

Department of Veterans Affairs

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paragraph (a) of this section, credits legally applicable to the entire loan shall be applied as follows:

(1) Prepayments made expressly for credit to that portion of the indebtedness allocable to the veteran shall be applied to such portion of the indebtedness. All other payments shall be applied ratably to those portions of the loan allocable respectively to the veteran and to the other debtors.

(2) Proceeds of the sale or other liquidation of the security shall be applied ratably to the respective portions of the loan, such portion of the proceeds as represents the interest of the veteran being applied to that portion of the loan allocable to such veteran.

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

[44 FR 22725, Apr. 17, 1979, as amended at 55 FR 37473, Sept. 12, 1990]

§ 36.4211 Amortization—prepayment.

(a) To be eligible for guaranty under 38 U.S.C. 3712 a loan shall be amortized fully within the term of the loan in accordance with any generally recognized plan of amortization requiring approximately equal monthly payments. The loan shall not be payable on demand or at sight or presentation, or at a time not specified or computable from the language in the evidence of indebtedness, or on a renewal basis at the option of the holder. The first payment may be deferred not longer than 2 months from the date the loan is closed.

(b) No guaranteed loan security instrument shall contain any provision giving the holder a right to declare the loan due or otherwise to declare a default if the holder “shall feel insecure” or upon the occurrence of any similar condition at the holder’s option, without regard to any act or omission by the debtor.

(c) The debtor shall have the right, without penalty or fee, to prepay all or not less than one installment of the indebtedness at any time. Credit for any partial prepayment made on other than an installment due date may be postponed to the next installment due date. The holder and the debtor may agree at any time that any prepayment not previously applied in satisfaction of matured installments shall be reapplied

for the purpose of curing or preventing any subsequent default. Any prepayment in full of the indebtedness (unpaid principal balance plus earned interest) shall be credited on the date received. In determining the amount required to prepay the indebtedness in full the holder of the loan shall exclude all unearned interest or discount.

(d) Subject to paragraph (a) of this section any amounts which under the terms of a loan do not become due and payable on or before the last maturity date permissible for loans of its class under the limitations contained in § 36.4204 shall automatically fall due on such date.

§ 36.4212 Interest rates and late charges.

(a) In guaranteeing or insuring loans under 38 U.S.C. chapter 37, the Secretary may elect to require that such loans either bear interest at a rate that is agreed upon by the veteran and the lender, or bear interest at a rate not in excess of a rate established by the Secretary. The Secretary may, from time to time, change that election by publishing a notice in the FEDERAL REGISTER. Provided, however, that the interest rate of a loan for the purpose of an interest rate reduction under 38 U.S.C. 3712(a)(1)(F) must be less than the interest rate of the VA loan being refinanced. This paragraph (a) does not apply in the case of an adjustable rate mortgage being refinanced with a fixed rate loan.

(Authority: 38 U.S.C. 3703, 3712)

(b) For loans bearing an interest rate agreed upon by the veteran and the lender, the veteran may pay reasonable discount points in connection with the loan. The discount points may not be included in the loan amount, except for interest rate reduction refinancing loans under 38 U.S.C. 3712(a)(1)(F).

(Authority: 38 U.S.C. 3703, 3712)

(c) The rate of interest in instruments securing the indebtedness for all loans may be expressed in terms of add-on or discount.

(Authority: 38 U.S.C. 3710, 3712)

(d) Interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency or default; *Provided*, that a late charge not in excess of an amount equal to 4 percent of any installment paid more than 15 days after due date shall not be considered a violation of this limitation.

(Authority: 38 U.S.C. 3712)

(e) Adjustable rate mortgage loans which comply with the requirements of this paragraph are eligible for guaranty.

(1) *Interest rate index.* Changes in the interest rate charged on an adjustable rate mortgage must correspond to changes in the weekly average yield on one year (52 week) Treasury bills adjusted to a constant maturity. Yields on one year Treasury bills at "constant maturity" are interpolated by the United States Treasury from the daily yield curve. This curve, which relates the yield on the security to its time to maturity, is based on the closing market bid yields on actively traded one year Treasury bills in the over-the-counter market. The weekly average one year constant maturity Treasury bill yields are published by the Federal Reserve Board of the Federal Reserve System. The Federal Reserve Statistical Release Report H.15 (519) is released each Monday. These one year constant maturity Treasury bill yields are also published monthly in the Federal Reserve Bulletin, published by the Federal Reserve Board of the Federal Reserve System, as well as quarterly in the Treasury Bulletin, published by the Department of the Treasury.

(2) *Frequency of interest rate changes.* Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur not sooner than 12 months nor later than 18 months from the date of the borrower's first mortgage payment. The adjusted rate will become effective the first day of the month following the adjustment date; the first monthly payment at the new rate will be due on the first day of the following month. To set the new interest rate, the lender will determine the change between the initial (*i.e.*, base) index figure and the current

index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(3) *Method of rate changes.* Interest rate changes may only be implemented through adjustments to the borrower's monthly payments.

(4) *Initial rate and magnitude of changes.* The initial contract interest rate of an adjustable rate mortgage shall be agreed upon by the lender and the veteran. The rate must be reflective of adjustable rate lending. Annual adjustments in the interest rate shall be set at a certain spread or margin over the interest rate index prescribed in paragraph (e)(1) of this section. Except for the initial rate, this margin shall remain constant over the life of the loan. Annual adjustments to the contract interest rate shall correspond to annual changes in the interest rate index, subject to the following conditions and limitations:

(i) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(ii) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, rounded to the nearest one-eighth of one percent, up or down. For example, if the margin is 2 percent and the new index figure is 6.06 percent, the adjusted mortgage interest rate will be 8 percent. If the margin is 2 percent and the new index figure is 6.07 percent, the adjusted mortgage interest rate will be 8½ percent.

(5) *Pre-loan disclosure.* The lender shall explain fully and in writing to the borrower, no later than on the date

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upon which the lender provides the prospective borrower with a loan application, the nature of the obligation taken. The borrower shall certify in writing that he or she fully understands the obligation and a copy of the signed certification shall be placed in the loan folder and included in the loan submission to VA. Such lender disclosure must include the following items:

(i) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;

(ii) Identification of the interest rate index, its source of publication and availability;

(iii) The frequency (*i.e.*, annually) with which interest rate levels and monthly payments will be adjusted, and the length of the interval that will precede the initial adjustment; and

(iv) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the borrower over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(6) *Annual disclosure.* At least 25 days before any adjustment to a borrower's monthly payment may occur, the lender must provide a notice to the borrower which sets forth the date of the notice, the effective date of the change, the old interest rate, the new interest rate, the new monthly payment amount, the current index and the date it was published, and a description of how the payment adjustment was calculated. A copy of the annual disclosure shall be made a part of the lender's permanent record on the loan.

(Authority: 38 U.S.C. 3707, 3712)

[60 FR 38257, July 26, 1995]

§ 36.4213 Capacity of parties.

Nothing in the § 36.4200 series shall be construed to relieve any lender of responsibility for any loss caused by lack of legal capacity of any person to contract, sell, convey or encumber, or by the existence of other legal disability or defects invalidating or rendering unenforceable in whole or in part either the loan obligation or the security therefor.

§ 36.4214 Geographical limits.

The site for any manufactured home purchased with a guaranteed loan must be located within the United States of America, which for the purposes of 38 U.S.C. 3712 comprises the several States, the Territories and possessions of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

[46 FR 43670, Aug. 31, 1981, as amended at 48 FR 1717, Jan. 14, 1983]

§ 36.4215 Maintenance of records.

(a) The holder shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto and the dates thereof. This record shall be maintained until the Secretary ceases to be liable as guarantor of the loan. For the purpose of any accounting with the Secretary or computation of claim against the Secretary, any holder who fails to maintain such record 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, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such holder.

(b) The lender shall retain copies of all loan origination records on VA guaranteed loan for at least one year 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 reports, reports on other inspections of the property, and all closing papers and documents.

(Authority: 38 U.S.C. 501, 3703(c)(1), 3712(g))