

§ 36.4305

38 CFR Ch. I (7-1-08 Edition)

change in the identity of the property upon which the original appraisal was based must be supported by a new or supplemental appraisal of reasonable value: *Provided*, That substitution of materials of equal or better quality and value approved by the veteran and the designated appraiser shall not be deemed a "change in the identity of the property" within the purview of this section. A deviation not in excess of 5 percent will not require the prior approval of the Secretary.

[17 FR 9668, Oct. 25, 1952]

§ 36.4305 Partial disbursement.

In cases where intervening circumstances make it impracticable to complete the actual paying out of the loan originally proposed, or justify the lender in declining to make further disbursements on a construction loan, evidence of guaranty or of insurance of the loan or the proper pro rata part thereof will be issuable if the loan is otherwise eligible for automatic guaranty or a certificate of commitment was issued thereon: *Provided*,

(a) A report of the loan is submitted to the Secretary within a reasonable time subsequent to the last disbursement, but in no event more than 90 days thereafter, unless report of the facts and circumstances is made and an extension of time obtained from the Secretary.

(b) There has been no default on the loan, except that the existence of a default shall not preclude issuance of a guaranty certificate or insurance advice if a certificate of commitment was issued with respect to the loan.

(c) The Secretary determines that a person of reasonable prudence similarly situated would not make further disbursements in the situation presented.

(d) There has been full compliance with the provisions of 38 U.S.C. Chapter 37 and of the applicable regulations up to the time of the last disbursement.

(e) In the case of a construction loan when the construction is not fully completed, the amount and percentage of the guaranty and the amount of the loan for the purposes of insurance or accounting to the Secretary shall be based upon such portion of the amount

disbursed out of the proceeds of the loan which, when added to any other payments made by or on behalf of the veteran to the builder or the contractor, does not exceed 80 percent of the value of that portion of the construction performed (basing value on the contract price) plus the sum, if any, disbursed by the lender out of the proceeds of the loan for the land on which the construction is situated: *And provided further*, That the lender shall certify as follows:

(1) Any amount advanced for land is protected by title or lien as provided in the regulations concerning guaranty or insurance of loans to veterans; and

(2) No enforceable liens, for any work done or material furnished for that part of the construction completed and for which payment has been made out of the proceeds of the loan, exist or can come into existence.

[13 FR 7275, Nov. 27, 1948, as amended at 15 FR 4397, July 12, 1950; 24 FR 2653, Apr. 7, 1959]

§ 36.4306 Refinancing of mortgage or other lien indebtedness.

(a) Any loan for the purpose of refinancing (38 U.S.C. 3710(a)(5)) an existing mortgage loan or other indebtedness secured by a lien of record on a dwelling or farm residence owned and occupied or to be reoccupied if the refinancing loan is for the completion of major alterations, repairs or improvements to the property, by an eligible veteran as the veteran's home, or in the case of an eligible veteran unable to occupy the property because of active duty status in the Armed Forces, occupied or to be reoccupied by the veteran's spouse as the spouse's home, shall be eligible for guaranty in an amount as computed under § 36.4302(a) provided that—

(1) The amount of the loan may not exceed an amount equal to 90 percent of the reasonable value of the dwelling or farm residence which will secure the loan, as determined by the Secretary.

(Authority: 38 U.S.C. 3710(e)(1) and 3710(h))

(2) The dollar amount of discount, if any, to be paid by the veteran is reasonable in amount as determined by the Secretary in accordance with § 36.4312(d)(7)(i),