

§ 36.4363

changes or variations therein, approved in writing by the Secretary, and no certificate of guaranty or insurance credit shall be issued unless a copy of such warranty duly receipted by the purchaser is submitted with the loan papers.

[40 FR 34595, Aug. 18, 1975, as amended at 44 FR 47343, Aug. 13, 1979]

§ 36.4363 Nondiscrimination and equal opportunity in housing certification requirements.

(a) Any request for a master certificate of reasonable value on proposed or existing construction, and any request for appraisal of individual existing housing not previously occupied, which is received on or after November 21, 1962, will not be assigned for appraisal prior to receipt of a certification from the builder, sponsor or other seller, in the form prescribed by the Secretary, that neither it nor anyone authorized to act for it will decline to sell any property included in such request to a prospective purchaser because of his or her race, color, religion, sex or national origin.

(b) On requests for appraisal of individual proposed construction received on or after November 21, 1962, the prescribed nondiscrimination certification will be required if the builder is to sell the veteran the lot on which the dwelling is to be constructed, but will not be required if:

(1) The veteran owns the lot; or

(2) The lot is being acquired by the veteran from a seller other than the builder and there is no identity of interest between the builder and the seller of the lot.

(c) Each builder, sponsor or other seller requesting approval of site and subdivision planning shall be required to furnish a certification, in the form prescribed by the Secretary, that neither it nor anyone authorized to act for it will decline to sell any property included in such request to a prospective purchaser because of his or her race, color, religion, sex or national origin. Site and subdivision analysis will not be commenced by the Department of Veterans Affairs prior to receipt of such certification.

(d) No commitment shall be issued and no loan shall be guaranteed or in-

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sured under 38 U.S.C. Chapter 37 unless the veteran certifies, in such form as the Secretary shall prescribe, that

(1) Neither he/she, nor anyone authorized to act for him/her, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, sex, or national origin;

(2) He/she recognizes that any restrictive covenant on the property relating to race, color, religion, sex or national origin is illegal and void and any such covenant is specifically disclaimed; and

(3) He/she understands that civil action for preventive relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law.

[28 FR 7673, July 27, 1963, as amended at 36 FR 13032, July 13, 1971; 40 FR 34595, Aug. 18, 1975]

§ 36.4364 Correction of structural defects.

(a) The purpose of this section is to specify the types of assistance that the Secretary may render pursuant to 38 U.S.C. 1827 to an eligible borrower who has been unable to secure satisfactory correction of structural defects in a dwelling encumbered by a mortgage securing a guaranteed, insured or direct loan, and the terms and conditions under which such assistance will be rendered.

(b) A written application for assistance in the correction of structural defects shall be filed by a borrower under a guaranteed, insured or direct loan with the Director of the Department of Veterans Affairs office having loan jurisdiction over the area in which the dwelling is located. The application must be filed not later than 4 years after the date on which the first direct, guaranteed or insured mortgage loan on the dwelling was made, guaranteed or insured by the Secretary. A borrower under a direct, guaranteed or insured mortgage loan on the same dwelling which was made, guaranteed or insured subsequent to the first such

loan shall be entitled to file an application if it is filed within 4 years of the date on which such first loan was made, guaranteed or insured by the Secretary.

(c) An applicant for assistance under this section must establish that:

(1) The applicant is the owner of a one- to four-family dwelling which was inspected during construction by the Department of Veterans Affairs or the Federal Housing Administration.

(2) The applicant is an original veteran-borrower on an outstanding guaranteed, insured or direct loan secured by a mortgage on such dwelling which was made, guaranteed or insured on or after May 8, 1968. The Secretary may, however, recognize an applicant who is not the original veteran-borrower but who contracted to assume such borrower's personal obligation thereunder, if the Secretary determines that such recognition would be in the best interests of the Government in the particular case.

(3) There exists in such dwelling a structural defect, not the result of fire, earthquake, flood, windstorm, or waste, which seriously affects the livability of the dwelling.

(4) The applicant has made reasonable efforts to obtain correction of such structural defect by the builder, seller, or other person or firm responsible for the construction of the dwelling.

(d) In those instances in which the Secretary determines that assistance under this section is appropriate and necessary the Secretary may take any of the following actions:

(1) Pay such amount as is reasonably necessary to correct the defect, or

(2) Pay the claim of the borrower for reimbursement of the borrower's expenses for correcting or obtaining correction of the defect, or

(3) Acquire title to the property upon terms acceptable to the borrower and the holder of the guaranteed or insured loan.

(e) To the extent of any expenditure made by the Secretary pursuant to paragraph (d) of this section the Secretary shall be subrogated to any legal rights the borrower or applicant described in paragraph (c)(2) of this section may have against the builder, sell-

er, or other persons arising out of the structural defect or defects.

(f) The borrower shall not be entitled, as a matter of right, to receive the assistance in the correction of structural defects provided in this section. Any determination made by the Secretary in connection with a borrower's application for assistance shall be final and conclusive and shall not be subject to judicial or other review. Authority to act for the Secretary under this section is delegated to the Under Secretary for Benefits.

(g) For the purpose of this section, the term "structural defects seriously affecting livability" shall in no event be deemed to include (1) defects of any nature in a dwelling in respect to which the applicant for assistance under this section was the builder or general contractor, or (2) structural features, improvements, amenities, or equipment which were not taken into account in the Secretary's determination of reasonable value.

[33 FR 16088, Nov. 1, 1968, as amended at 36 FR 321, Jan. 9, 1971; 40 FR 34595, Aug. 18, 1975; 61 FR 28059, June 4, 1996]

§ 36.4365 Advertising and Solicitation Requirements.

Any advertisement or solicitation in any form (e.g., written, electronic, oral) from a private lender concerning housing loans to be guaranteed or insured by the Secretary:

(a) Must not include information falsely stating or implying that it was issued by or at the direction of VA or any other department or agency of the United States, and

(b) Must not include information falsely stating or implying that the lender has an exclusive right to make loans guaranteed or insured by VA.

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

[67 FR 9402, Mar. 1, 2002]

LOANS UNDER 38 U.S.C. 3703

SOURCE: Sections 36.4370 to 36.4375 appear at 13 FR 7281, Nov. 27, 1948, unless otherwise noted.