

Chapter 2: The Memorandum of Understanding

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2.01 LEGAL REQUIREMENTS

Pursuant to 38 U.S.C. § 3762, the law requires that before any direct loan may be made to an eligible Native American Veteran under this program, the Department of Veterans Affairs (VA) and the tribal/territorial government with jurisdiction over the land on which the home is or will be located must have entered into a Memorandum of Understanding (MOU). The MOU must provide that the Veteran must have or acquire a meaningful ownership interest in the property to be used as security for the loan. “Meaningful interest” in this context includes ownership of the property, a lease for a period of years which exceeds the mortgage by at least 14 years, or a life estate. In addition, the MOU should incorporate reference copies of the loan instruments that are to be used in the loan program. Finally, the MOU establishes the rights and responsibilities of both VA and the tribal/territorial government with regards to access to the property for purposes of conducting necessary construction and/or foreclosure related inspections by VA and/or its agents, as well as the rights and obligations of all parties with regard to foreclosure and eviction procedures to be followed.

2.02 MOU PROCESS

a. In general, Regional Loan Center (RLC) staff, with legal guidance from their Office of Regional Counsel and oversight from VA Central Office (VACO), shall conduct the preliminary outreach with the appropriate tribal authorities. Formal negotiation to draft the MOU will occur between the tribal government and VACO. VACO will ensure the MOU contains the legal provisions necessary to protect the interests of the Federal Government. It is important to remember that Federally-recognized tribes are considered to be sovereign nations, state law may be useful, but does not control real estate transactions on Federal Trust land.

b. Submission and Review of a Complete MOU Package. A completed MOU package should contain the following (1) an MOU; (2) a tribal resolution adopting the MOU; (3) a copy of the tribal leasehold documents; and (4) the relevant portions of the tribal housing/foreclosure codes. As necessary, the RLC should accept any documents submitted by the tribal government and, prior to submitting them to VACO, ensure that all of the abovementioned documents have been submitted by the tribe. VACO will review the completed package submitted by the RLC to determine that it meets the requirements found in [38 U.S.C. § 3762](#) and [38 CFR §36.4527](#).

2.03 REVIEW AND APPROVAL OF MOUs

a. Ultimate Responsibility. Ultimate responsibility for executing an MOU rests with VACO. The Director, Loan Guaranty Service has delegated authority to sign MOUs on behalf of the Secretary. VACO will review the submission and obtain concurrence from the Office of General Counsel (OGC) and, if for some reason, VACO or OGC do not concur, VACO will contact the RLC for assistance, as necessary.

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b. Execution and Notice. Once VACO and OGC concur in approving the MOU, VACO will assign a numeric identifier for each MOU. This number is to be used for all coding and recordkeeping purposes.

c. Bureau of Indian Affairs (BIA) Approval of MOUs Not Necessary. BIA, by agreement with VA, is not considered a party to the MOU. Approval of the MOU is completed upon signature by authorized tribal representatives and VA. Signatory authority for MOUs is delegated to the Director, Loan Guaranty Service. Copies of signed MOUs should be forwarded to the appropriate local BIA Regional Office for their records immediately after VACO approval.

2.04 MOU STORAGE

Upon execution of an MOU, VACO will upload the complete MOU package into both the NADL Consolidated [website](#) and the Native American Direct Loan (NADL) Communications Management [website](#).

2.05 LOAN APPLICATION IN ABSENCE OF MOU

If the RLC receives an application for a direct loan on Federal trust land, and there is no record of an executed MOU for that particular tribal/territorial organization, the station should immediately advise the applicant in writing that his/her application cannot be processed until an MOU is executed between their tribal government and VA. RLC staff should take this opportunity to contact the appropriate tribal government and establish an MOU.

2.06 ELECTRONIC DOCUMENTATION OF NATIVE AMERICAN DIRECT LOAN FILES

a. All NADLs must be electronically uploaded into WebLGY. A mandatory stacking order has been established for VA NADL purchase loans/cash-out refinances and interest rate reduction loans (IRRRLs).

b. The stacking order for NADL purchase loans/cash-out refinances is as follows:

Order	Document
1	Letter of Commitment to Veteran
2	Purchase or Lease Agreement
3	Certificate of Eligibility, or proof of military service (DD-214 or NGB-22)
4	Title Status Report (TSR), if available
5	HUD-1, <i>Settlement Statement</i>
6	VA Form 26-6393 , <i>Loan Analysis</i>
7	VA Form 26-8497 , <i>Request for Verification of Employment</i> , and other verifications of income such as paystubs and tax returns
8	All original credit reports obtained in connection with the loan and any related documentation such as explanation for adverse credit, if required

9	Credit Alert Reporting Verification System (CAIVRS): borrower/co-borrower
10	Uniform Residential Loan Application (URLA) with revised VA Form 26-1802a , <i>HUD/VA Addendum to URLA</i> . These forms may be signed and dated any time from the date of initial application to the date of loan closing. These forms must be properly completed and legible, but do not have to be typed.
11	Evidence of compliance with Notice of Value requirements; such as, final compliance inspection, termite certification, and/or warranty
12	Archeological Survey and exhibits, if available
13	VA Form 26-0592 , <i>Counseling Checklist for Military Homebuyers</i> , if applicant is on active duty
14	Truth in Lending Agreement (TILA)
15	Good Faith Estimate (GFE)
16	Other necessary documents (ex. Power of Attorney)

c. The stacking order for IRRRLs is a follows:

Order	Document
1	Letter of Commitment to Veteran
2	HUD-1, <i>Settlement Statement</i>
3	VA For 26-8923 , <i>Interest Rate Reduction Refinancing Loan Worksheet</i>
4	CAIVRS: borrower/co-borrower
5	Statement signed by the Veteran acknowledging the effect of the refinancing loan on the Veteran's loan payments and interest rate. <ul style="list-style-type: none"> The statement must show the interest rate and monthly payments for the new loan versus that for the old loan. The statement must also indicate how long it will take to recoup ALL closing costs (both those included in the loan and those paid outside of closing). If applicable, the Veteran's statement may be combined with the lender's certification that the Veteran qualifies for the new monthly payment which exceeds the previous payment by 20 percent or more.
6	URLA with revised VA Form 26-1802a , <i>HUD/VA Addendum to URLA</i> These forms may be signed and dated anytime from the date of initial application, to the date of loan closing. These forms must be properly completed and legible, but do not have to be typed.
7	VA Form 26-0503 , <i>Federal Collection Policy Notice</i>
8	VA Form 26-0592 , <i>Counseling Checklist for Military Homebuyers</i> , if applicant is on active duty
9	TILA
10	GFE
11	Other necessary documents (ex. Power of Attorney)

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- c. All existing NADL files must be uploaded to WebLGY.