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Loan Guaranty

Book H

Title 38, Part 36

Supplement No. 49

Issued on March 5, 2021

**Covering period of *Federal Register* issues
through March 1, 2021**

**This update is for the Direct Sale (Black & Gold) version only.
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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 SF-2) to be sure that all prior supplements have been filed. If you are missing any supplements, please contact Jonathan Publishing (see contact information on previous page).
3. After filing, enter the relevant information on the Supplement Filing Record sheet (page SFR-2)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
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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new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.

FILING INSTRUCTIONS

**Book H, Supplement No. 49
March 5, 2021**

*Remove these
old pages*

*Add these
new pages*

*Section(s)
Affected*

**Do not file this supplement until you confirm that
all prior supplements have been filed**

36.4340-18 to 36.4340-19

36.4340-18 to 36.4340-19

§36.4340

**Be sure to complete the
Supplement Filing Record (page SFR-2)
when you have finished filing this material.**

HIGHLIGHTS

Book H, Supplement No. 49 March 5, 2021

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 2 February 2021, the VA published a final rule effective that same day, to provide public notice of inflationary adjustments to the maximum civil monetary penalties assessed or enforced by VA, as implemented by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, for calendar year 2021. VA may impose civil monetary penalties for false loan guaranty certifications. Also, VA may impose civil monetary penalties for fraudulent claims or written statements made in connection with VA programs generally. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, sets forth a formula that increases the maximum statutory amounts for civil monetary penalties and directs VA to give public notice of the new maximum amounts by regulation. Changes:

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





(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 \$23,607, 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 \$23,607, 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:

liability;

(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; 85 FR 7232, Feb. 7, 2020; 86 FR 7813, Feb. 2, 2021]

Supplement *Highlight* References: 40 (1), 43(1), 46(1), 47(2), 48(1), 49(1).