

## Department of Veterans Affairs

## § 36.4254

June 6, 1969, the Secretary's determination must have been made prior to the recordation of the covenant.

(f) In the case of a combination loan or a loan to purchase a lot upon which a manufactured home owned by the veteran will be placed it shall be the responsibility of the lender that the veteran initially obtains or has an estate in the land constituting the manufactured home lot meeting the requirements of paragraph (a) of this section and to obtain and retain a security interest thereon meeting the requirements of paragraph (d) of this section.

(g) In the case of a combination loan to purchase a manufactured home lot and to refinance an existing purchase money loan on a manufactured home unit which is or will be located on the lot to be purchased, it shall be the responsibility of the lender to assure that the veteran obtains or retains an estate in the manufactured home and in the land meeting the requirements of paragraph (a) of this section and § 36.4234. The lender must also obtain and retain a first lien or the equivalent thereof on the estate of the veteran in both the manufactured home and in the lot on which the manufactured home is located.

(Authority: 38 U.S.C. 501, 3703(c), and 3712 (a)(1)(G), (e)(3) and (g))

[36 FR 3368, Feb. 23, 1971, as amended at 45 FR 55720, Aug. 21, 1980; 47 FR 49393, Nov. 1, 1982; 48 FR 40231, Sept. 9, 1983; 49 FR 22081, May 25, 1984; 55 FR 25976, June 26, 1990; 58 FR 37860, July 14, 1993; 61 FR 28058, June 4, 1996]

### § 36.4254 Fees and charges.

(a) Except as provided in § 36.4232 fees and charges incident to origination of a combination loan or a loan to purchase a lot upon which a manufactured home owned by the veteran will be placed which may be paid by the veteran shall be limited, with respect to the real estate portion of the loan, to reasonable and customary amounts for any of the following:

(1) Fees of the Department of Veterans Affairs appraiser and of compliance inspectors designated by the Department of Veterans Affairs, except appraisal fees incurred for the pre-determination of reasonable value re-

quested by others than veteran or lender,

(2) Recording fees and recording taxes or other charges incident to recordation,

(3) Credit report,

(4) That portion of taxes, assessments, and other similar items for the current year chargeable to the borrower and an initial deposit (lump-sum payment) for any tax and insurance account,

(5) Survey, if required by lender or veteran,

(6) Title examination and title insurance, if any,

(7) The actual amount charged for flood zone determinations, including a charge for a life-of-the-loan flood zone determination service purchased at the time of loan origination, if made by a third party who guarantees the accuracy of the determination. A fee may not be charged for a flood zone determination made by a Department of Veterans Affairs appraiser or for the lender's own determination, and

(8) Such other items as may be authorized in advance by the Under Secretary for Benefits as appropriate for inclusion under this paragraph as proper local variances.

(Authority: 38 U.S.C. 3712; 42 U.S.C. 4001 note, 4012a)

(b) A lender may charge and the veteran may pay a flat charge not exceeding one (1) percent of the amount of the loan less the portion thereof allocated to the manufactured home: *Provided*, That such flat charge shall be in lieu of all other charges relating to costs of origination not expressly specified and allowed in this schedule.

(c) Except for a refinancing loan pursuant to 38 U.S.C. 3712(a)(1)(F) or (G) fees and charges specified in this section may not be included in the loan.

(d)(1) Notwithstanding the provisions of paragraph (c) of this section and subject to the limitations set out in paragraphs (d)(4) and (d)(5) of this section, a fee must be paid to the Secretary. A fee of 1 percent of the total loan amount must be paid to the Secretary before a combination manufactured home and lot loan (or a loan to purchase a lot upon which a manufactured home owned by the veteran will be placed)

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will be eligible for guaranty. Provided, however, that the fee shall be 0.50 percent of the total loan amount for interest rate reduction refinancing loans guaranteed under 38 U.S.C. 3712(a)(1)(F). All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 3729(a))

(2) Subject to the limitations set out in paragraphs (d)(3) and (d)(4) of this section, a fee of one-half of one percent of the loan balance must be paid to the Secretary in a manner prescribed by the Secretary by a person assuming a loan to which section 3714 of chapter 37 of 38 U.S.C. applies. The instrument securing such a loan shall contain a provision describing the right of the holder to collect this fee as trustee for the Department of Veterans Affairs. The loan holder shall list the amount of this fee in every assumption statement provided and include a notice that the fee must be paid to the holder immediately following loan settlement. The fee must be transmitted to the Secretary within 15 days of receipt by the holder of notice of the transfer.

(Authority: 38 U.S.C. 3714, 3729)

(3) The lender is required to pay to the Secretary the fee described in paragraph (d)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (d)(4) and (d)(5) of this section, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If payment of the 1 percent fee is made more than 30 days after loan closing, interest will be assessed at a rate set in conformity with the Department of Treasury's Fiscal Requirements Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily

basis beginning on the date of closing, although the interest will be assessed only on funding fee payments received more than 30 days after closing.

(Authority: 38 U.S.C. 501)

(4) The lender is required to pay to the Secretary electronically through the Automated Clearing House (ACH) system the fees described in paragraphs (d)(1) and (d)(2) of this section and any late fees and interest due on them. This shall be paid to a collection agent by operator-assisted telephone, terminal entry, or CPU-to-CPU transmission. The collection agent will be identified by the Secretary. The lender shall provide the collection agent with the following: authorization for payment of the funding fee (including late fees and interest) along with the following information: VA lender ID number; four-digit personal identification number; dollar amount of debit; VA loan number; OJ (office of jurisdiction) code; closing date; loan amount; information about whether the payment includes a shortage, late charge, or interest; veteran name; loan type; sale amount; downpayment; whether the veteran is a reservist; and whether this is a subsequent use of entitlement. For all transactions received prior to 8:15 p.m. on a workday, VA will be credited with the amount paid to the collection agent at the opening of business the next banking day.

(Authority: 38 U.S.C. 3729(a))

(5) The fee described in paragraphs (d)(1) and (d)(2) of this section shall not be collected from a veteran who is receiving compensation or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in section 3701(b)(2) of title 38 U.S.C.

(Authority: 38 U.S.C. 3729(b))

(6) Collection of the loan fee in this paragraph does not apply to loans closed prior to August 17, 1984, between

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October 1, and October 15, 1987, inclusive, between November 16 and December 20, 1987, inclusive, nor to loans closed after September 30, 1989.

(Authority: 38 U.S.C. 3729(c))

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900-0474)

[36 FR 3369, Feb. 23, 1971, as amended at 46 FR 43671, Aug. 31, 1981; 47 FR 46700, Oct. 20, 1982; 48 FR 40231, Sept. 6, 1983; 50 FR 5754, Feb. 12, 1985; 53 FR 27048, July 18, 1988; 55 FR 37473, Sept. 12, 1990; 60 FR 38259, July 26, 1995; 61 FR 28058, June 4, 1996; 62 FR 63278, Nov. 28, 1997]

### § 36.4255 Loans for the acquisition of a lot.

(a) A loan to finance all or part of the cost of acquisition by the veteran of a lot on which to place a manufactured home owned by the veteran shall be eligible for guaranty, *Provided, That*:

(1) The veteran will acquire title to such lot that conforms to the requirements of § 36.4253(a),

(2) The loan is secured as required by § 36.4253(d),

(3) The lot is determined by the Secretary to be an acceptable manufactured homesite pursuant to § 36.4208,

(4) The portion of the loan allocated to acquisition of the lot does not exceed the reasonable value of the lot as determined by the Secretary,

(5) The loan conforms otherwise to the requirements of the § 36.4200 series.

(b) The cost of lot acquisition which will not be paid from the proceeds of the loan must be paid by the veteran in cash from his or her own resources.

(c) For the purpose of this section, acquisition of a manufactured home lot includes:

(1) The refinancing of the balance owed by the veteran as purchaser under an existing real estate installment contract, and

(2) The refinancing of existing mortgage loans or other liens which are secured of record on a manufactured home lot owned by the veteran.

(Authority: 38 U.S.C. 501, and 3712(g))

[40 FR 13215, Mar. 25, 1975, as amended at 48 FR 40231, Sept. 6, 1983]

## SERVICING, LIQUIDATION OF SECURITY AND CLAIM

### § 36.4275 Events constituting default and acceptability of partial payments.

(a) Except as provided in paragraphs (a)(1), (a)(2) and (a)(3) of this section, the conveyance of or other transfer of title to property by operation of law or otherwise, after the creation of a lien thereon to secure a loan which is guaranteed in whole or in part by the Secretary, shall not constitute an event of default, or acceleration of maturity, elective or otherwise, and shall not of itself terminate or otherwise affect the guaranty.

(1) The Secretary may issue guaranty on loans in which a State, Territorial, or local governmental agency provides assistance to a veteran for the acquisition of a mobile home or lot. Such loans will not be considered ineligible for guaranty if the State, Territorial, or local authority, by virtue of its laws or regulations or by virtue of Federal law, requires the acceleration of maturity of the loan upon the sale or conveyance of the security property to a person ineligible for assistance from such authority.

(2) At the time of application for a loan assisted by a State, Territorial, or local governmental agency, the veteran-applicant must be fully informed and consent in writing to the housing authority restrictions. A copy of the veteran's consent statement must be forwarded with the loan application or the report of a loan processed on the automatic basis.

(3) Any housing loan which is financed under 38 U.S.C. chapter 37 and to which section 3714 of that chapter applies, shall include a provision in the security instrument that the holder may declare the loan immediately due and payable upon transfer of the property securing such loan to any transferee unless the acceptability of the assumption of the loan is established pursuant to section 3714.

(i) A holder may not exercise its option to accelerate a loan upon:

(A) The creation of a lien or other encumbrance subordinate to the lender's