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Loan Guaranty

Veterans Benefits Administration

Supplement No. 50

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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. 50

5 July 2021

Covering the period of Federal Register issues
through July 1, 2021

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July 5, 2021**

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H-15 to H-22

H-15 to H-22

Book H Lead
Material

36.4332-1 to 36.4333-1

36.4332-1 to 36.4333-3

§36.4333

36.4335-1 to 36.4336-1

36.4335-1 to 36.4336-1

§36.4336

(none)

36.4800-1 to 36.4810-1

§§36.4800
through 36.4810

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HIGHLIGHTS

Book H, Supplement No. 50 July 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 28 May 2021, the VA published a final rule effective 27 July 2021, to establish the COVID-19 Veterans Assistance Partial Claim Payment program (COVID-VAPCP), a temporary program to help veterans return to making normal loan payments on a VA-guaranteed loan (guaranteed loan) after exiting a forbearance for financial hardship due, directly or indirectly, to the COVID-19 national emergency. Changes:

- In §36.4333, revised paragraphs (a)(2);
- Added §36.4336;
- Added Subpart F – COVID 19 Recovery Measures.



36.4408 Submission of proof to the Secretary 36.4408-1
 36.4409 Delegations of authority..... 36.4409-1
 36.4410 Supplementary administrative action..... 36.4410-1
 36.4411 Annual adjustments to the aggregate amount of assistance available 36.4411-1

Subpart D — Direct Loans

36.4500 Applicability 36.4500-1
 36.4501 Definitions..... 36.4501-1
 36.4502 Use of guaranty entitlement 36.4502-1
 36.4503 Amount and amortization 36.4503-1
 36.4504 Loan closing expenses 36.4504-1
 36.4505 Maturity of loan 36.4505-1
 36.4506 Recasting..... 36.4506-1
 36.4507 Refinancing of mortgage or other lien indebtedness 36.4507-1
 36.4508 Transfer of property by borrower 36.4508-1
 36.4509 Joint loans 36.4509-1
 36.4510 Prepayment, acceleration, and liquidation 36.4510-1
 36.4511 Advances after loan closing 36.4511-1
 36.4512 Taxes and insurance..... 36.4512-1
 36.4513 Foreclosure and liquidation..... 36.4513-1
 36.4514 Eligibility requirements 36.4514-1
 36.4515 Estate of veteran in real property 36.4515-1
 36.4516 Lien requirements 36.4516-1
 36.4517 Incorporation by reference..... 36.4517-1
 36.4518 Supplementary administrative action..... 36.4518-1
 36.4519 Eligible purposes and reasonable value requirements 36.4519-1
 36.4520 Delegation of authority 36.4520-1
 36.4521 Minimum property and construction requirements..... 36.4521-1
 36.4522 Waivers, consents and approvals 36.4522-1
 36.4523 Geographical limits..... 36.4523-1
 36.4524 Sale of loans..... 36.4524-1
 36.4525 Requirement of a construction warranty..... 36.4525-1
 36.4526 Issuance of fund reservation commitments..... 36.4526-1
 36.4527 Direct housing loans to Native American veterans on trust lands 36.4527-1
 36.4528 Vendee loan origination fee 36.4528-1
 36.4529 Vendee loan post-origination fees 36.4529-1
 36.4530 Vendee loan other fees..... 36.4530-1

Subpart E — Sale of Loans, Guarantee of Payment, and Flood Insurance

36.4600 Sale of loans, guarantee of payment..... 36.4600-1
 36.4700 Authority, purpose, and scope 36.4700-1
 36.4701 Definitions 36.4701-1
 36.4702 Requirement to purchase flood insurance where available 36.4702-1
 36.4703 Exemptions 36.4703-1
 36.4704 Escrow requirement..... 36.4704-1
 36.4705 Required use of standard flood hazard determination form 36.4705-1

H-16

36.4706	Forced placement of flood insurance.....	36.4706-1
36.4707	Determination fees.....	36.4707-1
36.4708	Notice of special flood hazards and availability of Federal disaster relief assistance.....	36.4708-1
36.4709	Notice of servicer's identity	36.4709-1

Subpart F--COVID-19 Recovery Measures

36.4800	Applicability.	36.4800-1
36.4801	Definitions.....	36.4801-1
36.4802	General purpose of the COVID-19 Veterans Assistance Partial Claim Payment program.....	36.4802-1
36.4803	General requirements of the COVID-19 Veterans Assistance Partial Claim Payment program.....	36.4803-1
36.4804	Partial claim payment as a home retention option.	36.4804-1
36.4805	Terms of the partial claim payment.	36.4805-1
36.4806	Terms of the assistance to the veteran.	36.4806-1
36.4807	Application for partial claim payment.	36.4807-1
36.4808	No effect on the servicing of the guaranteed loan.	36.4808-1
36.4809	Expiration of the COVID-19 Veterans Assistance Partial Claim Payment program.....	36.4809-1
36.4810	Oversight of the COVID-19 Veterans Assistance Partial Claim Payment program.....	36.4810-1
Appendix A to Part 36		36.App. A-1

Section Title index begins on next page

Index by Section Title, Arranged Alphabetically within Topics

Appendix A to Part 36 36.App. A-1

Assistance to Certain Disabled Veterans in Acquiring Specially Adapted Housing

Annual adjustments to the aggregate amount of assistance available 36.4411-1
 Authority 36.4400-1
 Definitions 36.4401-1
 Delegations of authority..... 36.4409-1
 Eligibility for assistance..... 36.4404-1
 Grant approval 36.4405-1
 Grant types 36.4402-1
 Guaranteed and direct loans..... 36.4407-1
 Reimbursement of costs and disbursement of grant funds 36.4406-1
 Submission of proof to the Secretary 36.4408-1
 Subsequent use..... 36.4403-1
 Supplementary administrative action..... 36.4410-1

Combination and Manufactured Home Lot Loans

Fees and charges 36.4254-1
 Loans for purchase or refinancing of a manufactured home 36.4252-1
 Loans for the acquisition of a lot 36.4255-1
 Loans to finance the purchase of manufactured homes and
 the cost of necessary site preparation..... 36.4251-1
 Title and lien requirements 36.4253-1

COVID-19 Recovery Measures

Applicability. 36.4800-1
 Application for partial claim payment. 36.4807-1
 Definitions..... 36.4801-1
 Expiration of the COVID-19 Veterans Assistance
 Partial Claim Payment program..... 36.4809-1
 General purpose of the COVID-19 Veterans Assistance
 Partial Claim Payment program..... 36.4802-1
 General requirements of the COVID-19 Veterans Assistance
 Partial Claim Payment program..... 36.4803-1
 No effect on the servicing of the guaranteed loan. 36.4808-1
 Oversight of the COVID-19 Veterans Assistance
 Partial Claim Payment program..... 36.4810-1
 Partial claim payment as a home retention option. 36.4804-1
 Terms of the partial claim payment. 36.4805-1
 Terms of the assistance to the veteran. 36.4806-1

H-18

Direct Loans

Advances after loan closing.....	36.4511-1
Amount and amortization	36.4503-1
Applicability	36.4500-1
Definitions 36.4501-1	
Delegation of authority	36.4520-1
Direct housing loans to Native American veterans on trust lands	36.4527-1
Eligibility requirements	36.4514-1
Eligible purposes and reasonable value requirements	36.4519-1
Estate of veteran in real property	36.4515-1
Foreclosure and liquidation.....	36.4513-1
Geographical limits.....	36.4523-1
Incorporation by reference.....	36.4517-1
Issuance of fund reservation commitments.....	36.4526-1
Joint loans	36.4509-1
Lien requirements	36.4516-1
Loan closing expenses	36.4504-1
Maturity of loan	36.4505-1
Minimum property and construction requirements.....	36.4521-1
Prepayment, acceleration, and liquidation	36.4510-1
Recasting	36.4506-1
Refinancing of mortgage or other lien indebtedness	36.4507-1
Requirement of a construction warranty.....	36.4525-1
Sale of loans	36.4524-1
Supplementary administrative action.....	36.4518-1
Taxes and insurance.....	36.4512-1
Transfer of property by borrower	36.4508-1
Use of guaranty entitlement	36.4502-1
Waivers, consents and approvals	36.4522-1

Financing Manufactured Home Units

Allowable fees and charges; manufactured home unit	36.4232-2
Title and lien requirements	36.4234-2
Warranty requirements.....	36.4231-2

Flood Insurance Requirements

Authority, purpose, and scope 36.4700-1
 Definitions 36.4701-1
 Determination fees 36.4707-1
 Escrow requirement 36.4704-1
 Exemptions 36.4703-1
 Forced placement of flood insurance 36.4706-1
 Notice of servicer’s identity 36.4709-1
 Notice of special flood hazards and availability of Federal
 disaster relief assistance 36.4708-1
 Required use of standard flood hazard determination form..... 36.4705-1
 Requirement to purchase flood insurance where available..... 36.4702-1
 Appendix A to Part 36 36.App. A-1

**General Provisions—Guaranty of Loans to Veterans to Purchase
 Manufactured Homes and Lots, Including Site Preparation**

Advertising and Solicitation Requirements 36.4227-1
 Amortization—prepayment 36.4211-1
 Authority to close manufactured home loans on the automatic basis..... 36.4225-1
 Capacity of parties 36.4213-1
 Computation of guaranty 36.4205-1
 Delegation of authority 36.4221-1
 Delivery of notice 36.4217-1
 Eligibility of the veteran for the manufactured home loan
 benefit under 38 U.S.C. 3712..... 36.4203-1
 Geographical limits..... 36.4214-1
 Hazard insurance..... 36.4222-1
 Incorporation by reference..... 36.4219-1
 Interest rate reduction refinancing loan 36.4223-1
 Interest rates and late charges 36.4212-1
 Joint loans 36.4210-1
 Loan purposes, maximum loan amounts and terms..... 36.4204-1
 Maintenance of records..... 36.4215-1
 Manufactured home location standards. 36.4208-1
 Manufactured home standards 36.4207-1
 Payment in full; termination of guaranty 36.4218-1
 Refinancing existing manufactured home loan including
 purchase of lot..... 36.4224-1
 Reporting requirements..... 36.4209-1
 Substantive and procedural requirements; waiver 36.4220-1
 Underwriting standards, occupancy, and non-discrimination
 requirements..... 36.4206-1
 Withdrawal of authority to close manufactured home
 loans on the automatic basis 36.4226-1

**Guaranty of Loans to Veterans to Purchase Manufactured homes and lots,
including site preparation**

Applicability of the series 36.4201-1
Definitions 36.4202-1

Guaranty or Insurance of Loans to Veterans with Electronic Reporting

Acceptability of partial payments. 36.4316-1
Acceptable ownership arrangements and documentation. 36.4361-1
Advances and other charges..... 36.4314-1
Advertising and solicitation requirements. 36.4370-1
Amortization. 36.4310-1
Applicability of this subpart..... 36.4300-1
Applicability. 36.4391-1
Appraisal requirements. 36.4365-1
Authority to close loans on the automatic basis..... 36.4352-1
Capacity of parties to contract. 36.4331-1
Certification requirements. 36.4392-1
Charges and fees. 36.4313-1
Combination residential and business property. 36.4357-1
Complaint and hearing procedure. 36.4393-1
Computation of guaranties or insurance credits..... 36.4302-1
Computation of indebtedness..... 36.4325-1
Condominium loans. 36.4360-1
Conformance of loan instruments. 36.4337-1
Cooperative loans..... 36.4346-1
Correction of structural defects..... 36.4369-1
Death or insolvency of holder..... 36.4341-1
Debits and credits to insurance account under §36.4320..... 36.4378-1
Definitions36.4301-1
Delegation of authority. 36.4345-1
Delivery of notice. 36.4335-1
Deviations; changes of identity..... 36.4304-1
Documentation and related requirements-flexible condominiums
and condominiums with offsite facilities..... 36.4364-1
Election to convey security..... 36.4323-1
Eligibility of loans; reasonable value requirements..... 36.4339-1
Estate of veteran in real property. 36.4354-1
Geographical limits..... 36.4332-1
Guaranty claims; subsequent accounting..... 36.4324-1
Hazard insurance..... 36.4329-1
Insured loan and insurance account. 36.4375-1
Interest rate reduction refinancing loan. 36.4307-1
Interest rates..... 36.4312-1
Joint loans. 36.4308-1

Lender appraisal processing program 36.4347-1
Loan modifications. 36.4315-1
Loan termination. 36.4322-1
Loans, first, second, or unsecured..... 36.4355-1
Maintenance of records..... 36.4333-1
Minimum property and construction requirements..... 36.4351-1
Miscellaneous legal requirements..... 36.4363-1
Nondiscrimination and equal opportunity in housing
 certification requirements. 36.4368-1
Partial disbursement..... 36.4305-1
Partial or total loss of guaranty or insurance. 36.4328-1
Payment of insurance..... 36.4379-1
Prepayment. 36.4311-1
Purpose. 36.4390-1
Qualification for designated fee appraisers..... 36.4342-1
Refinancing of mortgage or other lien indebtedness. 36.4306-1
Refunding of loans in default..... 36.4320-1
Release of security. 36.4327-1
Reporting requirements..... 36.4303-1
Reports of insured institutions. 36.4380-1
Requirement of construction warranty..... 36.4367-1
Restriction on designated appraisers..... 36.4343-1
Rights and restrictions..... 36.4362-1
Service of process. 36.4321-1
Servicer appraisal processing program. 36.4348-1
Servicer loss-mitigation options and incentives. 36.4319-1
Servicer reporting requirements..... 36.4317-1
Servicer tier ranking—temporary procedures..... 36.4318-1
Servicing procedures for holders. 36.4350-1
Subrogation and indemnity. 36.4326-1
Substitution of trustees..... 36.4330-1
Supplemental loans. 36.4359-1
Supplementary administrative action..... 36.4338-1
Tax, special assessment and other liens..... 36.4356-1
Transfer of insured loans. 36.4377-1
Transfer of title by borrower or maturity by demand or acceleration..... 36.4309-1
Underwriting standards, processing procedures, lender responsibility, and lender
 certification. 36.4340-1
Waivers, consents, and approvals; when effective. 36.4349-1
Withdrawal of authority to close loans on the automatic basis. 36.4353-1

Sale of Loans, Guarantee of Payment

Sale of loans, guarantee of payment 36.4600-1

Servicing, Liquidation of Security, and Claims

Advances and other charges..... 36.4276-1
Computation of guaranty claims..... 36.4284-1
Events constituting default and acceptability of
 partial payments..... 36.4275-1
Foreclosure or repossession 36.4283-1
Legal proceedings (notice of repossession) 36.4282-1
Partial or total loss of guaranty 36.4286-1
Refunding of loans in default..... 36.4281-1
Release of security 36.4277-1
Reporting of defaults..... 36.4280-1
Servicing procedures for holders 36.4278-1
Subrogation and indemnity 36.4285-1
Substitution of trustees..... 36.4287-1

§36.4332 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. (Authority: 38 U.S.C. 3703(c)(1))

§36.4333 Maintenance of records.

(a) (1) The holder shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto and the dates thereof, including copies of bills and receipts for such disbursements. These records shall be maintained until the Secretary ceases to be liable as guarantor or insurer of the loan, or, if the Secretary has paid a claim on the guaranty, until 3 years after such claim was paid. For the purpose of any accounting with the Secretary or computation of a claim, any holder who fails to maintain such record and, upon request, make it available to the Secretary for review 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, or to have not made the disbursement for which reimbursement is claimed, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such holder.

(2) The holder shall maintain records supporting their decision to approve any loss mitigation option. The holder shall maintain records supporting their decision to pursue a partial claim payment under the COVID-19 Veterans Assistance Partial Claim Payment program established under subpart F of this part. Such records shall be retained a minimum of 3 years from the date of any incentive paid in accordance with §36.4319(a) or, in the case of a partial claim payment under the COVID-19 Veterans Assistance Partial Claim Payment program, the date the veteran's guaranteed loan is made current under such program, whichever is later, and shall include, but not be limited to, credit reports, verifications of income, employment, assets, liabilities, and other factors affecting the obligor's credit worthiness, work sheets, and other documents supporting the holder's decision.

(3) For any loan where the claim on the guaranty was paid on or after February 1, 2008, or action described in paragraph (a)(2) of this section was taken after February 1, 2008, holders shall submit any documents described in paragraph (a)(1) or (a)(2) of this section to the Secretary in electronic form; i.e., an image of the original document in .jpg, .gif, .pdf, or a similar widely accepted format.

(b) The lender shall retain copies of all loan origination records on a VA-guaranteed loan for at least two years 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, 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. 501, 3703(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 lender or holder pertaining to loans guaranteed or insured by the Secretary. (Authority: 38 U.S.C. 3703(c)(1))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0515)

(Authority: 38 U.S.C. 3703(c)(1), 3704(d))

[73 FR 6310, Feb. 1, 2008. Redesignated at 75 FR 33705, June 15, 2010, as amended at 80 FR 34319, June 16, 2015; 86 FR 28708, May 28, 2021]

Supplement *Highlights* Reference(s): 50(1)

Next Section is §36.4335

[Reserved]

§36.4335 Delivery of notice.

Except where otherwise specified in this part, any notice required by §§36.4300 to 36.4380 to be given the Secretary must be in writing or such other communications medium as may be approved by an official designated in §36.4345 and delivered, by mail or otherwise, to the VA 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 certified mail when so provided by §§36.4300 to 36.4380. (Authority: 38 U.S.C. 3703(c)(1))

§36.4336 Oversight of servicing

(a) Subject to notice and opportunity for a hearing, whenever the Secretary finds that any servicer 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 willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government, the Secretary may refuse either temporarily or permanently to guarantee or insure any loans made by such servicer and may bar such servicer from servicing or acquiring guaranteed loans.

(b) Notwithstanding paragraph (a) of this section, but subject to §36.4328, the Secretary will not refuse to pay a guaranty or insurance claim on a guaranteed loan theretofore entered into in good faith between a veteran and such servicer.

(c) The Secretary may also refuse either temporarily or permanently to guarantee or insure any loans made by a lender or holder suspended, debarred, denied, or otherwise restricted from participation in FHA's insurance programs pursuant to a determination of the Secretary of Housing and Urban Development.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0515)

(Authority: 38 U.S.C. 3703, 3704(d), 3720)

[86 FR 28708, May 28, 2021]

Supplement **Highlights** Reference(s): 50(1)

Subpart F--COVID-19 Recovery Measures

Source: 86 Fed. Reg. 28708, May 28, 2021

Supplement *Highlights* reference: 50(1).

36.4800	Applicability.	36.4800-1
36.4801	Definitions.....	36.4801-1
36.4802	General purpose of the COVID-19 Veterans Assistance Partial Claim Payment program.....	36.4802-1
36.4803	General requirements of the COVID-19 Veterans Assistance Partial Claim Payment program.....	36.4803-1
36.4804	Partial claim payment as a home retention option.....	36.4804-1
36.4805	Terms of the partial claim payment.....	36.4805-1
36.4806	Terms of the assistance to the veteran.....	36.4806-1
36.4807	Application for partial claim payment.....	36.4807-1
36.4808	No effect on the servicing of the guaranteed loan.....	36.4808-1
36.4809	Expiration of the COVID-19 Veterans Assistance Partial Claim Payment program.....	36.4809-1
36.4810	Oversight of the COVID-19 Veterans Assistance Partial Claim Payment program.....	36.4810-1

§36.4800 Applicability

This subpart applies to all loans guaranteed by VA, to the extent such loans are affected by the COVID-19 national emergency.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

[86 FR 28708, May 28, 2021]

Supplement *Highlights* Reference(s): 50(1)

§36.4801 Definitions

The following definitions of terms apply to this subpart:

Alternative to foreclosure means an alternative to foreclosure for which the Secretary may pay an incentive under §36.4319. These alternatives include compromise sale (sometimes called a short sale) and deed-in-lieu of foreclosure.

COVID-19 forbearance means any forbearance of scheduled monthly guaranteed loan payments, granted to a veteran under section 4022 of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136). It can also include any forbearance of scheduled monthly guaranteed loan payments, granted to a veteran for a financial hardship due, directly or indirectly, to the COVID-19 national emergency.

COVID-19 indebtedness means the dollar amount the veteran is obligated to pay under the guaranteed loan terms, but that is not collected during a COVID-19 forbearance.

Guaranteed loan means a loan guaranteed under chapter 37 of title 38, United States Code.

Loss-mitigation option means a loss-mitigation option for which the Secretary may pay an incentive under §36.4319. These options include a repayment plan, special forbearance, and loan modification.

Secretary means the Secretary of Veterans Affairs, or any employee of the Department of Veterans Affairs (VA) authorized to act in the Secretary's stead.

Servicer means, for the purposes of this subpart, the holder, servicer, or servicing agent, as defined in §36.4301. The terms can apply jointly or severally, or jointly and severally.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

[86 FR 28708, May 28, 2021]

Supplement **Highlights** Reference(s): 50(1)

§36.4802 General purpose of the COVID-19 Veterans Assistance Partial Claim Payment program

The COVID-19 Veterans Assistance Partial Claim Payment program is a temporary program to help veterans who have suffered a COVID-19 financial hardship. Notwithstanding the requirements elsewhere in this part regarding payment of a guaranty claim or refunding a loan, VA may assist a veteran exiting a COVID-19 forbearance by purchasing from the servicer the veteran's COVID-19 indebtedness. Such a purchase is called a partial claim payment. In exchange for VA's partial claim payment on behalf of the veteran, the veteran must agree to repay the Secretary, in the amount of such partial claim payment, upon loan terms established by the Secretary.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

[86 FR 28708, May 28, 2021]

Supplement *Highlights* Reference(s): 50(1)

§36.4803 General requirements of the COVID-19 Veterans Assistance Partial Claim Payment program

The following general requirements must be met before the Secretary will allow for participation in the COVID-19 Veterans Assistance Partial Claim Payment program:

(a) The loan for which a partial claim payment is requested must be a guaranteed loan that was either--

(1) Current or less than 30 days past due on March 1, 2020; or

(2) Made on or after March 1, 2020;

(b) The veteran on whose behalf VA will pay a partial claim payment both received a COVID-19 forbearance and missed at least one scheduled monthly payment;

(c) There remains unpaid at least one scheduled monthly payment that the veteran did not make while under a COVID-19 forbearance;

(d) The veteran indicates that the veteran can resume making scheduled monthly payments, on time and in full, and that the veteran occupies, as the veteran's residence, the property securing the guaranteed loan for which the partial claim payment is requested; and

(e) The veteran executes, in a timely manner, all loan documents necessary to establish an obligation to repay the Secretary for the partial claim payment.

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

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

[86 FR 28708, May 28, 2021]

Supplement *Highlights* Reference(s): 50(1)

§36.4804 Partial claim payment as a home retention option

(a) The Veterans Assistance Partial Claim Payment program is designed to address the financial hardships due, directly or indirectly, to the COVID-19 national emergency. A servicer may therefore use the partial claim payment option, even in cases where other home retention options are feasible, provided the partial claim payment option is in the veteran's financial interest.

(b) If the veteran notifies the servicer that the veteran does not want to retain ownership of the property securing the guaranteed loan, the servicer may immediately proceed to offering an alternative to foreclosure.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

[86 FR 28708, May 28, 2021]

Supplement *Highlights* Reference(s): 50(1)

§36.4805 Terms of the partial claim payment

(a) In order for a partial claim payment to be payable, the servicer must submit to the Secretary, not later than 120 days after the date the veteran exits the COVID-19 forbearance, a request for such payment, as prescribed in §36.4807.

(b) The amount of the partial claim payment that VA will pay to the servicer, as calculated under paragraph (e) of this section, shall not exceed 30 percent of the unpaid principal balance of the guaranteed loan. For the purposes of this paragraph (b), the unpaid principal balance of the guaranteed loan means such balance as of the date the veteran entered into a COVID-19 forbearance.

(c) VA will pay only one partial claim payment per guaranteed loan.

(d) VA will pay only one partial claim payment per veteran.

(e)

(1) Because VA will pay only one partial claim payment per guaranteed loan, and only one partial claim payment per veteran, a servicer must, when calculating the amount of partial claim payment to be paid by VA to the servicer, include the full amount of indebtedness that is necessary to bring the guaranteed loan current.

(2) To bring the guaranteed loan current, servicers must include the full COVID-19 indebtedness, comprising--

(i) All scheduled but missed monthly payments of principal and interest; and

(ii) As applicable, all scheduled but missed monthly escrow payments for real estate taxes and insurance premiums, or where the guaranteed loan documents do not provide for monthly escrowing, all payments the servicer made to real estate tax authorities and insurance providers, on the veteran's behalf, during the COVID-19 forbearance.

(3) Also in bringing the guaranteed loan current, servicers must include--

(i) All scheduled monthly payments (comprising principal, interest, and escrow payments for real estate taxes and insurance premiums) due within 31 days of the date the servicer provides to the veteran the note and security instrument described in §36.4806;

(ii) If applicable, all scheduled monthly payments (comprising principal, interest, and escrow payments for real estate taxes and insurance premiums) that were missed on or after March 1, 2020, but before the veteran was granted the COVID-19 forbearance; and

(iii) The actual amount of recording fees, recording taxes, or other charges levied by the recording authority, that must be paid in order to record the security instrument described in §36.4806.

(4) Except for amounts identified in paragraphs (e)(2) and (3) of this section, servicers shall not include any amounts (e.g., fees, penalties, or interest) beyond the amounts scheduled or calculated as if the veteran made all contractual payments on time and in full under the terms of the guaranteed loan.

(5) Nothing in this section shall preclude a veteran from making an optional payment or a servicer from waiving a veteran's indebtedness, such that the amount of partial claim payment would not exceed the 30 percent cap described in paragraph (b) of this section.

(6) If the servicer miscalculates the partial claim amount, resulting in an overpayment to the servicer, the amount of such overpayment shall constitute a liability of the servicer to the United States. The servicer must remit the overpaid amount immediately to VA.

(7) If the servicer miscalculates the partial claim amount, resulting in underpayment (i.e., an amount insufficient to bring the guaranteed loan current), the servicer must waive the difference.

(8) Servicers shall not include any amounts for a monthly payment that is scheduled to be paid on a date that is more than 31 days after the servicer provides to the veteran the note and security instrument described in §36.4806.

(f) The servicer must prepare a note and security instrument in favor of the "Secretary of Veterans Affairs, an Officer of the United States". The name of the incumbent Secretary should not be included unless State law requires naming a real person.

(1) The note must be consistent with the terms described in §36.4806 and include all borrowers who are obligated on the guaranteed loan; and

(2) The security instrument must include all persons (borrowers, as well as non-borrowers) who hold a title interest in the property securing the guaranteed loan.

(g) Subject to paragraph (a) of this section, all loan documents must be fully executed not later than 90 days after the veteran exits the COVID-19 forbearance.

(h) The servicer must record the security instrument timely, as prescribed in §36.4807.

(i) The servicer must not charge, or allow to be charged, to the veteran any fee in connection with the COVID-19 Veterans Assistance Partial Claim Payment program.

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

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

[86 FR 28708, May 28, 2021]

Supplement *Highlights* Reference(s): 50(1)

§36.4806 Terms of the assistance to the veteran

(a) If a veteran chooses to accept VA's assistance (i.e., a partial claim payment to the servicer, on the veteran's behalf), the veteran, and all co-borrowers on the guaranteed loan, must execute a note and security instrument in favor of the "Secretary of Veterans Affairs, an Officer of the United States". The name of the incumbent Secretary should not be included unless State law requires naming a real person.

(b) Specific terms of the note and security instrument shall include the following:

(1) The amount to be repaid to the Secretary, by the veteran, is the amount calculated under §36.4805(e);

(2) Repayment in full is required immediately upon--

(i) The veteran's transfer of title to the property; or

(ii) The refinancing or payment in full otherwise of the guaranteed loan with which the partial claim payment is associated.

(3) A veteran may make payments for the subordinate loan, in whole or in part, without charge or penalty. If the veteran makes a partial prepayment, there will be no changes in the due date unless VA agrees in writing to those changes.

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

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

[86 FR 28708, May 28, 2021]

Supplement *Highlights* Reference(s): 50(1)

§36.4807 Application for partial claim payment

(a) The servicer must provide VA with the original note required by §36.4805. Not later than 180 days following the date the security instrument, required by §36.4805, is fully executed, the servicer must provide VA with the original security instrument and evidence that the servicer recorded such instrument. If the recording authority causes a delay, the servicer may request an extension of time, in writing, from VA.

(b) Servicers must report a partial claim event to VA through VA's existing electronic loan servicing system within seven days of the date the veteran returns to the servicer the executed note required by §36.4805, but not later than 120 days after the date the veteran exits the COVID-19 forbearance.

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0021 and 2900-XXXX)

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

[86 FR 28708, May 28, 2021]

Supplement *Highlights* Reference(s): 50(1)

§36.4808 No effect on the servicing of the guaranteed loan

(a) Servicers must continue to service the guaranteed loan in accordance with subpart B of this part.

(b) The liability of the United States for any guaranteed loan shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the guaranteed loan. A partial claim payment does not affect the guaranty percentage established at the time the guaranteed loan was made.

(c) Receipt of a partial claim payment shall not eliminate a servicer's option under 38 U.S.C. 3732 to convey to the Secretary the security for the guaranteed loan.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

[86 FR 28708, May 28, 2021]

Supplement *Highlights* Reference(s): 50(1)

§36.4809 Expiration of the COVID-19 Veterans Assistance Partial Claim Payment program

(a) Subject to paragraph (b) of this section, the Secretary will not accept a request for a partial claim payment after the date that is 180 days after the date the COVID-19 national emergency ends under the National Emergencies Act, 50 U.S.C.161.

(b) If a veteran's COVID-19 forbearance does not end until after the date described in paragraph (a) of this section, the Secretary shall accept a request for a partial claim payment, provided that such request is submitted to the Secretary not later than 120 days after the date the veteran exits the COVID-19 forbearance.

(c) Notwithstanding paragraphs (a) and (b) of this section, the Secretary will not accept a request for a partial claim payment after October 28, 2022.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

[86 FR 28708, May 28, 2021]

Supplement *Highlights* Reference(s): 50(1)

§36.4810 Oversight of the COVID-19 Veterans Assistance Partial Claim Payment program

(a) Subject to notice and opportunity for a hearing, whenever the Secretary finds with respect to a partial claim payment that any servicer 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 willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government, the Secretary may refuse either temporarily or permanently to guarantee or insure any loans made by such servicer and may bar such servicer from servicing or acquiring guaranteed loans.

(b) Notwithstanding paragraph (a) of this section, but subject to §36.4328, the Secretary will not refuse to pay a guaranty or insurance claim on a guaranteed loan theretofore entered into in good faith between a veteran and such servicer.

(c) The Secretary may also refuse either temporarily or permanently to guarantee or insure any loans made by a lender or holder suspended, debarred, denied, or otherwise restricted from participation in FHA's insurance programs pursuant to a determination of the Secretary of Housing and Urban Development.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0515)

(Authority: 38 U.S.C. 3703, 3704(d), 3720)

[86 FR 28708, May 28, 2021]

Supplement *Highlights* Reference(s): 50(1)