

Chapter 17

VA Sanctions Against Program Participants

Overview

Introduction

VA is authorized to impose sanctions against persons or entities who take actions which are detrimental to the VA loan guaranty program. The type and severity of the sanction imposed is based on

- the type of participant (for example, lender, builder, management broker, etc.), and
- the nature of the actions (for example., fraud, significant deficiencies in performance, ongoing disregard for VA requirements, and so on).

Sanctions may be imposed in the form of

- civil money penalties, and/or
 - the participant's full or partial exclusion from participation in the VA loan guaranty program for a certain period of time.
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Appeal Rights

VA provides appeal rights to all program participants against whom sanctions are imposed. The notice informing the participant that sanctions will be or are imposed explains what the participant must do to appeal VA's decision.

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17.01 Program Participants

**Program
Participants**

Any person or entity conducting business related to the VA loan guaranty program is considered a program participant. This includes, but is not limited to

- lenders
- employees of lenders
- loan holders
- loan servicers
- builders
- real estate brokers or agents
- management brokers
- repair contractors
- compliance inspectors
- fee appraisers
- salespersons, and
- manufactured home manufacturers, dealers or park operators.

Note: A person is **not** considered a program participant just because he or she obtains a VA loan.

**Program
Participant
Also A Veteran**

VA may impose sanctions against a program participant who is also a veteran eligible for loan guaranty benefits. This does not preclude the veteran from using his or her entitlement to obtain a VA-guaranteed loan.

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17.01 Program Participants, Continued

- Full Exclusion** A participant who is fully excluded may not
- conduct any type of VA loan guaranty business, or
 - have another party conduct such business on his or her behalf.
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- Partial Exclusion** Partial exclusion may involve limitations on
- the role the participant may play, or
 - how the participant conducts VA loan guaranty business.
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- Program Participants and Excluded Parties** Program participants may not
- do VA business with an excluded party if the type of transaction involved is prohibited by the terms of the party's exclusion, or
 - allow an employed excluded party to perform prohibited duties.

Violation of the above restrictions may result in VA sanctions against the program participant doing business with (or employing) the excluded party.

- Identifying Excluded Parties** Participants may check the *List of Parties Excluded From Federal Procurement and Nonprocurement Programs* published by the U.S. General Services Administration (GSA).

The list can be obtained

- in hard copy by subscription through the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, and
- electronically, via the Internet at www.epls.arnet@gsa.gov.

Note: Contact GSA at (202)501-4740, or, online at epls.support@gsa.gov for details.

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17.01 Program Participants, Continued

Nature of Exclusion	<p>Some of the parties on this list may be excluded from</p> <ul style="list-style-type: none"> • participation in the programs of all Federal agencies, including VA, or • a specific program of a specific Federal agency.
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Cause and Treatment Codes	<p>The cause and treatment codes provide information on the nature of the exclusion. These codes are described in the document and at the GSA website, above.</p>
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Obtaining Information on Excluded Party	<p>Call the contact person for the agency that placed the excluded party on the list if</p> <ul style="list-style-type: none"> • more detail is necessary to confirm the identity of a party on the list, or • to clarify the nature or length of the sanction.
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Non-procurement List	<p>For parties placed on the non-procurement list by VA (indicated by the code “VA”), obtain any necessary clarifying information from the local VA office with jurisdiction over the city and state listed in the excluded party’s address.</p>
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Parties Not on GSA List	<p>Some of the VA sanctioned parties may not appear on the GSA list. Information on such parties can be obtained by contacting the local VA office.</p>
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17.01 Program Participants, Continued

Lender Check On Excluded Parties

Lenders and other parties may want to check whether a program participant has been excluded prior to

- employing the program participant, or
- participating in a VA loan guaranty-related transaction, if the program participant is also a party to the transaction.

Note: This does not refer to a veteran using entitlement to obtain a VA loan.

Reasons For Lender Check

The following illustrates some of the reasons why a lender/other party would want to check on a participant's exclusion.

- A lender hiring an underwriter for its VA lending activities may want to verify that the underwriter is not an excluded party.
 - A lender making a loan to a veteran for new construction is told by another lender that the builder has had problems with some of its HUD/FHA transactions. The lender may want to verify that the builder is not an excluded party.
 - A management broker establishing a panel of contractors to do repairs to VA-owned properties must ensure that none of the panel members are excluded parties.
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17.02 False Lender Certification

Lender Certification

A lender must submit a signed certification with each loan submission indicating that in processing and underwriting the loan, the lender has complied with

- VA requirements
- regulations, and
- the law.

The specific language required in the certification is found in Step 7 of “Lender Procedures” in Section 4.01.

False Lender Certification

Any lender who knowingly and willfully makes a false certification may be subject to civil money penalties equal to the greater of

- two times the amount of the Government’s loss on the loan involved, or
- another appropriate amount, not to exceed \$10,000.

In addition to monetary penalties, VA may impose other sanctions including, but not limited to

- debarment and suspension, and
 - loss of automatic authority.
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Lenders Assessed Monetary Penalty

Lenders assessed civil money penalties for a false certification do not appear in *GSA’s List of Parties Excluded From Federal Procurement and Nonprocurement Programs*. Other program participants may still transact VA business with these lenders.

Exception: Lenders may appear on the GSA list if another sanction is imposed against them in conjunction with the civil money penalty. In such cases, other program participants may be prohibited from transacting business with them.

17.03 Withdrawal of Automatic Authority

Withdrawal For Proper Cause

VA can withdraw a lender's automatic authority for proper cause, after giving the lender 30 days' notice. This applies to both

- supervised, and
 - nonsupervised lenders.
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Submitting Loans for Prior Approval

The lender may continue processing loans on a prior approval basis after automatic authority has been withdrawn.

Note: It is the lender's responsibility to submit all loans for prior approval as long as automatic authority is withdrawn.

VA Business With Other Participants

Lenders with their automatic authority withdrawn do not appear in GSA's *List of Parties Excluded From Federal Procurement and Nonprocurement Programs*. Other program participants may still transact VA business with these lenders.

Exception: Lenders may appear on the GSA list if another sanction is imposed against them. In such cases, other program participants may be prohibited from transacting business with them.

Withdrawal for an Indefinite Period

Withdrawal for an indefinite period can be based on

- failure to continue meeting basic qualifying criteria
 - for supervised lenders this includes loss of status as an entity subject to examination and supervision by a Federal or state regulatory agency
 - for nonsupervised lenders this includes no approved underwriter, failure to maintain \$50,000 working capital, and/or failure to file the required financial statements
- any of the causes for debarment set forth in [38 CFR 44.305](#), or
- poor underwriting or consistently careless processing during the probationary period for newly-approved nonsupervised automatic lenders.

[\[38 CFR 44.305\]](#)

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17.03 Withdrawal of Automatic Authority, Continued

**Withdrawal
Time Periods**

Refer to the following table for information on withdrawal time periods.

**Withdrawal
Period: 60
Days**

A withdrawal period of 60 days can be based on any of the following situations:

- Loan submissions show deficiencies in credit underwriting after repeatedly being called to the lender's attention.
 - Use of unstable sources of income to qualify borrower or ignoring significant adverse credit items affecting applicant's creditworthiness.
 - Employment or deposit verifications are hand-carried by applicants or otherwise improperly permitted to pass through the hands of a third party.
 - Loan submissions are consistently incomplete after repeatedly being called to the lender's attention
 - There are continued instances of disregard of VA requirements after repeatedly being called to the lender's attention.
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17.03 Withdrawal of Automatic Authority, Continued

**Withdrawal
Period: 180
Days**

A withdrawal period of 180 days can be based on any of the following situations:

- Loans conflict with VA credit standards and would not have been made by a lender acting prudently.
- Failure to disclose to VA significant obligations or other information which affects the veteran's ability to repay the loan, and which results in undue risk to the Government.
- Employment or deposit verifications are handcarried by the applicant or otherwise mishandled, resulting in submission of significant misinformation to VA.
- Substantiated complaints are received that the lender misrepresented VA requirements to veterans to the detriment of their interests.

Example

The veteran was dissuaded from seeking a lower interest rate based on the lender's incorrect advice that such options were excluded by VA requirements.

- Closing documents show instances of improper charges to veteran after the impropriety of such charges are called to lender's attention by VA, or the lender refuses to refund such charges after notification by VA.
- Deliberate delays in scheduling loan closings.

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17.03 Withdrawal of Automatic Authority, Continued**Withdrawal
Period: 1-3
Years**

A withdrawal period of 1-3 years can be based on any of the situations described in the table below.

Situation	Example
Failure to properly disburse loans	Loan disbursement checks are returned due to insufficient funds.
Involvement by the lender in the improper use of a veteran's entitlement	Knowingly permitting the veteran to violate occupancy requirements, or lender involvement in the veteran's sale of entitlement to a third party.
	Lender makes the loan with the knowledge that the veteran is not purchasing the property to be his or her home. Instead, the veteran intends to transfer title to a third party who assumes the loan shortly after closing.

17.04 Withdrawal of LAPP Authority

LAPP is a Privilege The authority to determine value under LAPP is a privilege delegated to lenders at VA’s discretion. Lenders maintain this privilege by complying with all applicable LAPP-related VA requirements.

Withdrawal or Amendment for Proper Cause VA can amend or withdraw the special privilege of LAPP authority from a lender for proper cause. This applies to both supervised and nonsupervised lenders with automatic authority that have been granted LAPP authority.

Withdrawal Time Period LAPP authority can be withdrawn for a specific or indefinite period of time.

Continued on next page

17.04 Withdrawal of LAPP Authority, Continued

Examples of Withdrawal for Proper Cause

The following is a non-inclusive list of examples of proper cause that can form a basis for withdrawal of LAPP authority.

Technical incompetence

Conduct demonstrating insufficient knowledge of industry-accepted appraisal principles, techniques and practices and/or the inability to adequately apply them in reviewing appraisal reports and making value determinations for VA purposes.

Substantive or repetitive errors

A substantive error is one which significantly involves the value determination or condition of the property. In the aggregate, nonsubstantive errors which are frequently repeated may also indicate that LAPP case reviews are being performed in a careless or negligent manner.

Disregard for VA requirements

Continued disregard for the VA requirements and procedures outlined in VA regulations, guidelines, instructions or applicable laws, after the problem has been brought to the lender's attention.

Failure to meet qualification requirements

The lender or the lender's staff appraisal reviewer (SAR) no longer meets the basic LAPP qualification requirements (see Chapter 15).

Civil judgments and convictions

Continued on next page

17.04 Withdrawal of LAPP Authority, Continued

Notice of Sanction

Generally, VA will provide written notice at least 30 days prior to imposition of the sanction to

- the lender's staff appraisal reviewer (SAR)
- the lending officer responsible for the quality of the SAR's work, and
- any other appropriate official(s).

Note: VA's notice provides the basis for the sanction and information on how to exercise appeal rights.

Government at Immediate Risk

VA is not required to give 30 days' notice if the Government's interests are exposed to immediate risk from the lender's activities. The withdrawal is effective immediately in such cases.

Determining Reasonable Value and Issuing CRVs

Once LAPP authority is withdrawn, VA must

- make all determinations of reasonable value for the lender, and
- issue the Certificates of Reasonable Value (CRVs).

Note: For any withdrawal longer than 90 days, the lender must reapply to VA to participate in LAPP.

Imposition of Probationary Period

As an alternative, VA may impose a probationary period for a specified period to further evaluate LAPP-related performance. During that period, the VA office, at its discretion, may require

- VA review of appraisal reports and lender notices of value
 - VA staff issuance of the lender's VA value notices
 - increased VA quality control review of the lender's LAPP cases, or
 - other measures designed to monitor and improve performance.
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17.04 Withdrawal of LAPP Authority, Continued

Other Sanctions

Withdrawal or amendment of a lender's LAPP authority does not preclude VA from

- also withdrawing automatic processing authority, or
 - taking debarment or suspension action against the lender for the same cause.
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Relationship With Other Program Participants

Lenders with their LAPP authority withdrawn do not appear in GSA's *List of Parties Excluded From Federal Procurement and Nonprocurement Programs*.

Other program participants may still transact VA business with these lenders.

Exception: Lenders may appear on the GSA list if another sanction is imposed against them. In such cases, other program participants may be prohibited from transacting business with them.

Responsibilities of Lender

As long as LAPP authority is withdrawn, it is the lender's responsibility to ensure that VA, and not the lender

- makes all determinations of reasonable value, and
 - issues CRVs on its loans.
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17.05 Debarment and Suspension

Debarment Debarment is a sanction that in most cases excludes the program participant from any participation in the nonprocurement programs of any Federal agency, including VA's loan guaranty program.

Note: Occasionally debarment is used to exclude the participant from only certain types of transactions.

Debarment Time Period Debarment is effective for a period appropriate to the seriousness of the cause. Often a period of 3 years is deemed appropriate.

Suspension Suspension has the same impact as debarment, but is imposed on a temporary basis, pending the outcome of

- investigative
- legal, or
- debarment proceedings.

Note: Suspension can be followed by debarment if the results of the proceedings warrant.

Suspension Time Period Suspension generally does not exceed 18 months. It is imposed for a temporary period pending

- investigative
- legal, or
- debarment proceedings.

Note: An additional period of debarment may follow.

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17.05 Debarment and Suspension, Continued

Geographic Scope of Exclusion	The debarred or suspended participant is excluded from targeted activities in all locations.
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Debarred Loan Guaranty Participants	<p>All loan guaranty program participants debarred by VA are listed in GSA's <i>List of Parties Excluded From Federal Nonprocurement Programs</i>. Most of these debarments are Government-wide.</p> <p>The GSA list contains government-wide debarments of parties who cannot participate in the nonprocurement programs of any Federal agency.</p>
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Participant is an Entity	<p>Any program participant (individual or entity) and/or affiliate can be debarred or suspended. If the participant is an entity, the sanction can be imposed against the</p> <ul style="list-style-type: none"> • entire organization • a certain part of the organization, or • only certain individuals.
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VA Regulations	<p>VA can impose debarments or suspensions based on any of a multitude of causes outlined in VA regulations</p> <ul style="list-style-type: none"> • 38 CFR 44.305, and • 38 CFR.44.405.
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[\[38 CFR 44.305\]](#)
[\[38 CFR 44.405\]](#)

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17.05 Debarment and Suspension, Continued

Causes for Debarment or Suspension

The regulations authorize VA to debar or suspend participants for “Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.” These causes include, but are not limited to

- conviction of, or civil judgment for, fraud, embezzlement, theft, forgery, falsification or destruction of records, commission of an offense evidencing serious lack of integrity
- violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program
- knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, or
- failure to pay debts owed to the Federal Government.

[\[38 CFR 44.305\]](#)

[\[38 CFR 44.405\]](#)

17.06 Limited Denial of Participation (LDP)

Introduction

A Limited Denial of Participation (LDP)

- is a sanction imposed by a local VA office limiting a program participant's activities within that local VA office's jurisdiction
- can either exclude the program participant from participation in any VA loan guaranty activities in the geographic area or just certain types of loan guaranty activities in the geographic area, and
- can be the sole sanction against a participant, or a means to immediately end unacceptable conduct while more severe sanctions are considered.

Note: An LDP may prohibit the participant from performing VA appraisals, but not from acting as a management broker or in another role.

Participant is an Entity

If the participant is an entity, the sanction can be imposed against

- the entire organization
 - a certain part of the organization, or
 - only certain individuals.
-

LDP Exceptions

An LDP can be imposed against any program participant (individual or entity) and/or affiliate except

- lenders
 - employees of lenders, and
 - manufactured home manufacturers.
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17.06 Limited Denial of Participation (LDP), Continued

Causes for LDP VA can impose LDPs based on any of a multitude of causes outlined in VA regulations [38 CFR 44.705](#). These causes include, but are not limited to

- irregularities in a participant's or contractor's performance in the VA loan guaranty program
- failure to satisfy contractual obligations or to proceed in accordance with contract specifications
- construction deficiencies deemed by VA to be the participant's responsibility, and
- failure to proceed in accordance with VA requirements or to comply with VA regulations.

[\[38 CFR 44.705\]](#)

**LDP as
Reciprocal
Action**

A local VA office may also impose an LDP as a reciprocal action because an LDP or other sanction was imposed upon the participant by

- another VA office, or
- an office of another Federal agency, such as HUD or USDA.

A VA office may also notify local offices of another Federal agency that the LDP action has been taken.

**Jurisdiction
Restrictions**

The participant is excluded from targeted activities only within the jurisdiction of the VA office imposing the sanction. If other VA offices impose a reciprocal LDP, the exclusion applies within their jurisdictions also.

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17.06 Limited Denial of Participation (LDP), Continued

Appeal Rights No additional appeal rights are provided to the participant for reciprocal LDPs. The participant is provided appeal rights with the original LDP only, and may choose to exercise them at that time.

LDP Time Period LDPs can be imposed for a specified period up to 12 months.

Builders With Unresolved Deficiencies In the case of builders with unresolved construction deficiencies, the LDP may be for

- an indefinite period pending correction of the construction deficiencies, or
- a specified period up to 12 months.

Obtaining LDP Party Information LDP parties are not listed in GSA's *List of Parties Excluded From Federal Procurement and Nonprocurement Programs*. Therefore, information must be obtained from the local VA office.

17.07 Unfair Contract Provisions or Marketing Practices

Introduction

VA may impose sanctions, such as debarment, suspension, or LDP against participants who use contracts of sale, or methods or practices in the marketing of properties, which are unfair or prejudicial to veteran-purchasers. Unethical practices based upon experience and standards generally observed by reputable homebuilders and other reputable program participants are

- barred by VA, and
- grounds for sanctions.

Note: Chapter 9 provides examples of unfair contractual provisions or features.

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17.07 Unfair Contract Provisions or Marketing Practices, Continued

Unfair Marketing Practices

Unfair marketing practices include, but are not limited to

- enforcement of unfair contractual provisions
- requiring purchasers to execute so-called “contracts” which legally bind the purchasers but do not bind the seller to deliver the property when completed to the purchasers

Example: limiting a seller’s liability to the refund of the earnest money deposit

- advertising that a property or project is “VA guaranteed” or “VA approved” or “VA inspected” in such a way as to lead veterans to believe that VA guarantees the construction and workmanship

Note: “VA financing available,” “Eligible for VA financing,” or similar advertising is acceptable.

- delaying tactics on the part of the builder to postpone completion of the property or the closing of the sale after completion in an effort to induce the veteran to agree to a modification of a firm contract such as
 - the substitution of inferior materials
 - the omission of appliances, or
 - an increase in price.
- failure of the seller or agent of the seller of proposed or newly constructed property to place deposits or downpayments received from veteran-purchasers in a special trust account , as required by 38 U.S.C. 3706
 - failure to place downpayments or earnest money deposits in a trust fund or in escrow when required by law or by local practice on existing properties, or
 - failure or inability of the seller to return the deposit when and if required under the contract when it is not required or not customary for these deposits to be “isolated,” and

[38 U.S.C. 3706]

- failure of the seller of proposed or newly constructed property to state in the sales agreement, when applicable, that the property was or will be constructed under FHA compliance inspection procedures pursuant to *section 203(i) or 221(d)(2) of the National Housing Act.*
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17.08 Violations of Equal Housing Opportunity Laws

Introduction

VA may impose sanctions, such as debarment, suspension, or LDP against participants who violate statutory provisions and regulations governing equal opportunity in housing. These laws and regulations include

- Equal Credit Opportunity Act (ECOA)
- The Fair Housing Act
- Section 527 of the National Housing Act, and
- VA Regulations at [38 CFR 36.4363](#)

[\[38 CFR 36.4363\]](#)

Based on these provisions and VA's policy on unfair marketing practices, VA may impose sanctions if any party involved or financially interested in the construction or sale of property has declined to sell property to an eligible veteran because of

- race
- color
- sex
- handicap
- familial status
- religion, or
- national origin.

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17.08 Violations of Equal Housing Opportunity Laws, Continued

Equal Housing Certification

This regulation requires a certification by builders or other parties requesting the following types of VA appraisals

- a Master Certificate of Reasonable Value on proposed or existing housing, or
- an individual appraisal of existing housing that was not previously occupied.

The certification provides that the builder or other party will not decline to sell the appraised property to a prospective purchaser because of his or her

- race
- color
- religion
- sex, or
- national origin.

Note: This requirement is satisfied by completion of VA Form 26-8791, *VA Affirmative Marketing Certification*.

Veteran Equal Housing Certification

Any veteran obtaining a VA-guaranteed loan is also required to certify that he or she will not decline to sell the home in the future based on these discriminatory factors. The certification is found in the *Veteran's Certifications* on [VA Form 26-1820](#), Report and Certification of Loan Disbursement.

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