

Custom Federal Regulations Service™

**This is supplemental material  
for Book H of your set of  
Federal Regulations**

Title 38, Part 36

*Loan Guaranty*

**Veterans Benefits Administration**

Supplement No. 38

Covering period of *Federal Register* issues  
through January 1, 2012

Copyright © 2012 Jonathan Publishing

## **Need Assistance?**

Questions concerning **MISSING SUPPLEMENTS**, need for **ADDITIONAL BOOKS**, and other **DISTRIBUTION LIST** issues for this loose-leaf service should be directed to:

Department of Veterans Affairs  
Veterans Benefits Administration  
Administration  
Mail Code: 20M33  
810 Vermont Avenue, N.W.  
Washington DC 20420  
Telephone: 202/273-7588  
Fax: 202/275-5947  
E-mail: [coarms@vba.va.gov](mailto:coarms@vba.va.gov)

Questions concerning the **FILING INSTRUCTIONS** for this loose-leaf service,  
or the reporting of **SUBSTANTIVE ERRORS** in the text,  
may be directed to:

Jonathan Publishing  
660 Laurel Street, B-103  
Baton Rouge, LA 70802  
Telephone: 225-205-5873  
Fax: 702-993-6003  
E-mail: [info@jonpub.com](mailto:info@jonpub.com)

Copyright © 2012 Jonathan Publishing

# 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. 38

5 January 2012

Covering the period of Federal Register issues  
through January 1, 2012

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.

**FILING INSTRUCTIONS**

**Book H, Supplement No. 38  
January 5, 2012**

*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**

36.4315-1 to 36.4315-2

36.4315-1 to 36.4315-2

§36.4315

**Be sure to complete the  
*Supplement Filing Record* (page H-8)  
when you have finished filing this material.**

## HIGHLIGHTS

### Book H, Supplement No. 38 January 5, 2012

**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 20 December 2011, the VA published a final rule, effective 19 January 2012, to amend a VA Loan Guaranty regulation related to modification of guaranteed housing loans in default. Change:

- In §36.4315, changed “executed” to “approved” in paragraph (a)(8)(i) and added “(subject to the maximum amounts prescribed in §36.4314)” to paragraph (a)(10).



**§36.4315 Loan modifications.**

(a) The terms of any guaranteed loan may be modified by written agreement between the holder and the borrower, without prior approval of the Secretary, if all of the following conditions are met:

(1) The loan is in default;

(2) The event or circumstances that caused the default has been or will be resolved and it is not expected to re-occur;

(3) The obligor is considered to be a reasonable credit risk, based on a review by the holder of the obligor's creditworthiness under the criteria specified in §36.4340, including a current credit report. The fact of the recent default will not preclude the holder from determining the obligor is now a satisfactory credit risk provided the holder determines that the obligor is able to resume regular mortgage installments when the modification becomes effective based upon a review of the obligor's current and anticipated income, expenses, and other obligations as provided in §36.4340;

(4) At least 12 monthly payments have been paid since the closing date of the loan;

(5) The current owner(s) is obligated to repay the loan, and is party to the loan modification agreement;

(6) The loan will be reinstated to performing status by virtue of the loan modification;

(7) A loan has not been modified more than once in a 3-year period or more than 3 times during the life of the loan;

(8) The loan as modified will bear a fixed-rate of interest, which:

(i) May not exceed the most recent Freddie Mac Weekly Primary Mortgage Market Survey Rate for 30-year fixed-rate conforming mortgages (U.S. Average), rounded to the nearest one-eighth of one percent (0.125%), as of the date the Modification Agreement is approved, plus 50 basis points;

(ii) After being determined and selected in accordance with paragraph (i), is not more than one percent higher than the existing rate on the loan; or,

(iii) In the case of a loan in which a State, Territorial, or local governmental agency provided assistance to the veteran for the acquisition of the dwelling, and the law providing that assistance precludes any revision in the interest rate on the loan, then the interest rate on the modified loan is the same or less than that on the original note evidencing the loan;

(9) The unpaid balance of the modified loan will be re-amortized over the remaining life of the loan, or if the loan term is to be extended, the maturity date will not exceed the shorter of:

(i) 360 months from the due date of the first installment required under the modification, or

(ii) 120 months after the original maturity date of the loan (unless the original term was less than 360 months, in which case the term may be extended to 480 months from the due date of the first installment on the original loan);

(10) Only the following items may be included in the modified indebtedness: Unpaid principal; accrued interest; deficits in the taxes and insurance impound accounts; amounts incurred to pay actual legal fees and foreclosure costs related to the canceled foreclosure (subject to the maximum amounts prescribed in §36.4314); the cost of a title insurance policy endorsement or other update for the modified loan; and advances required to preserve the lien position, such as homeowner association fees, special assessments, water and sewer liens, etc. Late fees and other charges may not be capitalized;

(11) The holder will not charge a processing fee, and all unpaid late fees will be waived. Any other actual costs incurred and legally chargeable, but which cannot be capitalized in the modified indebtedness, may be collected directly from the borrower as part of the modification process or waived, at the discretion of the servicer;

(12) Holders will ensure the first lien status of the modified loan;

(13) The dollar amount of the guaranty will not exceed the greater of:

(i) The original guaranty amount of the loan being modified (but if the modified loan amount is less than the original loan amount, then the amount of guaranty will be equal to the original guaranty percentage applied to the modified loan), or

(ii) 25 percent of the loan being modified subject to the statutory maximum specified at 38 U.S.C. 3703(a)(1)(B); and

(14) The obligor will not receive any cash back from the modification.

(b) If a loan fails to meet one or more of the conditions identified in paragraph (a), the holder must submit the loan file to the Secretary for approval before entering into any loan modification agreement. The Secretary will grant such approval if the Secretary determines that the modification is in the best interests of the veteran and the Government after balancing the risks of non-approval versus approval despite the absence of one or more of the conditions identified in paragraph (a) of this section.

(c) This section does not create a right of a borrower to have a loan modified, but simply authorizes the loan holder to modify a loan in certain situations without the prior approval of the Secretary. (Authority: 38 U.S.C. 3703(c)(1), 3720)

[75 FR 33705, June 15, 2010, as amended at 76 FR 6558, Feb. 7, 2011; 76 FR 78829, Dec. 20, 2011]

**Supplement *Highlights* references:** 37(1), 38(1).