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Federal Regulations**

Title 38, Part 36

*Loan Guaranty*

**Veterans Benefits Administration**

Supplement No. 47

Covering period of *Federal Register* issues  
through February 1, 2019

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# GENERAL INSTRUCTIONS

Custom Federal Regulations Service™

## Supplemental Materials for *Book H*

Code of Federal Regulations

Title 38, Part 36

*Loan Guaranty*

## Veterans Benefits Administration

Supplement No. 47

5 February 2019

Covering the period of Federal Register issues  
through February 1, 2019

When **Book H** was originally prepared, it was current through final regulations published in the *Federal Register* of 5 March 1992. These supplemental materials are designed to keep your regulations up to date. You should file the attached pages immediately, and record the fact that you did so on the *Supplement Filing Record* which is at page H-8 of Book H, *Loan Guaranty*.

**To ensure accuracy and timeliness of your materials,  
it is important that you follow these simple procedures:**

1. Always file your supplemental materials immediately upon receipt.
2. Before filing, always check the Supplement Filing Record (page H-8) to be sure that all prior supplements have been filed. If you are missing any supplements, contact the Veterans Benefits Administration at the address listed on page H-2.
3. After filing, enter the relevant information on the Supplement Filing Record sheet (page H-8)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
4. If as a result of a failure to file, or an undelivered supplement, you have more than one supplement to file at a time, be certain to file them in chronological order, lower number first.
5. Always retain the filing instructions (simply insert them at the back of the book) as a backup record of filing and for reference in case of a filing error.
6. Be certain that you *permanently discard* any pages indicated for removal in the filing instructions in order to avoid confusion later.

To execute the filing instructions, simply remove *and throw away* the pages listed under *Remove These Old Pages*, and replace them in each case with the corresponding pages from this supplement listed under *Add These New Pages*. Occasionally new pages will be added without removal of any old material (reflecting new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.

<b>FILING INSTRUCTIONS</b>
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**Book H, Supplement No. 47  
February 5, 2019**

<i>Remove these <u>old pages</u></i>	<i>Add these <u>new pages</u></i>	<i>Section(s) <u>Affected</u></i>
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**Do not file this supplement until you confirm that  
all prior supplements have been filed**

36.4301-2 to 36.4301-7	36.4301-2 to 36.4301-7	§36.4301
36.4305-1 to 36.4307-1	36.4305-1 to 36.4307-1	§36.4306
36.4340-18 to 36.4340-19	36.4340-18 to 36.4340-19	§36.4340

**Be sure to complete the  
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## HIGHLIGHTS

### Book H, Supplement No. 47 February 5, 2019

**Supplement Highlights references:** Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §3.263, you will see a note at the end of that section which reads: “Supplement *Highlights* references—6(2).” This means that paragraph 2 of the *Highlights* section in Supplement No. 6 contains information about the changes made in §3.263. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

**Supplement frequency:** This Book H (*Loan Guaranty*) was originally supplemented four times a year, in January, April, July and October. Beginning 1 August 1995, supplements will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

### Modifications in this supplement include the following:

1. On 17 December 2018, the VA published an interim final rule effective 15 February 2019, to amend its rules on VA-guaranteed or insured cash-out refinance loans. The Economic Growth, Regulatory Relief, and Consumer Protection Act requires VA to promulgate regulations governing cash-out refinance loans. This interim final rule defines the parameters of when VA will permit cash-out refinance loans, to include defining net tangible benefit, recoupment, and seasoning requirements. Changes:

- In §36.4601, added definition for *Home Equity*,
- Revised §36.4306.

2. On 31 January 2019, the VA published a final rule, effective that same day, to provide notice of the calendar year 2019 inflationary adjustments that increase maximum civil monetary penalties from \$22,363 to \$22,927 for false loan guaranty certifications and from \$11,181 to \$11,463 for fraudulent claims or written statements made in connection with VA programs generally. Change:

- In §36.4340, revised amount in paragraphs (k)(1)(i) and (k)(3).



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

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

*Discharge or release.* For purposes of basic eligibility a person will be considered discharged or released if the veteran was issued a discharge certificate under conditions other than dishonorable (38 U.S.C. 3702(c)). The term discharge or release includes:

(1) Retirement from the active military, naval, or air service, and

(2) The satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable. (Authority: 38 U.S.C. 101(18))

*Dwelling.* Any building designed primarily for use as a home consisting of not more than four family units plus an added unit for each veteran if more than one eligible veteran participates in the ownership, except that in the case of a condominium housing development or project within the purview of 38 U.S.C. 3710(a)(6) and §§36.4360 through 36.4365 of this part the term is limited to a one single-family residential unit. Also, a manufactured home, permanently affixed to a lot owned by a veteran and classified as real property under the laws of the State where it is located. (Authority: 38 U.S.C. 3710(a) and (f))

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

*Energy conservation improvement.* An improvement to an existing dwelling or farm residence through the installation of a solar heating system, a solar heating and cooling system, or a combined solar heating and cooling system or through application of a residential energy conservation measure as prescribed in 38 U.S.C. 3710(d) or by the Secretary. (Authority: 38 U.S.C. 3710(a)(7))

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

- (1) By payment to those contracting with the borrower for such purposes, or
- (2) By payment to the borrower, or
- (3) By transfer to an account against which the borrower can draw at will, or
- (4) By transfer to an escrow account, or
- (5) By transfer to an earmarked account if

- (i) The amount is not in excess of 10 percent of the loan, or
- (ii) The loan is an Acquisition and Improvement loan pursuant to §36.4301, or
- (iii) The loan is one submitted by a lender of the class specified in 38 U.S.C. 3702(d) or 3703(a)(2). (Authority: 38 U.S.C. 3703(c)(1))

*Graduated payment mortgage loan.* A loan for the purpose of acquiring a 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. 3703(c) and (d))

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

*Holder.* The lender or any subsequent assignee or transferee of the guaranteed obligation or the authorized servicing agent (also referred to as “the servicer”) of the lender or of the assignee or transferee. (Authority: 38 U.S.C. 3714)

*Home.* Home means place of residence.

*Home equity.* Home equity is the difference between the home's reasonable value and the outstanding balance of all liens on the property.

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

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

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

*Lender.* The payee or assignee or transferee of an obligation at the time it is guaranteed or insured. This term also includes any sole proprietorship, partnership, or corporation and the owners, officers and employees of a sole 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. 3703(c)(1) and 3704(d))

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

*Liquidation sale.* Any judicial, contractual or statutory disposition of real property, under the terms of the loan instruments and applicable law, to liquidate a defaulted loan that is secured by such property. This includes a voluntary conveyance made to avoid such disposition of the obligation or of the security. This term also includes a compromise sale. (Authority: 38 U.S.C. 3732)

*Lot.* A parcel of land acceptable to the Secretary as a manufactured home site. (Authority: 38 U.S.C. 3710(a)(9))

*Manufactured home.* A moveable dwelling unit designed and constructed for year-round occupancy by a single family, on land, containing permanent eating, cooking, sleeping and sanitary facilities. A double-wide manufactured home is a moveable dwelling designed for occupancy by one family and consisting of:

(1) Two or more units intended to be joined together horizontally when located on a site, but capable of independent movement or

(2) A unit having a section or sections which unfold along the entire length of the unit. For the purposes of this section of VA regulations, manufactured home/lot loans guaranteed under the purview of §§36.4300 through 36.4393 must be for units permanently affixed to a lot and considered to be real property under the laws of the State where it is located. If the loan is for the purchase of a manufactured home and lot it must be considered as one loan. (Authority: 38 U.S.C. 3710(a)(9))

*Net loss (insured loans).* Net loss on insured loans means the indebtedness, plus any other charges authorized under §36.4314, 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 an amount representing the costs that the Secretary estimates would be incurred by VA in acquiring and disposing of the property. The number to be subtracted from the fair market value will be calculated by multiplying the fair market value by the current cost factor. The cost factor used will be the most recent percentage of the fair market value that VA calculated and published in the Notices section of the *Federal Register* (it is intended that this percentage will be calculated annually). In computing this cost factor, VA will determine the average operating expenses and losses (or gains) on resale incurred for properties acquired under §36.4323 which were sold during the preceding fiscal year and the average administrative cost to VA associated with the property management activity. The final net value derived from this calculation will be stated as a whole dollar amount (any fractional amount will be rounded up to the next whole dollar). The cost items included in the calculation will be:

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

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

(3) *Administrative costs.*

(i) An estimate of the total cost for VA of personnel (salary and benefits) and overhead (which may include things such as travel, transportation, communication, utilities, printing, supplies, equipment, insurance claims and other services) associated with the acquisition, management and disposition of property acquired under §36.4323 of this part. The average administrative costs will be determined by:

(A) Dividing the total cost for VA personnel and overhead salary and benefits costs 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; and

(B) Dividing the figure calculated in paragraph (3)(i)(A) of this definition by the VBA ratio of personal services costs to total obligations.

(ii) The three cost averages will be added to the average loss (or gain) on property sold during the preceding fiscal year (based on the average property purchase price) and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the preceding fiscal year to derive the percentage to be used in estimating net value. (Authority: 38 U.S.C. 3732)

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

*Real-estate loan.* Any obligation incurred for the purchase of real property or a leasehold estate as limited in §§36.4300 through 36.4393 or for the construction of fixtures or appurtenances thereon or for alterations, improvements, or repairs thereon required by §§36.4300 through 36.4393 to be secured by a lien on such property or is so secured. Loans for the purpose specified in 38 U.S.C. 3710(a)(5) (refinancing of mortgage loans or other liens on a dwelling or farm residence), loans for the purpose specified in 38 U.S.C. 3710(a)(8) (refinancing of a VA guaranteed, insured or direct loan to lower the interest rate), loans for the purposes specified in 38 U.S.C. 3710(a)(9) (purchase of manufactured homes/lots or the refinancing of such loans in order to reduce the interest rate or purchase a lot, in States in which 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. 3710(a)(6) and §§36.4360 through 36.4365 shall also be considered real estate loans.

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

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

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

*Repayment plan.* A repayment plan is a written executed agreement by and between the borrower and the holder to reinstate a loan that is 61 or more calendar days delinquent, by requiring the borrower to pay each month over a fixed period (minimum of three months duration) the normal monthly payments plus an agreed upon portion of the delinquency each month.

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

*Residential property.*

(1) Any one-family residential unit in a condominium housing development within the purview of 38 U.S.C. 3710(a)(6) and §§36.4360 through 36.4365;

(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;

(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 this subpart, 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. 3703(c)(1) and 3710(a))

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

*Servicer.* The authorized servicer is either:

(1) The servicing agent of a holder; or

(2) The holder itself, if the holder is performing all servicing functions on a loan. The servicer is typically the entity reporting all loan activity to VA and filing claims under the guaranty on behalf of the holder. VA will generally issue guaranty claims and other payments to the servicer, who will be responsible for forwarding funds to the holder in accordance with its servicing agreement. Incentives under §36.4319 will generally be paid directly to the servicer based on its performance under that section and in accordance with its tier ranking under §36.4318.

*Servicing agent.* An agent designated by the loan holder as the entity to collect installments on the loan and/or perform other functions as necessary to protect the interests of the holder. (Authority: 38 U.S.C. 3714)

*Special forbearance.* This is a written agreement executed by and between the holder and the borrower where the holder agrees to suspend all payments or accept reduced payments for one or more months, on a loan 61 or more calendar days delinquent, and the borrower agrees to pay the total delinquency at the end of the specified period or enter into a repayment plan.

*Total indebtedness:* For purposes of 38 U.S.C. 3732(c), the veteran's "total indebtedness" shall be the sum of: the unpaid principal on the loan as of the date of the liquidation sale, accrued unpaid interest permitted by §36.4324(a) of this part, and allowable advances/other charges permitted to be included in the guaranty claim by §36.4314 of this part. (Authority: 38 U.S.C. 3703(c)(1))

[73 FR 6310, Feb. 1, 2008; as amended at 83 FR 64468, Dec. 17, 2018]

**Supplement *Highlights* References:** 47(1)

**§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

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

**§36.4306 Refinancing of mortgage or other lien indebtedness.**

(a) A refinancing loan made pursuant to 38 U.S.C. 3710(a)(5) qualifies for guaranty in an amount as computed under 38 U.S.C. 3703, provided--

(1) The amount of the new loan must not exceed an amount equal to 100 percent of the reasonable value, as determined by the Secretary, of the dwelling or farm residence which will secure the loan.

(2) The funding fee as prescribed by 38 U.S.C. 3729 may be included in the new loan amount, except that any portion of the funding fee that would cause the new loan amount to exceed 100 percent of the reasonable value of the property must be paid in cash at the loan closing.

(3) The new loan must provide a net tangible benefit to the borrower. For the purposes of this section, net tangible benefit means that the new loan is in the financial interest of the borrower. The lender of the new loan must provide the borrower with a net tangible benefit test. The net tangible benefit test must be satisfied. The net tangible benefit test is defined as follows:

(i) The new loan must meet one or more of the following:

(A) The new loan eliminates monthly mortgage insurance, whether public or private, or monthly guaranty insurance;

(B) The term of the new loan is shorter than the term of the loan being refinanced;

(C) The interest rate on the new loan is lower than the interest rate on the loan being refinanced;

(D) The payment on the new loan is lower than the payment on the loan being refinanced;

(E) The new loan results in an increase in the borrower's monthly residual income as explained by §36.4340(e);

(F) The new loan refinances an interim loan to construct, alter, or repair the primary home;

(G) The new loan amount is equal to or less than 90 percent of the reasonable value of the home; or

(H) The new loan refinances an adjustable rate mortgage to a fixed rate loan.

(ii) The lender must provide a borrower with a comparison of the following:

(A) The loan payoff amount of the new loan, with a comparison to the loan payoff amount of the loan being refinanced;

(B) The new type of loan, with a comparison to the type of the loan being refinanced;

(C) The interest rate of the new loan, with a comparison to the interest rate of the loan being refinanced;

(D) The term of the new loan, with a comparison to the term remaining on the loan being refinanced;

(E) The total the borrower will have paid after making all payments of principal, interest, and mortgage or guaranty insurance (if applicable), as scheduled, for both the loan being refinanced and the new loan; and

(F) The loan to value ratio of the loan being refinanced compared to the loan to value ratio under the new loan.

(iii) The lender must provide the borrower with an estimate of the dollar amount of home equity that, by refinancing into a new loan, is being removed from the reasonable value of the home, and explain that removal of this home equity may affect the borrower's ability to sell the home at a later date.

(iv) The lender must provide the information required under paragraphs (a)(3)(i) through (iii) of this section in a standardized format and on two separate occasions: Not later than 3 business days from the date of the loan application and again at loan closing. The borrower must certify that the borrower received the information required under paragraphs (a)(3)(i) through (iii) on both occasions.

(4) The dollar amount of discount, if any, to be paid by the borrower must be reasonable in amount as determined by the Secretary in accordance with §36.4313(d)(7)(i).

(5) The loan must otherwise be eligible for guaranty.

(b) If the loan being refinanced is a VA-guaranteed or insured loan, and the new loan amount is equal to or less than the payoff amount of the loan being refinanced, the following requirements must also be met--

(1)

(i) The lender of the refinanced loan must provide the Secretary with a certification of the recoupment period for fees, closing costs, and any expenses (other than taxes, amounts held in escrow, and fees paid under 38 U.S.C. chapter 37) that would be incurred by the borrower in the refinancing of the loan;

(ii) All of the fees and incurred costs must be scheduled to be recouped on or before the date that is 36 months after the date of loan issuance; and

(iii) The recoupment must be calculated through lower regular monthly payments (other than taxes, amounts held in escrow, and fees paid under 38 U.S.C. chapter 37) as a result of the refinanced loan.

(2) The new loan may not be guaranteed or insured until the date that is the later of 210 days from the date of the first monthly payment made by the borrower and the date on which the sixth monthly payment is made on the loan.

(3) In a case in which the loan being refinanced has a fixed interest rate and the new loan will also have a fixed interest rate, the interest rate on the new loan must not be less than 50 basis points less than the loan being refinanced.

(4) In a case in which the loan being refinanced has a fixed interest rate and the new loan will have an adjustable rate, the interest rate on the new loan must not be less than 200 basis points less than the previous loan. In addition--

(i) The lower interest rate must not be produced solely from discount points, unless such points are paid at closing; and

(ii) Such points are not added to the principal loan amount, unless--

(A) For discount point amounts that are less than or equal to one discount point, the resulting loan balance after any fees and expenses allows the property with respect to which the loan was issued to maintain a loan to value ratio of 100 percent or less; and

(B) For discount point amounts that are greater than one discount point, the resulting loan balance after any fees and expenses allows the property with respect to which the loan was issued to maintain a loan to value ratio of 90 percent or less.

(c) If the new loan amount exceeds the payoff amount of the loan being refinanced--

(1) The borrower is deemed to have recouped the costs of the refinancing if the requirements prescribed in paragraph (a) are met.

(2) The new loan may not be guaranteed or insured until the date that is the later of 210 days from the date of the first monthly payment made by the borrower and the date on which the sixth monthly payment is made on the loan; however, this requirement applies only when the loan being refinanced is a VA-guaranteed or insured loan.

(d) For the limited purpose of calculating entitlement, 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. 3710(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.

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

(f) Nothing in this section shall preclude the determination that a loan is being made for a purpose authorized under 38 U.S.C. 3710, if the purpose of such loan is 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 borrower's dwelling or farm residence.

(g) A veteran may refinance (38 U.S.C. 3710(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 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 §36.4313(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 §36.4313

(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. 3702(b), the refinancing portion of the loan shall be considered to have been obtained with the guaranty entitlement used to obtain VA-guaranteed loan being refinanced. The total guaranty for the new loan shall be the sum of the guaranty entitlement used to obtain 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); and

(6) All other requirements of this section are met.

(h) Any refinancing loan that might be guaranteed under this section, when made or purchased by any financial institution subject to examination and supervision by any agency of the United States or of any State may, in lieu of such guaranty, be insured by the Secretary under an agreement whereby the Secretary will reimburse any such institution for losses incurred on such loan up to 15 percent of the aggregate of loans so made or purchased by it.

[73 FR 6310, Feb. 1, 2008; as amended at 83 FR 64468, Dec. 17, 2018]

**Supplement *Highlights* References:** 47(1)

**§36.4307 Interest rate reduction refinancing loan.**

(a) Pursuant to 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11), a veteran may refinance an existing VA guaranteed, insured, or direct loan to reduce the interest rate payable on the existing loan provided that all of the following requirements are met:

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

(2) The veteran owns the dwelling or farm residence securing the loan and

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

(ii) Previously occupied the dwelling or residence as his or her home and certifies, in such form as the Secretary shall require, that he or she has previously occupied the dwelling or residence as a home; or

(iii) In a case in which the veteran is or was unable to occupy the residence or dwelling as a home because the veteran was on active duty status as a member of the Armed Forces, the spouse of the veteran occupies, or previously occupied, the dwelling or residence as the spouse's home and certifies to that occupancy in such form as the Secretary shall require. (Authority: 38 U.S.C. 3710(e)(1))

(3) The monthly principal and interest payment on the new loan is lower than the principal and interest payment on the loan being refinanced; or the term of the new loan is shorter than the term of the loan being refinanced; or the new loan is a fixed-rate loan that refinances a VA-guaranteed adjustable rate mortgage; or the increase in the monthly payments on the loan results from the inclusion of energy efficient improvements, as provided by §36.4339(a)(4); or the Secretary approves the loan in advance after determining that the new loan is necessary to prevent imminent foreclosure and the veteran qualifies for the new loan under the credit standards contained in §36.4340.

(4) The amount of the refinancing loan does not exceed:

(i) An amount equal to the balance of the loan being refinanced, which is not delinquent, except as provided in paragraph (a)(5) of this section, plus closing costs authorized by §36.4313(d) and a discount not to exceed 2 percent of the loan amount; or

(ii) In the case of a loan to refinance an existing VA-guaranteed or direct loan and to improve the dwelling securing such loan through energy efficient improvements, the amount referred to with respect to the loan under paragraph (a)(4)(i) of this section, plus the amount authorized by §36.4339(a)(4). (Authority: 38 U.S.C. 3703, 3710)

(5) If the loan being refinanced is delinquent (delinquent means that a scheduled monthly payment of principal and interest is more than 30 days past due), the new loan will be guaranteed only if the Secretary approves it in advance after determining that the borrower, through the lender, has provided reasons for the loan deficiency, has provided information to

(i) *Another appropriate amount.* In determining the appropriate amount of a lender's civil penalty in cases where the Secretary has not sustained a loss or where two times the amount of the Secretary's loss on the loan involved does not exceed \$22,927, the Secretary shall consider:

- (A) The materiality and importance of the false certification to the determination to issue the guaranty or to approve the assumption;
- (B) The frequency and past pattern of such false certifications by the lender; and
- (C) Any exculpatory or mitigating circumstances.

(ii) *Complaint.* Complaint includes the assessment of liability served pursuant to this section.

(iii) *Defendant.* Defendant means a lender named in the complaint.

(iv) *Lender.* Lender includes the holder approving loan assumptions pursuant to 38 U.S.C. 3714.

(2) *Procedures for certification.*

(i) As a condition to VA issuance of a loan guaranty on all loans closed on or after October 27, 1994, and as a prerequisite to an effective loan assumption on all loans assumed pursuant to 38 U.S.C. 3714 on or after November 17, 1997, the following certification shall accompany each loan closing or assumption package:

The undersigned lender certifies that the (loan) (assumption) application, all verifications of employment, deposit, and other income and credit verification documents have been processed in compliance with 38 CFR part 36; that all credit reports obtained or generated in connection with the processing of this borrower's (loan) (assumption) application have been provided to VA; that, to the best of the undersigned lender's knowledge and belief the (loan) (assumption) meets the underwriting standards recited in chapter 37 of title 38 United States Code and 38 CFR part 36; and that all information provided in support of this (loan) (assumption) is true, complete and accurate to the best of the undersigned lender's knowledge and belief.

(ii) The certification shall be executed by an officer of the lender authorized to execute documents and act on behalf of the lender.

(3) *Penalty.* Any lender who knowingly and willfully makes a false certification required pursuant to §36.4340(k)(2) shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed \$22,927, whichever is greater.

(1) *Assessment of liability.*

(1) Upon an assessment confirmed by the Under Secretary for Benefits, in consultation with the Investigating Official, that a certification, as required in this section, is

false, a report of findings of the Under Secretary for Benefits shall be submitted to the Reviewing Official setting forth:

- (i) The evidence that supports the allegations of a false certification and of liability;
- (ii) A description of the claims or statements upon which the allegations of liability are based;
- (iii) The amount of the VA demand to be made; and
- (iv) Any exculpatory or mitigating circumstances that may relate to the certification.

(2) The Reviewing Official shall review all of the information provided and will either inform the Under Secretary for Benefits and the Investigating Official that there is not adequate evidence, that the lender is liable, or serve a complaint on the lender stating:

- (i) The allegations of a false certification and of liability;
- (ii) The amount being assessed by the Secretary and the basis for the amount assessed;
- (iii) Instructions on how to satisfy the assessment and how to file an answer to request a hearing, including a specific statement of the lender's right to request a hearing by filing an answer and to be represented by counsel; and
- (iv) That failure to file an answer within 30 days of the complaint will result in the imposition of the assessment without right to appeal the assessment to the Secretary.

(m) *Hearing procedures.* A lender hearing on an assessment established pursuant to this section shall be governed by the procedures recited at 38 CFR 42.8 through 42.47.

(n) *Additional remedies.* Any assessment under this section may be in addition to other remedies available to VA, such as debarment and suspension pursuant to 38 U.S.C. 3704 and 2 CFR parts 180 and 801 or loss of automatic processing authority pursuant to 38 U.S.C. 3702, or other actions by the Government under any other law including but not limited to title 18 U.S.C. and 31 U.S.C. 3732. (Authority 38 U.S.C. 3703(c)(1), 3710(g))

(The Office of Management and Budget has approved the information collection requirements of this section under control number 2900-0521.)

[73 FR 6310, Feb. 1, 2008; as amended at 79 FR 26627, May 9, 2014; 81 FR 40525, June 22, 2016; 83 FR 8946, March 2, 2018; 84 FR 537, Jan. 31, 2019]

**Supplement *Highlight* References:** 40 (1), 43(1), 46(1), 47(2).