

**Department of Veterans Affairs**

**§ 36.4318**

(3) A failure by the holder to comply with the provisions of this paragraph may result in a partial or total loss of guaranty or insurance pursuant to § 36.4325(b), but such failure shall not constitute a defense to any legal action to terminate the loan.

(Authority: 38 U.S.C. 3703(c)(1))  
[45 FR 31065, May 12, 1980]

**§ 36.4316 Continued default.**

(a) In the event any failure of the debtor to discharge the debtor's obligations under the loan continues for a period of 3 months, or for more than 1 month on an extended loan or on a term loan, the holder may at the holder's option then or thereafter give the notice prescribed in § 36.4317.

(b) The notice prescribed in § 36.4317 may be submitted prior to the time prescribed in paragraph (a) of this section in any case where any material prejudice to the rights of the holder or to the Secretary or hazard to the security warrants more prompt action.

(Authority: 38 U.S.C. 3732)

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 2900-0480)

[13 FR 7276, Nov. 27, 1948, as amended at 45 FR 31065, May 12, 1980; 53 FR 34296, Sept. 6, 1988; 61 FR 28058, June 4, 1996]

**§ 36.4317 Notice of intention to foreclose.**

(See also § 36.4319.) Except upon the express waiver of the Secretary, a holder shall not begin proceedings in court or give notice of sale under power of sale, or otherwise take steps to terminate the debtor's rights in the security until the expiration of 30 days after delivery by registered mail to the Secretary of a notice of intention to take such action: Provided, That

(a) Immediate action as required under 38 CFR 36.4346 (i), may be taken if the property to be affected thereby has been abandoned by the debtor or has been or may be otherwise subjected to extraordinary waste or hazard, or if there exist conditions justifying the appointment of a receiver for the property (without reference to any contractual provisions for such appointment);

(b) Any right of a holder to repossess personal property may be exercised without prior notice to the Secretary; but notice of any such action taken shall be given by certified mail to the Secretary within ten days thereafter; and

(c) The notice required under this paragraph shall also be provided to the original veteran-borrower and any other liable obligors by certified mail within 30 days after such notice is provided to the Secretary in all cases in which the current owner of the property is not the original veteran-borrower. A failure by the holder to make a good faith effort to comply with the provisions of this subparagraph may result in a partial or total loss of guaranty or insurance pursuant to VA Regulation 36.4325(b), but such failure shall not constitute a defense to any legal action to terminate the loan. A good faith effort will include, but is not limited to:

(1) A search of the holder's automated and physical loan record systems to identify the name and current or last known address of the original veteran and any other liable obligors;

(2) A search of the holder's automated and physical loan record systems to identify sufficient information (e.g., Social Security Number) to perform a routine trace inquiry through a major consumer credit bureau;

(3) Conducting the trace inquiry using an in-house credit reporting terminal;

(4) Obtaining the results of the inquiry;

(5) Mailing the required notices and concurrently providing the Secretary with the names and addresses of all obligors identified and sent notice; and,

(6) Documentation of the holder's records.

(Approved by the Office of Management and Budget under Control Number 2900-0530)

[58 FR 29116, May 19, 1993]

**§ 36.4318 Refunding of loans in default.**

(a) Upon receiving a notice of default or a notice under § 36.4317, the Secretary may within 30 days thereafter require the holder upon penalty of otherwise losing the guaranty or insurance to transfer and assign the loan