has made a reasonable value determination and fully drafted, but not issued, the lender's notification of reasonable value letter to the veteran. At that point, and prior to loan closing, each of the five cases will be submitted to the local VA office. After a staff review of each case, VA will issue a Certificate of Reasonable Value, which the lender may use in closing the loan automatically if it meets all other requirements of the VA. If these five cases are found to be acceptable by VA, the lender's staff appraisal reviewer

IV-68

will be allowed to fully process subsequent appraisals for properties located in that VA office's jurisdiction without prior submission to VA and issuance by VA of a Certificate of Reasonable Value. Lenders must also satisfy a subsequent VA office case review requirement in each additional VA office location in which they desire to extend and utilize this authority. Under this requirement, the lender must have first satisfied the initial office case review requirement and then must submit to the additional VA office(s) the first case each staff appraisal reviewer processes in the jurisdiction of that office. As provided under the initial office case review requirement, VA office personnel will issue a Certificate of Reasonable value for this case and subsequently determine the acceptability of the lender's staff appraisal reviewer's processing. If VA finds this first case to be acceptable, the lender's staff appraisal reviewer will be allowed to fully process subsequent cases in that additional VA office's jurisdiction without prior submission to VA. The initial and subsequent office case review requirements may be expanded by VA if acceptable performance has not been demonstrated. After satisfaction of the initial and subsequent office case review requirements, routine reviews of LAPP cases will be made by VA staff based upon quality control procedures established by the Chief Benefits Director. Such review will be made on a random sampling or performance related basis. During the probationary period a high percentage of reviews will be made by VA staff.

(4) The following certification by the lender's nominated staff appraisal reviewer must be provided with the lender's application for delegation of LAPP authority:

I hereby acknowledge and represent that by signing the Uniform Residential Appraisal Report (URAR), FHLMC (Federal Home Loan Mortgage Corporation) Form 70/FNMA (Federal Notice Mortgage Association) Form 1004, I am certifying, in all cases, that I have personally reviewed the appraisal report. In doing so I have considered and utilized recognized professional appraisal techniques, have found the appraisal report to have been prepared in compliance with applicable VA requirements, and concur with the recommendations of the fee appraiser, who was assigned by VA to the case. Furthermore, in those cases where clarifications or corrections have been requested from the VA fee appraiser there has been no pressure or influence exerted on that appraiser to remove or change information that might be considered detrimental to the subject property, or VA's interests, or to reach a predetermined value for that property. Signature of Staff Appraisal Reviewer.

(5) Other certifications required from the lender will be specified with particularity in the separate instructions issued by the Secretary, as noted in 36.4344(b).

(b) Instructions for LAPP Procedures. The Secretary will publish separate instructions for processing appraisals under the Lenders Appraisal Processing Program. Compliance with these regulations and the separate instructions issued by the Secretary is

IV-69

deemed by VA to be the minimum exercise of due diligence in processing LAPP cases. Due diligence is considered by VA to represent that care, as is to be properly expected from, and ordinarily exercised by, reasonable and prudent lenders who would be dependent on the property as security to protect its investment.

(c) VA Minimum Property Requirements. Lenders are responsible for determining that the property meets VA minimum property requirements. The separate instructions issued by the Secretary will set forth the lender's ability to adjust, remove, or alter the fee appraiser's or fee compliance inspector's recommendations concerning VA minimum property requirements. Condominiums, planned-unit developments and leasehold estates must have been determined acceptable by VA. A condominium or planned-unit development which is acceptable to the Department of Housing and Urban Development or the Department of Agriculture may also be acceptable to VA.

(d) Adjustment of Value Recommendations. The amount of authority to upwardly adjust the fee appraiser's estimated market value during the lender staff appraisal reviewer's initial review of the appraisal report or to subsequently process an appeal of the lender's established reasonable value will be specified in the separate instructions issued by VA as noted in 36.4344(b). The amount specified must not in any way be considered an administrative adjustment figure which may be applied indiscriminately and without valid basis or justification with the sole purpose of reaching an amount necessary to complete the sale or mortgage transaction.

(1) Adjustment During Initial Review. Any adjustment during the staff appraisal reviewer's initial review of the appraisal report must be fully and clearly justified in writing on the appraisal report form or, if necessary, on an addendum. The basis for the adjustment must be adequate and reasonable by professional appraisal standards. If real estate market or other valid data was utilized in arriving at the decision to make the adjustment, such data must be attached to the appraisal report. All adjustments, comments, corrections, justifications, etc., to the appraisal report must be made in a contrasting color, be clearly legible, and signed and dated by the staff appraisal reviewer.

(2) Processing Appeals. The authority provided under 38 U.S.C. 1831(d) which permits a lender to obtain a VA fee panel appraiser's report which VA is obligated to consider in an appeal of the established reasonable value shall not apply to cases processed under the authority provided by this section. All appeals of VA fee appraisers' estimated market values or lenders' reasonable value determinations above the amount specified in the separate instructions issued by VA must be submitted, along with the lender's recommendations, if any, to VA for processing and final determination. Unless otherwise authorized in the separate instructions lenders must also submit appeals, regardless of the amount, to VA in all cases where the staff appraisal reviewer has made an adjustment during their initial review of the appraisal

IV-70

report to the fee appraiser's market value estimate. The fee appraiser's estimated market value or lender's reasonable value determination may be increased only when such increase is clearly warranted and fully supported by real estate market or other valid data considered adequate and reasonable by professional appraisal standards and the lender's staff appraisal reviewer clearly and fully justifies the reasoning and basis for the increase in writing on the appraisal report form or an addendum. The staff appraisal reviewer must date and sign the written justification and must cite within it the data used in arriving at the decision to make the increase. All such data shall be attached to the appraisal report form and any addendum.

(e) Notification. It will be the responsibility of the lender to notify the veteran borrower in writing of the determination of reasonable value and related conditions specific to the property and to provide the veteran with a copy of the appraisal report. Any delay in processing the notification of value must be documented. Any delay of more than five work days between the date of the lender's receipt of the fee appraiser's report and date of the notification of value to the veteran, without reasonable and documented extenuating circumstances, will not be acceptable. A copy of the lender notification letter to the veteran and the appraisal report must be forwarded to the VA office of jurisdiction at the same time the veteran is notified. In addition, the original appraisal report, related appraisal documentation, and a copy of the reasonable value determination notification to the veteran must be submitted to the VA with the request for loan guaranty.

(f) Indemnification. When the Secretary has incurred a loss as a result of a payment of claim under guaranty and in which the Secretary determines an increase made by the lender under 36.4344(d) or (f) was unwarranted, or arbitrary and capricious, the lender shall indemnify the Secretary to the extent the Secretary determines such loss was caused, or increased, by the increase in value.

(g) Affiliations. A lender affiliated with a real estate firm builder, land developer or escrow agent as a subsidiary division, investment or any other entity in which it has a financial interest or which it owns may not use this authority for any cases involving the affiliate unless the lender demonstrates to the Secretary's satisfaction that the lender and its affiliate(s) are essentially separate entities that operate independently of each other, free of all cross-influences (e.g., a formal corporate agreement exists which specifically sets forth this fact).

(h) Quality Control Plans. The lender must have an effective self-policing or quality control system to ensure the adequacy and quality of their LAPP staff appraisal reviewer's processing and, that its activities do not deviate from high standards of integrity. The quality control system must include frequent, periodic audits that specifically address the appraisal review activity. These audits may be performed by an independent party, or

IV-71

by the lender's independent internal audit division which reports directly to the firm's chief executive officer. The lender must agree to furnish findings and information under this system to VA on demand. While the quality control personnel need not be appraisers, they should have basic familiarity with appraisal theory and techniques and the ability to prescribe appropriate corrective action(s) in the appraisal review process when discrepancies or problems are identified. The basic elements of the system will be described in separate instructions issued by the Secretary. Copies of the lender's quality control plan or self-policing system evidencing appraisal related matters must be provided to the VA office of jurisdiction with the lender's application for LAPP authority.

(i) Fees. The Secretary may require mortgagees to pay an application fee and/or annual fees, including additional fees for each branch office authorized to process cases under the authority delegated under this section, in such amounts and at such times as the Secretary may require.

(j) Withdrawal of Lender Authority. The authority for a lender to determine reasonable value may be withdrawn by the Loan Guaranty Officer when proper cause exists. A lender's authority to make reasonable value determinations shall be withdrawn when the lender no longer meets the basic requirements for delegating the authority, or when it can be shown that the lender's reasonable value determinations have not been made in accordance with VA regulations, requirements, guidelines, instructions or applicable laws, or when there is adequate evidence to support reasonable belief by VA that a particular unacceptable act, practice, or performance by the lender or the lender's staff has occurred. Such acts, practices or performance include, but are not limited to: Demonstrated technical incompetence (i.e., conduct which demonstrates an insufficient knowledge of industry accepted appraisal principles, techniques and practices; or the lack of technical competence to review appraisal reports and make value determinations in accordance with those requirements); substantive or repetitive errors (i.e., any error(s) of a nature that would materially or significantly affect the determination of reasonable value or condition of the property; or a number or series of errors that, considered individually, may not significantly impact the determination of reasonable value or property condition, but which when considered in the aggregate would establish that appraisal reviews or LAPP case processing are being performed in a careless or negligent manner), or continued instances of disregard for VA requirements after they have been called to the lender's attention.

(1) Withdrawal of authority by the Loan Guaranty Officer may be either for an indefinite or a specified period of time. For any withdrawal longer than 90 days a reapplication for lender authority to process appraisals under these regulations will be required. Written notice will be provided at least 30 days in advance of withdrawal unless the Government's interests are exposed to immediate risk from the lender's activities in which case the

IV-72

withdrawal will be effected immediately. The notice will clearly and specifically set forth the basis and grounds for the action. There is no right to a formal hearing to contest the withdrawal of LAPP processing privileges. However, if within 15 days after receiving notice the lender requests an opportunity to contest the withdrawal, the lender may submit, in person, in writing, or through a representative, information and argument to the Loan Guaranty Officer in opposition to the withdrawal. The Loan Guaranty Officer will make a recommendation to the Regional Office Director who shall make the determination as to whether the action should be sustained, modified or rescinded. The lender will be informed in writing of the decision.

(2) The lender has the right to appeal the Regional Office Director's decision to the Chief Benefits Director. In the event of such an appeal, the Chief Benefits Director will review all relevant material concerning the matter and make a determination that shall constitute final agency action. If the lender's submission of opposition raises a genuine dispute over facts material to the withdrawal of LAPP authority, the lender will be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses and confront any witness the Veterans Benefits Administration presents. The Chief Benefits Director will appoint a hearing officer or panel to conduct the hearing. When such additional proceedings are necessary, the Chief Benefits Director shall base the determination on the facts as found, together with any information and argument submitted by the lender.

(3) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Chief Benefits Director shall make a decision on the basis of all the information in the administrative record, including any submission made by the lender.

(4) Withdrawal of the LAPP authority will require that VA make subsequent determinations of reasonable value for the lender. Consequently, VA staff will review each appraisal report and issue a Certificate of Reasonable Value which can then be used by the lender to close loans on either the prior VA approval or automatic basis.

(5) Withdrawal by VA of the lender's LAPP authority does not prevent VA from also withdrawing automatic processing authority or taking debarment or suspension action based upon the same conduct by the lender.

(Authority: 38 U.S.C. 1831)

#### 36.4345 WAIVERS, CONSENTS, AND APPROVALS; WHEN EFFECTIVE

No waiver, consent, or approval required or authorized by the regulations concerning guaranty or insurance of loans to veterans shall be valid unless in writing signed by the Secretary or the subordinate officer to whom authority has been delegated by the Secretary.

IV-73

36.4346 Canceled.

#### 36.4347 MINIMUM PROPERTY AND CONSTRUCTION REQUIREMENTS

No loan for the purchase or construction or residential property shall be eligible for guaranty or insurance unless such property complies or conforms with those standards of planning, construction, and general acceptability that may be applicable thereto and prescribed by the Secretary pursuant to 38 U.S.C. 1804(a).

36.4348 - 36.4349 Canceled.

#### 36.4350 ESTATE OF VETERAN IN REAL PROPERTY

(a) The estate in the realty acquired by the veteran, wholly or partly with the proceeds of a guaranteed or insured loan, or owned by him or her and on which construction, or repairs, or alterations or improvements are to be made, shall be not less than:

(1) A fee simple estate therein, legal or equitable; or

(2) A leasehold estate running or renewable at the option of the lessee for a period of not less than 14 years from the maturity of the loan, or to any earlier date at which the fee simple title will vest in the lessee, which is assignable or transferable, if the same be subjected to the lien; however, a leasehold estate which is not freely assignable and transferable will be considered an acceptable estate if it is determined by the Chief Benefits Director, or the Director, Loan Guaranty Service, (i) that such type of leasehold is customary in the area where the property is located, (ii) that a veteran or veterans will be prejudiced if the requirement for free

assignability is adhered to and, (iii) that the assignability and other provisions applicable to the leasehold estate are sufficient to protect the interests of the veteran and the Government and are otherwise acceptable; or

(3) A life estate, provided that the remainder and reversionary interests are subjected to the lien.

The title to such estate shall be such as is acceptable to informed buyers, title companies, and attorneys, generally, in the community in which the property is situated, except as modified by paragraph (b) of this section.

(b) Any such property or estate will not fail to comply with the requirements of paragraph (a) of this section by reason of the following:

- (1) Encroachments;
- (2) Easements;
- (3) Servitudes;

IV-74

- (4) Reservations for water, timber, or subsurface rights;
- (5) Sale and lease restrictions:

(i) Except as to condominiums, the right in any grantor or cotenant in the chain title, or a successor of either, to purchase for cash, which right was established by an instrument recorded prior to December 1, 1976, and by the terms thereof is exercisable only if:

- (A) An owner elects to sell,
- (B) The option price is not less than the price at which the then owner is willing to sell to another, and
- (C) Exercised within 30 days after notice is mailed by registered mail to the address of optionee last known to the then owner of the then owner's election to sell, stating the price and the identity of the proposed vendee;

(ii) A condominium estate established by the filing for record of the Master Deed, or other enabling document before December 1, 1976, will not fail to comply with the requirements of paragraph (a) of this section by reason of:

- (A) Prohibition against leasing a unit for a period of less than 6 months.
- (B) The existence of a right of first option to purchase or right to provide a substitute buyer reserved to the condominium association provided such option or right is exercisable only if:
  - (1) An owner elects to sell;
  - (2) The option price is not less than the price at which the then owner is willing to sell to another,
  - (3) The terms and conditions under which the option price is to be paid

are identical to or are not less favorable to the owner than the terms and conditions under which the owner was willing to sell to the owner's prospective buyer, and

(4) Notice of the association's decision to exercise the option must be mailed to the owner by registered or certified mail within 30 days after notice is mailed by registered or certified mail to the address of the association last known to the owner of the owner's election to sell, stating the price, terms of sale, and the identity of the proposed vendee;

(iii) Any property subject to a restriction on the owner's right to convey to any party of the owner's choice, which restriction is established by a document recorded on or after December 1, 1976, will not qualify as security for a guaranteed or insured loan. A

IV-75

prohibition or restriction on leasing an individual unit in a condominium will not cause the condominium estate to fail to qualify as security for such loan, provided the restriction is in accordance with 36.4358(c);

(iv) Notwithstanding the provisions of paragraph (b), (5)(i), (ii), and (iii) of this section, a property shall not be considered ineligible pursuant to paragraph (a) of this section if:

(A) The veteran obtained the property under a State or local political subdivision program designed to assist low- or moderate-income purchasers, and as a condition the purchaser must agree to one or more of the following restrictions:

(1) If the property is resold within a time period as established by local law or ordinance, after the purchaser acquires title, the purchaser must first offer the property to the Government housing agency, or a low- or moderate-income purchaser designated by such agency, provided the option to purchase is exercised within 90 days after notice by the purchaser to the agency of intention to sell;

(2) If the property is resold within a time period as established by local law or ordinance after the purchaser acquires title, a governmental agency may specify a maximum price which the veteran may receive for the property upon resale; or

(3) Such other restriction approved by the Secretary designed to insure either that a property acquired under such program again be made available to low- or moderate-income purchasers, or to prevent a private purchaser from obtaining a windfall profit on the resale of such property, while assuring that the purchaser has a reasonable opportunity to dispose of the property without undue difficulty at a reasonable price.

The sale price of a property under any of the restrictions of paragraph (b)(5)(iv)(A) of this section shall not be less than the lowest of the following: The price designated by the owner as the asking price; the appraised value of the property; or the original purchase price of the property, increased by a factor reflecting all or a reasonable portion of the increased costs of housing or the percentage increase in median income in the area between the date of original purchase and resale, plus the reasonable value or actual costs of any capital improvements made by the owner plus a

reasonable real estate commission less the cost of necessary repairs required to place the property in saleable condition; or other reasonable formula approved by the Secretary. The veteran must be fully informed and consent in writing to the housing restrictions. A copy of the veteran's consent statement must be forwarded with the application for home loan guaranty or the report of a home loan processed on the automatic basis; or

(Authority: 38 U.S.C. 1803(c))

IV-76

(B) A recorded restriction on title designed to provide housing for older persons, provided that the restriction is acceptable under the provisions of the Fair Housing Act, title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 et seq. The veteran must be fully informed and consent in writing to the restrictions. A copy of the veteran's consent statement must be forwarded with the application for home loan guaranty or the report of a home loan processed on the automatic basis;

(Authority: 38 U.S.C. 210(c), 1803(c)(1))

(6) Building and use restrictions whether or not enforceable by a reverter clause if there has been no breach of the conditions affording a right to an exercise of the reverter;

(7) Violation of a restriction based on race, color, creed, or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach;

(8) Any other covenant, condition, restriction, or limitation approved by the Secretary in the particular case. Such approval shall be a condition precedent to the guaranty or insurance of the loan;

Provided, that the limitations on the quantum or quality of the estate or property that are indicated in this paragraph, insofar as they may materially affect the value of the property for the purpose for which it is used, are taken into account in the appraisal of reasonable value required by 38 U.S.C., chapter 37.

(c) The following limitations on the quantum or quality of the estate or property shall be deemed for the purposes of paragraph (b) of this section to have been taken into account in the appraisal of residential property and determined by the Secretary as not materially affecting the reasonable value of such property:

(1) Building or Use Restrictions. Provided, (i) no violation exists, (ii) the proposed use by a veteran does not presage a violation of a condition affording a right of reverter, and (iii) any right of future modification contained in the building or use restrictions is not exercisable, by its own terms, until at least 10 years following the date of the loan.

(2) Violations of Racial and Creed Restrictions. Violations of a restriction based on race, color, creed or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach.

(3) Violations of Building or Use Restrictions of Record. Violations of building or use restrictions of record which have existed for more than 1 year, are not the subject of pending or

IV-77

threatened litigation, and which do not provide for a reversion or termination of title, or condemnation by municipal authorities, or, a lien for liquidated damages which may be superior to the lien of the guaranteed or insured mortgage.

(4) Easements

(i) Easements for public utilities along one or more of the property lines and easements for drainage or irrigation ditches, provided the exercise of the rights thereof do not interfere with the use of any of the buildings or improvements located on the subject property.

(ii) Mutual easements for joint driveways located partly on the subject property and partly on adjoining property, provided the agreement is recorded in the public records.

(iii) Easements for underground conduits which are in place and which do not extend under any buildings in the subject property.

(5) Encroachments

(i) On the subject property by improvements on the adjoining property where such encroachments do not exceed 1 foot within the subject boundaries, provided such encroachments do not touch any buildings or interfere with the use or enjoyment of any building or improvement on the subject property.

(ii) By hedges or removable fences belonging to subject or adjoining property.

(iii) Not exceeding 1 foot on adjoining property by driveways belonging to subject property, provided there exists a clearance of at least 8 feet between the buildings on the subject property and the property line affected by the encroachment.

(6) Variations of Lot Lines. Variations between the length of the subject property lines as shown on the plot plan or other exhibits submitted to the Department of Veterans Affairs and as shown by the record or possession lines, provided such variations do not interfere with the current use of any of the improvements on the subject property and do not involve a deficiency of more than 2 percent with respect to the length of the front line or more than 5 percent with respect to the length of any other line.

(Authority: 38 U.S.C. 210(c), 1803(c), 1812(g))

36.4351 LOANS, FIRST, SECOND OR UNSECURED

Loans for the purchase of real property or a leasehold estate as limited in the regulations concerning guaranty or insurance of loans to veterans, or for the alteration, improvement, or repair thereof, and for more than \$1,500 and more than 40 percent of the reasonable value of such property or estate prior thereto shall be secured by a first lien on the property or estate.

Loans for such alteration,

IV-78

improvement, or repairs for more than \$1,500 but 40 percent or less of the prior reasonable value of the property shall be secured by a lien reasonable and customary in the community for the type of alteration, improvement, or repair financed. Those for \$1,500 or less need not be secured, and in lieu of the title examination, the lender may accept a statement from the borrower that he or she has an interest in the property not less than that prescribed in

36.4350(a).

36.4352 TAX, SPECIAL ASSESSMENT AND OTHER LIENS

Tax liens, special assessment liens, and ground rents shall be disregarded with respect to any requirement that loans shall be secured by a lien of specified dignity. With the prior approval of the Secretary, Chief Benefits Director, or Director, Loan Guaranty Service, liens retained by nongovernmental entities to secure assessments or charges for municipal type services and facilities clearly within the public purpose doctrine may be disregarded. In determining whether a loan for the purchase or construction of a home is secured by a first lien the Secretary may also disregard a superior lien created by a duly recorded covenant running with the realty in favor of a private entity to secure an obligation to such entity for the homeowner's share of the costs of the management, operation, or maintenance of property, services or programs within and for the benefit of the development or community in which the veteran's realty is located, if the Secretary determines that the interests of the veteran-borrower and of the Government will not be prejudiced by the operation of such covenant. In respect to any such superior lien to be created after June 6, 1969, the Secretary's determination must have been made prior to the recordation of the covenant.

36.4353 COMBINATION RESIDENTIAL AND BUSINESS PROPERTY

If otherwise eligible, a loan for the purchase or construction of a combination of residential property and business property which the veteran proposes to occupy in part as a home will be eligible under 38 U.S.C. 1810, if the property is primarily for residential purposes and no more than one business unit is included in the property.

36.4354 Canceled

36.4355 SUPPLEMENTAL LOANS

(a) Any loan for the alteration, repair, improvement, extension, replacement, or expansion of a home, with respect to which a guaranteed or insured obligation of the borrower is currently outstanding, may be reported for guaranty or insurance coverage, if such loan is made by the holder of the currently outstanding obligation, notwithstanding the fact no guaranty entitlement remains available to the borrower: Provided, that if no entitlement remains available the maximum amount payable on the revised guaranty shall not exceed the amount payable on the original guaranty on the date

IV-79

of closing the supplemental loan, and the percentage of guaranty shall be based upon the proportion the said maximum amount bears to the aggregate indebtedness, or, in the case of an insured loan, no additional credit to the holder's insurance account may be made: Provided further, that the prior approval of the Secretary shall be required if

(1) The loan will be made by a lender who is not the holder of the currently guaranteed or insured obligation; or

(2) The loan will be made by a lender not of a class specified in 38 U.S.C. 1802(d); or

(3) An obligor liable on the currently outstanding obligation will be released from personal liability.

In any case in which the unpaid balance of the prior loan currently outstanding is combined or consolidated with the amount of the supplemental loan, the entire aggregate indebtedness shall be repayable in full within the maximum maturity currently prescribed by statute for the original loan. No supplemental loan for the repair, alteration, or improvement of residential property will be eligible for guaranty or insurance unless such repair, alteration, or improvement substantially protects or improves the basic livability or utility of the property involved.

(b) Such loan shall be secured as required in 36.4351: Provided, that a lien of lesser dignity than therein specified will suffice if the lien obtained is immediately junior to the lien of the original guaranteed or insured obligation: Provided further, the liens of successive supplemental loans may be of lesser dignity so long as they are immediately junior to the lien of the last previous guaranteed or insured obligation having a lien of required dignity.

(c) Upon providing or extending guaranty or insurance coverage in respect to any such supplemental loan, the rights of the Secretary to the proceeds of the sale of security shall be subordinate to the right of the holder to satisfy therefrom the indebtedness outstanding on the original and supplemental loans.

#### 36.4356 CONDOMINIUM LOANS-GENERAL

(a) Authority-Applicability of Other Loan Guaranty Regulations 38 CFR, Part 36. A loan to an eligible veteran to purchase a one-family residential unit in a condominium housing development or project shall be eligible for guaranty or insurance to the same extent and on the same terms as other loans under 38 U.S.C. 1810 provided the loan conforms to the provisions of chapter 37, title 38, United States Code, except for sections 1811 (direct loans), and 1827 (structural defects). The loan must also conform to the otherwise applicable provisions of the regulations concerning the guaranty or insurance of loans to veterans. Sections 36.4353, 36.4355, and 36.4364 shall not be applicable.

IV-80

(b) Definitions. On and after July 1, 1979, the following definitions shall be applicable to each condominium loan entitled to be guaranteed or insured, and shall be applicable to such loans previously guaranteed or insured to the extent that no legal rights vested thereunder are impaired.

Whenever used in 38 U.S.C., chapter 37 or the 36.4300 series, unless the context otherwise requires, the terms defined in this paragraph shall have the meaning stated.

(1) Affiliate of Declarant. Affiliate of declarant means any person or entity which controls, is controlled by, or is under common control with, a declarant.

(i) A person or entity shall be considered to control a declarant if that person or entity is a general partner, officer, director, or employee of the declarant who:

(A) Directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting shares of the declarant;

(B) Controls in any manner the election of a majority of the directors of the declarant; or

(C) Has contributed more than 20 percent of the capital of the declarant.

(ii) A person or entity shall be considered to be controlled by a declarant if the declarant is a general partner, officer, director, or employee of that person or entity who:

(a) Directly or indirectly or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting shares of that person or entity;

(b) Controls in any manner the election of a majority of the directors of that person or entity; or

(c) Has contributed more than 20 percent of the capital of that person or entity.

(2) Condominium. Unless otherwise provided by State law, a condominium is a form of ownership in which 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 (restatement of 36.4301, Condominium.)

(3) Conversion Condominium. Condominium projects not originally built and sold as condominiums but subsequently converted to condominium form of ownership.

IV-81

(4) Declarant. Any person who has executed a declaration or an amendment to a declaration to add additional real estate to the project, or any successors or assigns of the declarant who offers to sell or sells units in the condominium project and who assumes declarant rights in the project including the right to: add, convert or withdraw real estate from the condominium project; maintain sales offices, management offices and rental units; exercise easements through the common elements for the purpose of

making improvements within the condominium; or exercise control of the owners' association. Declarant is further defined as any sponsor of a project or affiliate of the declarant who is acting on behalf of or exercising the rights of the declarant.

(5) Existing-Declarant in Control or Marketing Units. A condominium in which all onsite or offsite improvements were completed or the conversion was completed prior to appraisal by the Department of Veterans Affairs, but the declarant is in control of the owners' association and/or is currently marketing units for initial transfer to individual unit owners.

(6) Existing-Resale. A condominium in which all onsite or offsite improvements were completed or the conversion was completed prior to appraisal by the Department of Veterans Affairs, and the declarant is no longer in control of the owners' association and/or marketing units for initial transfer to individual unit owners.

(7) Expandable Condominium. A project which may be increased in size by the declarant. An expandable condominium is constructed in phases (or stages). After each phase is completed and constituted, the common estates are merged. Each unit owner, thereby, gains an individual interest in all of the facilities of the common estate.

(8) Foreclosure. Foreclosure shall mean the termination of a lien by either judicial or nonjudicial procedures in accordance with local law or the voluntary transfer of property by a deed-in-lieu of foreclosure or similar procedures.

(9) High Rise Condominium. A condominium project which is a multi-story elevator building.

(10) Horizontal Condominium. A condominium project in which generally no part of a living unit extends over and under another living unit.

(11) Low Rise Condominium. A condominium project in which all or a part of a living unit extends over or under another living unit; e.g., garden apartment or walk-up project.

(12) Proposed Condominium. A condominium project that is to be constructed or is under construction. In the case of a condominium conversion, the declarant proposes to convert a building or buildings to the condominium form of ownership, or the declarant is in the process of converting the building or buildings to the condominium form of ownership.

IV-82

(13) Series Condominium. A number of adjoining but separately constituted condominiums. An association of owners is established for each project, and each association is responsible for maintenance and upkeep of the common elements in its own project. Cross-easements between the separate condominiums may be created to permit members of the separate condominiums to use the common areas of the other condominiums.

(c) Project Approval. Prior to the Department of Veterans Affairs guaranty of an individual unit loan in a condominium, the legal documentation establishing the condominium project or development must be approved by the Secretary.

(Authority: 38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

36.4357 ACCEPTABLE OWNERSHIP ARRANGEMENTS AND DOCUMENTATION

(a) Types of Condominium Ownership. The following types of basic ownership arrangements are generally acceptable provided they are established in compliance with the applicable condominium law of the jurisdiction(s) in which the condominium is located:

(1) Ownership of units by individual owners coupled with an undivided interest in all common elements.

(2) Ownership of units by individual owners coupled with an undivided interest in general common elements and specified limited common elements.

(3) Individual ownership of units coupled with an undivided interest in the general common elements and/or limited common elements, with title to additional property for common use vested in an association of unit owners, with mandatory membership by unit owners or owners' associations. Any such arrangement must not be precluded by applicable State law.

(Authority: 38 U.S.C. 210(c)(1), 1810(a)(6))

(b) Estate of Unit Owner. The legal estate of each unit owner must comply with the provisions of 36.4350. The declaration or equivalent document shall allocate an undivided interest in the common elements to each unit. Such interest may be allocated equally to each unit, may be proportionate to that unit's relative size or value, or may be allocated according to any other specified criteria provided that the method chosen is equitable and reasonable for the condominium.

(Authority: 38 U.S.C. 210(c)(1), 1803(c)(1), (d)(3), 1810(a)(6))

(c) Condominium Documentation

(1) Compliance with Applicable Law. The declaration, bylaws and other enabling documentation shall conform to the laws governing the establishment and maintenance of condominium regimes within the

IV-83

jurisdiction in which the condominium is located, and to all other laws which apply to the condominium.

(2) Recordation. The declaration and all amendments or modifications thereof shall be placed of record in the manner prescribed by the appropriate jurisdiction. If recording of plats, plans, or bylaws or equivalent documents and all amendments or modifications thereof is the prevailing practice or is required by law within the jurisdiction where the project is located, then such documents shall be placed of record. If the bylaws are not recorded, then covenants, restrictions and other matters requiring record notice should be contained in the declaration or equivalent document.

(3) Availability. The owners' association shall be required to make available to unit owners, lenders and the holders, insurers and guarantors of the first mortgage on any unit, current copies of the declaration, bylaws and

other rules governing the condominium, and other books, records and financial statements of the owners' association. The owners' association also shall be required to make available to prospective purchasers current copies of the declaration, bylaws, other rules governing the condominium, and the most recent annual audited financial statement, if such is prepared. "Available" as used in this paragraph (c)(3) shall at least mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

(4) Amendments to Documents After Department of Veterans Affairs Project Approval. While the declarant is in control of the owners' association, amendments to the declaration, bylaws or other enabling documentation must be approved by the Secretary. The declarant should have proposed amendments reviewed prior to recordation. This provision does not apply to amendments which annex additional phases to the condominium regime in accordance with a general plan of development. (See 36.4360(a)(3) and 36.4360a(b)(6).)

(Authority: 38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(d) Real Property Descriptions in the Declaration

(1) Clarity-Conformity with the Law of the Jurisdiction. The description of the units, common elements, any recreational facilities and other related amenities, and any limited common elements shall be clear and in conformity with the law of the jurisdiction where the project is located. Responsibility for maintenance and repair of all portions of the condominium shall be set forth clearly.

(2) Developmental Plan-Proposed Condominiums. The declaration or other legally enforceable and binding document must state in a reasonable manner the overall development plan of the condominium, including building types, architectural style and the size of the units for those phases of the condominium which are required to be built. Under the applicable provisions of the declaration or such

IV-84

other legally enforceable and binding document, the development of the required portion of the condominium must be consistent with the overall plan, except that the declarant may reserve the right to change the overall plan or decide not to construct planned units or improvements to the common elements if the declaration sets forth the conditions required to be satisfied prior to the exercise of that right, the time within which the right may be exercised, and any other limitations and criteria that would be necessary or appropriate under the particular circumstances. Such conditions, time restraints and other limitations must be reasonable in light of the overall plan for the condominium. In an expandable project, additional phases which are not required to be built may be described in the development plan in very general terms, or the declaration may provide that the declarant makes no assurances concerning the construction, building types, architectural style and size of the units, etc., of these phases. However, the minimum number of units to be built should be that which would be adequate to reasonably support the common elements. (See 36.4360(a)(6).)

(Authority: 38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

36.4358 RIGHTS AND RESTRICTIONS

(a) Declarant's Rights and Restrictions

(1) Disclosure and Reasonableness of Reserved Rights. Any right reserved by the declarant must be reasonable and set forth in the declaration.

(2) Examples of Reserved Rights of Declarant, Sponsor, or Affiliate of Declarant which are Usually Unacceptable. Binding the owners' association either directly or indirectly to any of the following agreements is not acceptable unless the owners' association shall have a right of termination thereof which is exercisable without penalty at any time after transfer of control, upon not more than 90 days' notice to the other party thereto:

(i) Any management contract, employment contract or lease of recreational or parking areas or facilities;

(ii) Any contract or lease, including franchises and licenses, to which a declarant is a party.

The requirements of paragraphs (a)(2)(i) and (ii) of this section do not apply to acceptable ground leases.

(3) Examples of Reserved Rights which are Usually Acceptable. The following rights in the common elements may usually be reserved by the declarant for a reasonable period of time, subject to a concomitant obligation to restore:

(i) Easement over and upon the common elements and upon lands appurtenant to the condominium for the purpose of completing improvements for which provision is made in the declaration, but only if access thereto is otherwise not reasonably available.

IV-85

(ii) Easement over and upon the common elements for the purpose of making repairs required pursuant to the declaration or contracts of sale made with unit purchasers.

(iii) Right to maintain facilities in the common areas which are identified in the declaration and which are reasonably necessary to market the units. These may include sales and management offices, model units, parking areas, and advertising signs.

(Authority: 38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(b) Owners' Association's Rights and Restrictions

(1) Right of Entry Upon Units and Limited Common Elements. The owners' association shall be granted a right of entry upon unit premises and any limited common elements to effect emergency repairs, and a reasonable right of entry thereupon to effect other repairs, improvements, replacement or maintenance as necessary.

(2) Power to Grant Rights and Restrictions in Common Elements. The owners' association should be granted other rights, such as the right to grant utility easements under, through or over the common elements, which are

reasonably necessary to the ongoing development and operation of the project.

(3) Responsibility for Damage to Common Elements and Units. A provision may be made in the declaration or bylaws for allocation of responsibility for damages resulting from the exercise of any of the above rights.

(4) Assessments

(i) Levy and Collection. The declaration or its equivalent shall describe the authority of the owners' association to levy and enforce the collection of general and special assessments for common expenses and shall describe adequate remedies for failure to pay such common expenses. The common expenses assessed against any unit, with interest, late charges, costs and a reasonable attorney's fee shall be a lien upon such unit in accordance with applicable law. Each such assessment, together with interest, late charges, costs, and attorney's fee, shall also be the personal obligation of the person who was the owner of such unit at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them, or required by applicable law.

Common expenses as used in this subdivision shall mean expenditures made or liabilities incurred by or on behalf of the owners' association, together with any assessments for the creation and maintenance of reserves.

IV-86

(ii) Reserves and Working Capital. There shall be in new or proposed condominium projects (including conversions) a provision for an adequate reserve fund for the periodic maintenance, repair and replacement of the common elements, which fund shall be maintained out of regular assessments for common expenses. Additionally, a working capital fund must be established for the initial months of the project operations equal to at least 2 months' estimated common area charge for each unit.

(iii) Priority of Lien. Any assessment lien must be subordinate to any Department of Veterans Affairs guaranteed mortgage except as provided in 36.4352. A lien for common expense charges and assessments shall not be affected by any sale or transfer of a unit except that a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for common expense charges and assessments which became payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a unit from liability for, nor the unit so sold or transferred from the lien of, any common expense charges thereafter becoming due.

(Authority: 38 U.S.C. 210(c)(1), 1803(c)(1), (d)(3), 1810(a)(6))

(c) Unit Owners' Rights and Restrictions.

(1) Obligation to Pay Expenses. The declaration or equivalent document shall establish a duty on each unit owner, including the declarant, to pay a proportionate share of common expenses upon being assessed therefor by the owners' association. Such share may be allocated equally to each unit, may be proportionate to that unit's common element interest, relative size or value, or may be allocated according to any other specified criteria provided that

the method chosen is equitable and reasonable for that condominium.

(2) Voting Rights. The declaration or equivalent document shall allocate a portion of the votes in the association to each unit. Such portion may be allocated equally to each unit, may be proportionate to that unit's common expense liability, common element interest, relative size or value, or may be allocated according to any other specified criteria provided that the method is equitable and reasonable for the condominium. The declaration may provide different criteria for allocations of votes to the units on particular specified matters and may also provide different percentages of required unit owner approvals for such particular specified matters.

(3) Ingress and Egress of Unit Owners. There may not be any restriction upon any unit owner's right of ingress and egress to his or her unit.

(4) Encroachment - Units and Common Elements

(i) Easements for Encroachments. In the event any portion of the common elements encroaches upon any unit or any unit encroaches upon the common elements or another unit as a result of the

IV-87

construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. The declaration may provide, however, reasonable limits on the extent of any easement created by the overlap of units, common elements, and limited common elements resulting from such encroachments; or

(ii) Monuments as Boundaries. If permitted by the governing law within the jurisdiction where the project is located, the existing physical boundaries of a unit or a common element of the physical boundaries of a unit or a common element reconstructed in substantial accordance with the original plats and plans thereof become its boundaries rather than the metes and bounds expressed in the deed, plat or plan, regardless of settling or lateral movement of the building, or minor variance between boundaries shown on the plats, plans or in the deed and those of the building. The declaration should provide reasonable limits on the extent of any such revised boundary(ies) created by the overlap of units, common elements, and limited common elements resulting from such encroachments.

(5) Right of First Refusal. The right of a unit owner to sell, transfer, or otherwise convey his or her unit in a condominium shall not be subject to any right of first refusal or similar restriction if the declaration or similar document is recorded on or after December 1, 1976. If the declaration was recorded prior to December 1, 1976, the right of first refusal must comply with

36.4350(b)(5)(ii); Provided, however, restrictions on the basis of age or restrictions established by a State, Territorial, or local government agency as part of a program for providing assistance to low- and moderate-income purchasers shall be governed by

36.4350(b)(5)(iv).

(Authority: 38 U.S.C. 1803(c))

(6) Leasing Restrictions. Except as provided in this paragraph, there shall be no prohibition or restriction on a condominium unit owner's right to lease his or her unit. The following restrictions are acceptable:

(i) A requirement that leases have a minimum initial term of up to 1 year, or

(ii) Age restrictions or restrictions imposed by State or local housing authorities which are allowable under 36.4308(e) or 36.4350(b)(5)(iv).

(d) Rights of Action. The owners' association and any aggrieved unit owner should be granted a right of action against unit owners for failure to comply with the provisions of the declaration, bylaws, or equivalent documents, or with decisions of the owners'

IV-88

association which are made pursuant to authority granted the owners' association in such documents. Unit owners should have similar rights of action against the owners' association.

(Authority: 38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

#### 36.4359 MISCELLANEOUS LEGAL REQUIREMENTS

##### (a) Declarant Transfer of Control of Owners' Association

(1) Standards for Transfer of Control. The declarant shall relinquish all special rights, expressed or implied, through which the declarant may directly or indirectly control, direct, modify, or veto any action of the owners' association, its executive board, or a majority of unit owners, and control of the owners' association shall pass to the owners of units within the project, not later than the earlier of the following:

(i) 120 days after the date by which 75 percent of the units have been conveyed to unit purchasers, or

(ii) The last date of a specified period of time following the first conveyance to a unit purchaser; such period of time is to be reasonable for the particular project. The maximum acceptable period usually will be from 3 to 5 years for single-phased condominium regimes and 5 to 7 years for expandable condominiums.

(iii) On a case basis, modifications or variations of the requirements of paragraphs (a)(i) and (ii) of this section (a)(1) will be acceptable, particularly in circumstances involving very large condominium developments.

(2) Declarant's Unit Votes after Transfer of Control. The requirements of paragraph (a)(1) of this section shall not affect the declarant's rights, as a unit owner, to exercise the votes allocated to units which declarant owns.

(3) Unit Owners' Participation in Management. Declarants should provide for and foster early participation of unit owners in the management of the project.

(b) Taxes. Unless otherwise provided by State law, real estate taxes must be assessed and be lienable only against the individual units, together with their undivided interests in the common elements, and not against the multifamily structure. The owners' association usually owns no real estate, so it has no obligation concerning ad valorem taxes. Unless taxes are assessed only against the individual units, a tax lien could amount to more than the value of any particular unit in the structure.

(c) Canceled.

IV-89

(d) Policies for Bylaws. The bylaws of the condominium should be sufficiently detailed for the successful governance of the condominium by unit owners. Among other things, such documents should contain adequate provisions for the election and removal of directors and officers.

(e) Insurance and Related Requirements

(1) Insurance. The holder shall require hazard and flood insurance policies to be procured and maintained in accordance with

36.4326. Because of the nature of condominiums, additional types of insurance coverages—such as tort liability insurance for injuries sustained on the premises, personal liability insurance for directors and officers managing association affairs, boiler insurance, etc. should be considered in appropriate circumstances.

(2) Fidelity Bond Coverage. The securing of appropriate fidelity bond coverage is recommended but not required, for any person or entity handling funds of the owners' association, including, but not limited to, employees of the professional managers. Such fidelity bonds should name the association as an obligee, and be written in an amount equal to at least the estimated maximum of funds, including reserve funds, in the custody of the owners' association or the management agent at any given time during the term of the fidelity bond. However, the bond should not be less than a sum equal to 3 months' aggregate assessments on all units plus reserve funds.

(Authority: 38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

36.4360 DOCUMENTATION AND RELATED REQUIREMENTS-FLEXIBLE  
CONDOMINIUMS AND CONDOMINIUMS WITH OFFSITE FACILITIES

(a) Expandable Condominiums. The following policies apply to condominium regimes which may be increased in size by the declarant:

(1) The declarant's right to expand the regime must be fully described in the declaration. The declaration must contain provisions adequate to ensure that future improvements to the condominium will be consistent with initial improvements in terms of quality of construction. The declarant must build each phase in accordance with an approved general plan for the total development ( 36.4357(d)(2)) supported by detailed plats and plans of each phase prior to the construction of the particular phase.

(2) The reservation of a right to expand the condominium regime, the method of expansion and the result of an expansion must not affect the statutory validity of the condominium regime or the validity of title to the units.

(3) The declaration or equivalent document must contain a covenant that the condominium regime may not be amended or merged with a successor condominium regime without prior written approval

IV-90

of the Secretary. The declarant may have the proposed legal documentation to accomplish the merger reviewed prior to recordation. However, the Secretary's final approval of the merger will not be granted until the successor condominium has been legally established and construction completed. The declarant may add phases to an expandable condominium regime without the prior approval of the Secretary if the phasing implements a previously approved general plan for the total development. A copy of the amendment to the declaration or other annexation document which adds each phase must be submitted to the Secretary in accordance with 36.4360a(b)(6).

(4) Liens arising in connection with the declarant's ownership of, and construction of improvements upon, the property to be added must not adversely affect the rights of existing unit owners, or the priority of first mortgages on units in the existing condominium property. All taxes, assessments, mechanic's liens, and other charges affecting such property, covering any period prior to the addition of the property, must be paid or otherwise satisfactorily provided for by the declarant.

(5) The declarant must purchase (at declarant's own expense) a general liability insurance policy in an amount not less than \$1 million for each occurrence, to cover any liability which owners of previously sold units are exposed to as a result of further condominium development.

(6) Each expandable project shall have a specified maximum number of units which will give each unit owner a minimum percentage of interest in the common elements. Each project shall also have a specified minimum number of units which will give each unit owner a maximum percentage of interest in the common elements. The minimum number of units to be built should be that which would be adequate to reasonably support the common elements. The maximum number of units to be built should be that which would not overload the capacity of the common facilities. The maximum possible percentage(s) and the minimum possible percentage(s) of undivided interest in the common elements for each type of unit must be stated in the declaration or equivalent document.

(7) The declaration or equivalent document shall set forth clearly the basis for reallocation of unit owner's ownership interests, common expense liabilities and voting rights in the event the number of units in the condominium is increased. Such reallocation shall be according to the applicable criteria set forth in 36.4357(b) and 36.4358(c)(1) and (2).

(8) The declarant's right to expand the condominium must be for a reasonable period of time with a specific ending date. The maximum acceptable period will usually be from 5 to 7 years after the date of recording the declaration. On a case bases, longer periods of expansion rights will be acceptable, particularly in circumstances involving sizable condominium developments.

IV-91

(b) Series Projects

(1) Each phase in the series approach is to be considered as a separate project. A separate set of legal documents must be filed for each phase or project that relates to the condominium within its own boundary. The declaration for each phase must describe the particular project as a part of the whole development area, but subject only the one phase to the condominium regime. A separate unit ratio must be established that would relate each unit to all units of the particular condominium for purposes of ownership in the common areas, voting rights and assessment liability. A separate association may be created to govern the affairs of each condominium. Each phase is subject to a separate presale requirement.

(2) In the case of proposed projects, or projects under construction, the declaration should state the number of total units that the developer intends to build on other sections of the development area.

(c) Other Flexible Condominiums. Condominiums containing withdrawable real estate (contractable condominiums) and condominiums containing convertible real estate (portions of the condominium within which additional units or limited common elements, or both, may be created) will be considered acceptable provided the flexible condominium complies with the 36.4300 series.

(Authority: 38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

36.4360a APPRAISAL REQUIREMENTS

(a) Existing Resale Condominiums. Upon acceptance by the local office of the organizational documents, the project and unit(s) proposed as security for guaranteed financing shall be appraised to ensure that they meet MPR's (Minimum Property Requirements) and are safe, sanitary, and structurally sound. The Department of Veterans Affairs MPR's for existing construction apply to all existing resale condominiums including conversions, except that water, heating, ventilating, air-conditioning and sewer service may be supplied from a central source.

(Authority: 38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6), (b)(5))

(b) Proposed Condominiums or Existing Condominiums with Declarant in Control or Marketing Units

(1) Low Rise and High Rise Condominiums. Low rise and high rise condominiums shall comply with local building codes. Only the alterations, improvements or repairs to low rise and high rise buildings proposed to be converted to the condominium form of ownership must comply with current local building codes, unless local authorities require total code compliance on the entire structure when a building is being converted to the condominium form of ownership. In those areas where local standards are nonexistent,

IV-92

inferior to, or in conflict with the Department of Veterans Affairs objectives, a certification will be required from a registered professional architect and/or registered engineer certifying that the plans and specifications conform to one of the national building codes which is typical

of similar construction methods and standards for condominiums used in the area. Those portions of the condominium conversion which are not being altered, improved or repaired must be appraised in accordance with paragraph (a) of this section.

(2) Horizontal Condominiums. Department of Veterans Affairs policies and procedures applicable to single-family residential construction shall also apply to horizontal condominiums. Proposed or existing (declarant in control or marketing units) horizontal condominium conversions shall comply with current local building codes for alterations and improvements or repairs made to convert the building to the condominium form of ownership unless local authorities require total code compliance on the entire structure when a building is being converted to the condominium form of ownership. In those areas where local standards are nonexistent, inferior to, or in conflict with Department of Veterans Affairs objectives, a certification will be required from a professional architect and/or registered engineer certifying that the plans and specifications conform to one of the national building codes which is typical of similar construction methods and standards for condominiums used in the area. Those portions of the condominium conversion which are not being altered, improved or repaired must be appraised in accordance with paragraph (a) of this section.

(Authority: 38 U.S.C. 210(c)(1), 1803(c)(1))

(3) Unit Completion. All units in the individual project or phase must be substantially completed except for customer preference items, such as interior finishes, appliances or equipments.

(4) Common Element Completion. All amenities of the condominium (to include offsite community facilities), that are to be considered in the unit value, must be bound legally to the condominium regime. All such amenities as well as the common elements of the project, must be substantially completed and available for use by the unit owners. In large multi-phase projects, the declarant should construct common elements in a manner consistent with the addition of units to support the entire development. The Secretary, in appropriate cases, may approve the placement of adequate funds by the declarant in an escrow or otherwise earmarked account or accept a letter of credit or surety bond to assure completion of amenities and allow closing of VA-guaranteed (or insured) loans. Such funds must be adequate to assure completion of the amenities free and clear of all liens.

(Authority: 38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

IV-93

(5) Information Brochure/Public Offering Statement. When units are being sold by the declarant (not applicable to resales), and information brochure/public offering statement must be given to veteran buyers prior to the time a downpayment is received and an agreement is signed, unless State law authorized receipt of the downpayment and delivery of the information brochure followed by a period in which purchasers may cancel the purchase agreement without penalty for a specified number of days. Information brochures must be written in simple terms to inform buyers that the association does not provide owner's contents and personal liability policies which are the owner's responsibility. In the event the development is expandable, series, etc., there must be full disclosure of the impact of the total development plan. In expandable, series or other projects with more

than one phase, the information brochure must disclose fully later development rights, and the general plans of the declarant for additional phases. If the declarant makes no assurance concerning phases which are not required to be built, the declarant should state that no assurances are given concerning construction, unit sizes, building types, architectural styles, etc. In condominium conversions, the information brochure must list the major structural and mechanical components and the estimated remaining useful life of the components. A brief explanation must be furnished in the brochure explaining that certain major structural or mechanical components may require replacement within a specified time period. If the declarant has elected to place funds into a condominium reserve fund for replacement of a major component under the provisions of 36.4360a(b)(7), the amount of the contribution into the reserve fund must be specified in the information brochure.

(6) Evidence of Proper Phasing. In an expandable or flexible condominium, evidence of the addition of each phase in accordance with a previously approved general plan of development must be submitted to the Secretary prior to the guaranty of the first loan in the added area.

(7) Additional Condominium Conversion Requirements

(i) The declarant of a condominium project, which is (A) proposed, (B) under construction, or (C) an existing project with a declarant in control or marketing units not previously occupied, must furnish structural and mechanical common element component statements on the present condition of all accessible structural and mechanical components material to the use and enjoyment of the condominium. These statements must be completed by a registered professional engineer and/or architect prior to the guaranty of the first unit loan in the project. Each statement must also give an estimate of the expected useful life of the roof, elevators, heating and cooling, plumbing and electrical systems assuming normal maintenance. A minimum of 10 years estimated remaining useful life is required on all structural and mechanical components. In the alternative, the declarant may contribute an amount of funds to the condominium reserve fund equal to a minimum

IV-94

of 1/10 (one-tenth) of the estimated costs of replacement of a major structural or mechanical component (as determined by an independent registered professional architect or engineer) for each year of estimated remaining useful life less than 10 years; e.g., 7 years remaining useful life equals a 3/10 required declarant contribution to the reserve fund of the component's estimated replacement cost. The noted statements and remaining useful life requirement are not applicable to existing resale conversion projects when the declarant is no longer marketing units and/or in control of the association. Expandable or series condominium conversions require engineering and architectural statements on each stage or phase.

(ii) In declarant controlled projects, a statement(s) by the local authority(ies) of the adequacy of offsite utilities servicing the site (e.g., sanitary or water) is required. If a local authority(ies) declines to issue such a statement(s), a statement(s) may be obtained from a registered professional engineer.

(Authority: 38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(c) Presale Requirements

(1) Proposed Construction or Existing Declarant in Control. Bona fide agreements of sale must have been executed by purchasers other than the declarant (who are obligated contractually to complete the purchase) of 70 percent of the total number of units in the project. Lenders shall certify as to satisfaction of the presale requirement prior to VA guaranty of the first unit loan. When a declarant can demonstrate that a lower percentage would be justified, the Secretary, on an individual case basis, may approve a presale requirement of less than 70 percent. Reduction of the 70 percent presale requirement will be considered when:

(i) Strong initial sales demonstrate a ready market, or

(ii) The declarant will provide cash assets or acceptable bonds for payment of full common area assessments to the owners' association until such assessments are assumed by unit purchasers, or

(iii) Subsequent phases of an overall development are being undertaken in a proven market area, or

(iv) Previous experience in similar projects in the same market area indicates strong market acceptance, or

(v) The development is in a market area that has repeatedly indicated acceptance of such projects.

(2) Multiphase-Proposed or Existing Declarant in Control. The requirements of paragraph (c)(1) of this section shall apply to each individual phase of a multiphase development, taking into consideration that each individual phase must be capable of self-support in the event that the developer does not complete all planned phases.

(Authority: 38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

IV-95

(d) Warranty. Except in condominium conversion projects, each CRV (certificate of reasonable value) issued by the Secretary relating to a proposed or existing not previously occupied dwelling unit in a condominium project shall be subject to the express condition that the builder, seller, or the real party in interest in the transaction shall deliver to the veteran purchasing the dwelling unit with the aid of a guaranteed or insured loan a warranty against defects for the unit and common elements. The unit shall be warranted for 1 year from the date of settlement or the date of occupancy (whichever first occurs). The common elements shall be warranted for 2 years from the date each of the common elements is completed and available for use by the unit owners, or 2 years from the date the first unit is conveyed to a unit owner other than the declarant, whichever is later, in the particular phase of the condominium containing the common element. For these purposes, defects shall be those items reasonably requiring the repair, renovation, restoration, or replacement of any of the components constituting the unit or common elements. Items of maintenance relating to the unit or common elements are not covered by the warranty. No certificate of guaranty or insurance credit shall be issued unless a copy of such warranty, duly receipted by the purchaser, is submitted with the loan papers.

(e) Ownership and Operation of Offsite Facilities

(1) Title Requirements. Evidence must be presented that the offsite facility owned by an owners' association with mandatory membership by condominium unit owners or condominium unit owners' associations has been completed and conveyed free of encumbrances by the declarant for the benefit of the unit owners with title insured by an owner's title policy or other acceptable title evidence. Offsite facilities conveyed to a nonprofit corporation are the preferred method of offsite facilities ownership; however, the Secretary will consider other forms of ownership on an individual case basis.

(2) Mandatory Membership. The declaration of the condominium (each condominium in a series development) and the legal documentation of the corporation or association which owns the offsite facility must provide the following:

(i) The owner of a condominium unit is automatically a member of the offsite facility corporation or association and that upon the sale of the unit, membership is transferred automatically to the new owner/purchaser. It is also acceptable if each condominium owners' association (in lieu of each individual unit owner) is automatically a member of the offsite facility corporation or association coupled with use rights for each of the unit owners or residents. If membership in an offsite owners' association is voluntary, no credit in the CRV valuation may be given for such offsite amenities.

(ii) Each member of the offsite facility corporation or association must be entitled to a representative vote at meetings of the offsite facility corporation or association. If the individual condominium owners' association is a member of the offsite facility

IV-96

corporation or association, each condominium owners' association must be entitled to a representative vote at meetings of the offsite facility corporation or association.

(iii) Each member must agree by acceptance of the unit deed to pay a share of the expenses of the offsite facility corporation or association as assessed by the corporation or association for upkeep, insurance, reserve fund for replacements, maintenance and operation of the offsite facility. The share of said expenses shall be determined equitably. Failure to pay such assessment must result in a lien against the individual unit in the same manner as unpaid assessments by the owners' association of the condominium if each condominium owners' association is a member of the offsite facility in lieu of individual unit owners, failure of the condominium owners' association to pay its equitable assessment to the offsite facility must result in an enforceable lien.

(3) Declarant Payment of Offsite Facility in a Series Project. Until the declarant has completed all of the intended condominium phases in a total condominium development or established each condominium regime by filing a separate declaration in a series development, the balance of the total sum of the expenses of the offsite facility not covered by the assessment against the unit owners should be assessed against and be payable by the declarant commencing on the first day of the first month after the first unit is conveyed to a homeowner in the first phase. If this balance is not paid, it

must become a lien against those parcels of land in the development area which are owned by the declarant. The collection of such debt and enforcement of such lien may be by foreclosure or such other remedies afforded the corporation or association under local law.

(f) Professional Management. Many condominiums are small enough and their common areas so minimal that professional management is not necessary. VA does not have a requirement for professional management of condominiums. The powers given to the owners' association by the declaration and bylaws are fundamentally for "use control" and maintenance of the undivided interest all of the owners have in the common areas. These powers normally include management which may, if desired, be delegated to a professional manager. However, if the board of directors wants professional management, the management agreement must be terminable for cause upon 30 days' notice, and run for a reasonable period of from 1 to 3 years and be renewable by consent of the association and management. (Management contracts negotiated by the declarant should not exceed 2 years.)

(g) Commercial Areas. With respect to existing and proposed condominiums, commercial areas within condominium developments are acceptable, but such interests will be considered in value.

(Authority: 38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

IV-97

36.4361 RIGHT OF THE SECRETARY TO REFUSE TO APPRAISE  
RESIDENTIAL PROPERTIES

(a) The Secretary may refuse to appraise dwellings to which a request for appraisal relates if the Secretary determines that any party or parties involved or financially interested in the construction or sale of such units (1) have theretofore participated in the construction or sale of units sold to veterans which involved (i) substantial deficiencies in the construction, or (ii) a failure or indicated inability to discharge contractual obligations to the veterans who contracted for the construction or purchase of such units, or (iii) the use of a contract of sale or of methods or practices in marketing such units of a type which under standards promulgated by the Secretary was unfair or unduly prejudicial to the veterans concerned, or (2) have been refused the benefits of participation under the National Housing Act pursuant to a determination of the Secretary of Housing and Urban Development, or (3) have declined to sell residential property to an eligible veteran because of race, color, religion, sex, or national origin. Upon any such refusal to appraise, the Secretary shall give written notice thereof to the person or firm submitting the appraisal request and shall state the basis for such refusal.

(b) Except when the refusal to appraise is based upon action taken by the Secretary of Housing and Urban Development, any person or persons affected by such refusal to appraise shall have the right within 10 days after receipt of written notice of such refusal to file with the Secretary, by registered mail, a request for a hearing. Upon receipt of such request, the Chief Benefits Director shall, as promptly as may be deemed feasible to do so, designate a time and place as may be deemed appropriate for such hearing and shall appoint one or more persons who shall constitute a board to conduct the hearing. The person or persons requesting such hearing shall be afforded full opportunity to appear at the hearing in person, or by counsel, or both, and to

introduce evidence showing why the sanction should be terminated or modified. Authority is hereby granted to the persons designated to conduct the hearing to administer oaths to witnesses.

(c) As soon as is practicable after conclusion of the hearing, the board will make findings of fact and recommendations in writing to the Chief Benefits Director. The builder or other person requesting the hearing will be furnished with a transcript of the hearing and with a statement of the board's findings of fact. Such builder or other person shall have the right within 14 days after receipt of such copy to file with the Chief Benefits Director a brief of either, or both, facts and law.

(d) Upon receipt of the findings and recommendations of the hearing board and the brief of the builder or other person requesting the hearing, if a brief is filed, the Chief Benefits Director shall make a determination in the case; i.e., whether the refusal to appraise as imposed originally is continued, modified, or terminated, and what terms or conditions, if any, are imposed for termination or modification of the refusal to appraise. Notice of

IV-98

such determination shall be given to the person requesting the hearing. Such person shall have the right to appeal such decision to the Secretary within 30 days after the date of receipt of such notice. In the event of an appeal, the Secretary will decide the matter finally and will notify the person who filed the appeal of the decision.

(e) When the refusal to appraise is based solely on action taken by the Secretary of Housing and Urban Development the sanction will be lifted upon presentation to the Department of Veterans Affairs by the builder concerned of satisfactory evidence of his or her reinstatement as a participant in the programs administered by the Federal Housing Administration.

#### 36.4362 REQUIREMENT OF CONSTRUCTION WARRANTY

Each certificate of reasonable value issued by the Secretary relating to a proposed or newly constructed dwelling unit, except those covering one-family residential units in condominium housing developments or projects within the purview of 36.4356 through 36.4360a, shall be subject to the express condition that the builder, seller, or the real party in interest in the transaction shall deliver to the veteran constructing or purchasing such dwelling with the aid of a guaranteed or insured loan a warranty, in the form prescribed by the Secretary, that the property has been completed in substantial conformity with the plans and specifications upon which the Secretary based the valuation of the property, including any modifications thereof, or changes or variations therein, approved in writing by the Secretary, and no certificate of guaranty or insurance credit shall be issued unless a copy of such warranty duly receipted by the purchaser is submitted with the loan papers.

#### 36.4363 NONDISCRIMINATION AND EQUAL OPPORTUNITY IN HOUSING CERTIFICATION REQUIREMENTS

(a) Any request for a master certificate of reasonable value on proposed or existing construction, and any request for appraisal of individual existing housing not previously occupied, which is received on or after November 21, 1962, will not be assigned for appraisal prior to receipt of a

certification from the builder, sponsor or other seller, in the form prescribed by the Secretary, that neither it nor anyone authorized to act for it will decline to sell any property included in such request to a prospective purchaser because of his or her race, color, religion, sex or national origin.

(b) On requests for appraisal of individual proposed construction received on or after November 21, 1962, the prescribed nondiscrimination certification will be required if the builder is to sell the veteran the lot on which the dwelling is to be constructed, but will not be required if:

IV-99

(1) The veteran owns the lot; or

(2) The lot is being acquired by the veteran from a seller other than the builder and there is no identity of interest between the builder and the seller of the lot.

(c) Each builder, sponsor or other seller requesting approval of site and subdivision planning shall be required to furnish a certification, in the form prescribed by the Secretary, that neither it nor anyone authorized to act for it will decline to sell any property included in such request to a prospective purchaser because of his or her race, color, religion, sex or national origin. Site and subdivision analysis will not be commenced by the Department of Veterans Affairs prior to receipt of such certification.

(d) No commitment shall be issued and no loan shall be guaranteed or insured under 38 U.S.C. Chapter 37 unless the veteran certifies, in such form as the Secretary shall prescribe, that

(1) Neither he/she, nor anyone authorized to act for him/her, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, sex, or national origin;

(2) He/she recognizes that any restrictive covenant on the property relating to race, color, religion, sex or national origin is illegal and void and any such covenant is specifically disclaimed; and

(3) He/she understands that civil action for preventive relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law.

#### 36.4364 CORRECTION OF STRUCTURAL DEFECTS

(a) The purpose of this section is to specify the types of assistance that the Secretary may render pursuant to 38 U.S.C. 1827 to an eligible borrower who has been unable to secure satisfactory correction of structural defects in a dwelling encumbered by a mortgage securing a guaranteed, insured or direct loan, and the terms and conditions under which such assistance will be rendered.

(b) A written application for assistance in the correction of structural defects shall be filed by a borrower under a guaranteed, insured or direct loan with the Director of the Department of Veterans Affairs office

having loan jurisdiction over the area in which the dwelling is located. The application must be filed not later than 4 years after the date on which the first direct, guaranteed or insured mortgage loan on the dwelling was made, guaranteed or insured by the Secretary. A borrower under a direct, guaranteed or insured mortgage loan on the same dwelling which was

IV-100

made, guaranteed or insured subsequent to the first such loan shall be entitled to file an application if it is filed within 4 years of the date on which such first loan was made, guaranteed or insured by the Secretary.

(c) An applicant for assistance under this section must establish that:

(1) The applicant is the owner of a one- to four-family dwelling which was inspected during construction by the Department of Veterans Affairs or the Federal Housing Administration.

(2) The applicant is an original veteran-borrower on an outstanding guaranteed, insured or direct loan secured by a mortgage on such dwelling which was made, guaranteed or insured on or after May 8, 1968. The Secretary may, however, recognize an applicant who is not the original veteran-borrower but who contracted to assume such borrower's personal obligation thereunder, if the Secretary determines that such recognition would be in the best interests of the Government in the particular case.

(3) There exists in such dwelling structural defect, not the result of fire, earthquake, flood, windstorm, or waste, which seriously affects the livability of the dwelling.

(4) The applicant has made reasonable efforts to obtain correction of such structural defect by the builder, seller, or other person or firm responsible for the construction of the dwelling.

(d) In those instances in which the Secretary determines that assistance under this section is appropriate and necessary the Secretary may take any of the following actions:

(1) Pay such amount as is reasonably necessary to correct the defect, or

(2) Pay the claim of the borrower for reimbursement of the borrower's expenses for correcting or obtaining correction of the defect, or

(3) Acquire title to the property upon terms acceptable to the borrower and the holder of the guaranteed or insured loan.

(e) To the extent of any expenditure made by the Secretary pursuant to paragraph (d) of this section the Secretary shall be subrogated to any legal rights the borrower or applicant described in paragraph (c)(2) of this section may have against the builder, seller, or other persons arising out of the structural defect or defects.

(f) The borrower shall not be entitled, as a matter of right, to receive the assistance in the correction of structural defects provided in this section. Any determination made by the Secretary in connection with a borrower's application for assistance shall be

IV-101

final and conclusive and shall not be subject to judicial or other review. Authority to act for the Secretary under this section is delegated to the Chief Benefits Director.

(g) For the purpose of this section the term "structural defects seriously affecting livability" shall in no event be deemed to include (1) defects of any nature in a dwelling in respect to which the applicant for assistance under this section was the builder or general contractor, or (2) structural features, improvements, amenities, or equipment which were not taken into account in the Secretary's determination of reasonable value.

36.4365 Canceled.

LOANS UNDER 38 U.S.C. 1815

36.4370 INSURED LOAN AND INSURANCE ACCOUNT

(a) Loans otherwise eligible may be insured when purchased by a lender eligible under 38 U.S.C. 1815 if the purchaser (lender) submits with the loan report evidence of an agreement, general or special, made prior to the closing of the loan, to purchase such loan subject to its being insured.

(b) A current account shall be maintained in the name of each insured lender or purchaser. The account shall be credited with the appropriate amounts available for the payment of losses on insured loans made or purchased. The account shall be debited with appropriate amounts on account of transfers, purchases under

36.4318, or payment of losses. The Secretary may on 6 months' notice, close any lender's insurance account. Such account after expiration of the 6-month period shall be available only as to loans embraced therein.

(c) Amounts received or recovered by the Secretary or the holder with respect to a loan after payment of an insured claim thereon will not restore any amount to the holder's insurance account.

36.4372 TRANSFER OF INSURED LOANS

(a) In cases involving the transfer from one insured financial institution to another insured institution of loans which are transferred without recourse, guaranty, or repurchase agreement, if no payment on any loan included in the transfer is past due more than 1 calendar month at the time of transfer, there shall be transferred from the insurance account of the transferor to the insurance account of the transferee an amount equal to the original percentage credited to the insurance account in respect to each loan being transferred, applied to the unpaid balance of such loans, or to the purchase price, whichever is the lesser.

(b) Transfers between insurance accounts in a manner or under conditions not provided in paragraph (a) of this section must have prior approval of the Secretary.

IV-102

(c) Where loans are transferred with recourse or under a guaranty or repurchase agreement, no insurance credit will be transferred or insurance

account affected, and no reports will be required.

(d) In all cases of transfer of loans from one insured financial institution to another insured institution, except as provided in paragraph (c) of this section, a report on a prescribed form executed by the parties and showing their agreement with regard to the transfer of insurance credits shall be made to the Secretary.

36.4373 DEBITS AND CREDITS TO INSURANCE ACCOUNT UNDER 36.4318

In the event that an insured loan is transferred under the provisions of 36.4318, there shall be charged to the insurance account of the transferor a sum equal to the amount paid transferor on account of the indebtedness, less the current market value of the property transferred as security therefor as determined by an appraiser designated by the Secretary, or the amount chargeable to such insurance account in the event of a transfer under 36.4372, whichever sum is the greater. The credit to the insurance account of the transferee will be computed in accordance with 36.4372(a).

36.4374 PAYMENT OF INSURANCE

(a) Upon the continuance of a default for the period specified in 36.4316, the holder may proceed to establish the net loss, after giving the notice prescribed in 36.4317, if security is available. The net loss shall be reported to the Secretary with proper claim, whereupon the holder shall be entitled to payment of the claim within the amount then available for such payment under the payee's related insurance account. Subject to the provisions of the paragraph (b) of this section and to 36.4370(b), a supplemental claim for any balance of an insurance loss may be filed at any time within 5 years after the date of the original claim.

(b) The basis of the claim for an insured loss shall consist in the unrealized principal or the amount paid for the obligation, if less, plus unrealized interest to the date of claim or the date of sale, whichever is earlier, and those expenses, if any, allowable under 36.4313, but subject to proper credits because of payments, setoff, proceeds of security, or otherwise: Provided, That if there is no liquidation of security the claim shall not include an accrual of interest for a period in excess of 6 months from the date of the first uncured default.

36.4375 REPORTS OF INSURED INSTITUTION

An insured financial institution shall make such reports respecting its insurance accounts as the Secretary may from time to time require, not more frequently than semiannually.

36.4380 through 36.4389 Canceled.

IV-103

FEDERALLY ASSISTED CONSTRUCTION CONTRACTS-NONDISCRIMINATION  
IN EMPLOYMENT-EXECUTIVE ORDERS 11246 and 11375

36.4390 PURPOSE

Sections 36.4390 through 36.4393 are promulgated to achieve the aims of the applicable provisions of Executive Orders 11246 and 11375 and the

regulations of the Secretary of Labor with respect to Federally assisted construction contracts.

#### 36.4391 APPLICABILITY

(a) For the purposes of the home loan guaranty and insurance and direct loan programs of the VA, the term "applicant for Federal assistance" or "applicant" in part III of Executive Order 11246 shall mean the builder, sponsor or developer of land to be improved by such builder, sponsor or developer for the purpose of constructing housing thereon for sale to eligible veterans with financing which is to be guaranteed or insured or made under the provisions of 38 U.S.C. Chapter 37, or the builder, sponsor or developer of housing to be constructed for sale to eligible veterans with financing which is to be guaranteed or insured or made under the provisions of 38 U.S.C. Chapter 37.

(b) The provisions of Executive Orders 11246 and 11375 and the rules and regulations of the Secretary of Labor are applicable to:

(1) Each master certificate of reasonable value or extension or modification thereof relating to proposed construction issued on or after July 22, 1963;

(2) Each individual certificate of reasonable value or extension or modification thereof relating to proposed construction issued on or after July 22, 1963, except as provided in paragraph (c)(2) of this section;

(3) Each special conditions letter or modification thereof issued on or after July 22, 1963, in respect to site approval of land to be improved by a builder, sponsor or developer for the construction of housing thereon;

(4) Each direct loan fund reservation commitment or extension thereof issued to builders on or after July 22, 1963.

(c) The provisions of Executive Orders 11246 and 11375 and the rules and regulations of the Secretary of Labor are not applicable to:

(1) Grants under 38 U.S.C. Chapter 21;

(2) Individual certificates of reasonable value issued on or after July 22, 1963, if:

(i) The certificate relates to existing properties, either previously occupied or unoccupied; or

IV-104

(ii) The certificate relates to proposed construction and

(A) A veteran was named in the request for appraisal, or

(B) A veteran contracted for the construction or purchase of the home prior to issuance of the certificate, or

(C) The property was listed in the schedule of reasonable values on an outstanding master certificate of reasonable value issued prior to July 22, 1963;

(3) Any contract or subcontract for construction work not exceeding \$10,000;

(4) Any other contract or subcontract which is exempted or excepted by the regulations of the Secretary of Labor.

#### 36.4392 CERTIFICATION REQUIREMENTS

In any case in which 36.4390 through 36.4393 are applicable, as set forth in 36.4391, no action will be taken by the Department of Veterans Affairs on any request for appraisal relating to proposed construction, site approval of land to be improved by a builder, sponsor or developer for the construction of housing thereon, or for a direct loan fund reservation commitment unless the builder, sponsor or developer has furnished the Department of Veterans Affairs a signed certification in form as follows:

To induce the Department of Veterans Affairs to act on any request submitted by or on behalf of the undersigned for site approval of land to be improved for the construction of housing thereon to be financed with loans guaranteed, insured or made by the Department of Veterans Affairs, or for establishment by the Department of Veterans Affairs of reasonable value relating to proposed construction or for direct loan fund reservation commitments, the undersigned hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work or modification thereof, as defined in the rules and regulations of the Secretary of Labor relating to the land or housing included in its request to the Department of Veterans Affairs the following equal opportunity clause:

"During the performance of this contract the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training,

IV-105

including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the

notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

IV-106

Except in special cases and in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by reference the equal opportunity clause.

The undersigned further agrees that it will be bound by the above equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of Government.

The undersigned agrees that it will cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's

primary responsibility for securing compliance. The undersigned further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to part II, subpart D of Executive Order 11246 and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon the contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to part II, subpart D of Executive Order 11246.

In addition, the undersigned agrees that if it fails or refuses to comply with these undertakings such failure or refusal shall be a proper basis for cancellation by the Department of Veterans Affairs of any outstanding master certificates of reasonable value or individual certificates of reasonable value relating to proposed construction, except in respect to cases in which an eligible veteran has contracted to purchase a property included on such certificates, and for the rejection of future requests submitted by the undersigned or on his or her behalf for site approval, appraisal services, and direct loan fund reservation commitments until satisfactory assurance of future compliance has been received from the undersigned, and for referral of the case to the Department of Justice for appropriate legal proceedings.

#### 36.4393 COMPLAINT AND HEARING PROCEDURE

(a) Upon receipt of a written complaint signed by the complainant to the effect that any person, firm or entity has violated the undertakings referred to in 36.4392, such person, firm or other entity shall be invited to discuss the matter in an informal hearing with the Director of the Department of Veterans Affairs regional office or center.

IV-107

(b) If the existence of a violation is denied by the person, firm or other entity against which a complaint has been made, the Director or designee shall conduct such inquiries and hearings as may be deemed appropriate for the purpose of ascertaining the facts.

(c) If it is found that the person, firm or other entity against which a complaint has been made has not violated the undertakings referred to in 36.4392, the parties shall be so notified.

(d) If it is found that there has been a violation of the undertakings referred to in 36.4392, the person, firm, or other entity in violation shall be requested to attend a conference for the purpose of discussing the matter. Failure or refusal to attend such a conference shall be proper basis for the application of sanctions.

(e) The conference arranged for discussing a violation shall be conducted in an informal manner and shall have as its primary objective the elimination of the violation. If the violation is eliminated and satisfactory assurances are received that the person, firm or other entity in violation will comply with the undertakings pursuant to 36.4392 in the future, the parties concerned shall be so notified.

(f) Failure or refusal to comply and give satisfactory assurances of future compliance with the equal employment opportunity requirements shall be proper basis for applying sanctions. The sanctions shall be applied in

accordance with the provisions of Executive Order 11246 as amended and the regulations of the Secretary of Labor.

(g) Upon written application, a complainant or a person, firm or other entity against which a complaint has been filed may apply to the Chief Benefits Director for a review of the action taken by a Director. Upon receiving such application, the Chief Benefits Director may designate a representative or representatives to conduct an informal hearing and to make a report of findings. The Chief Benefits Director may, after a review of such report, modify or reverse an action taken by a Director.

(h) Reinstatement of restricted persons, firms or other entities shall be within the discretion of the Chief Benefits Director and under such terms as the Chief Benefits Director may prescribe.

IV-108