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paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

(Authority: 42 U.S.C. 4104a)

[62 FR 5534, Feb. 6, 1997]

Subpart F—Guaranty or Insurance of Loans to Veterans With Electronic Reporting

SOURCE: 73 FR 6310, Feb. 1, 2008, unless otherwise noted.

§ 36.4800 Applicability of this subpart.

(a) This subpart applies to loans serviced by a mortgage servicing industry segment on or after the date that VA issues a FEDERAL REGISTER notice making this subpart applicable to that segment. This includes loans entitled to an automatic guaranty, or otherwise guaranteed or insured, on or after the date assigned in the FEDERAL REGISTER, and loans that were previously guaranteed or insured to the extent that no legal rights vested under the regulations are impaired.

(b) Title 38 U.S.C., chapter 37, is a continuation and restatement of the provisions of Title III of the Servicemen's Readjustment Act of 1944, and may be considered an amendment to such Title III. References to the sections or chapters of title 38 U.S.C., shall, where applicable, be deemed to refer to the prior corresponding provisions of the law.

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

§ 36.4801 Definitions.

Whenever used in 38 U.S.C. chapter 37 or subpart F of this part, unless the context otherwise requires, the terms defined in this section shall have the following meaning:

A period of more than 180 days. For the purposes of sections 3707 and 3702(a)(2)(C) of title 38 U.S.C., the term a period of more than 180 days shall mean 181 or more calendar days of continuous active duty.

Acquisition and improvement loan. A loan to purchase an existing property which includes additional funds for the purpose of installing energy conserva-

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tion improvements or making other alterations, improvements, or repairs.

(Authority: 38 U.S.C. 3703(c)(1), 3710(a)(1), (4), and (7))

Alterations. Any structural changes or additions to existing improved realty.

Automatic lender. A lender that may process a loan or assumption without submitting the credit package to the Department of Veterans Affairs for underwriting review. Pursuant to 38 U.S.C. 3702(d) there are two categories of lenders who may process loans automatically:

(1) Entities such as banks, savings and loan associations, and mortgage and loan companies that are subject to examination by an agency of the United States or any State and

(2) Lenders approved by the Department of Veterans Affairs pursuant to standards established by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 3702(d))

Compromise sale. A sale to a third party for an amount less than is sufficient to repay the unpaid balance on the loan where the holder has agreed in advance to release the lien in exchange for the proceeds of such sale.

Condominium. Unless otherwise provided by State law, a condominium is a form of ownership where the buyer receives title to a three dimensional air space containing the individual living unit together with an undivided interest or share in the ownership of common elements.

Cost. Cost means the entire consideration paid or payable for or on account of the application of materials and labor to tangible property.

Credit package. Any information, reports or verifications used by a lender, holder or authorized servicing agent to determine the creditworthiness of an applicant for a Department of Veterans Affairs guaranteed loan or the assumer of such a loan.

(Authority: 38 U.S.C. 3710 and 3714)

Date of first uncured default. Date of first uncured default means the due date of the earliest payment not fully

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satisfied by the proper application of available credits or deposits.

Default. Default means failure of a borrower to comply with the terms of a loan agreement.

Designated appraiser. Designated appraiser means a person requested by the Secretary to render an estimate of the reasonable value of a property, or of a specified type of property, within a stated area for the purpose of justifying the extension of credit to an eligible veteran for any of the purposes stated in 38 U.S.C. chapter 37. An appraiser on a fee basis is not an agent of the Secretary.

Discharge or release. For purposes of basic eligibility a person will be considered discharged or released if the veteran was issued a discharge certificate under conditions other than dishonorable (38 U.S.C. 3702(c)). The term discharge or release includes—

(1) Retirement from the active military, naval, or air service, and

(2) The satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable.

(Authority: 38 U.S.C. 101(18))

Dwelling. Any building designed primarily for use as a home consisting of not more than four family units plus an added unit for each veteran if more than one eligible veteran participates in the ownership, except that in the case of a condominium housing development or project within the purview of 38 U.S.C. 3710(a)(6) and §§ 36.4860 through 36.4865 of this part the term is limited to a one single-family residential unit. Also, a manufactured home, permanently affixed to a lot owned by a veteran and classified as real property under the laws of the State where it is located.

(Authority: 38 U.S.C. 3710(a) and (f))

Economic readjustment. Economic readjustment means rearrangement of an eligible veteran's indebtedness in a manner calculated to enable the veteran to meet obligations and thereby avoid imminent loss of the property which secures the delinquent obligation.

Energy conservation improvement. An improvement to an existing dwelling or farm residence through the installation of a solar heating system, a solar heating and cooling system, or a combined solar heating and cooling system or through application of a residential energy conservation measure as prescribed in 38 U.S.C. 3710(d) or by the Secretary.

(Authority: 38 U.S.C. 3710(a)(7))

Full disbursement. Payment by a lender of the entire proceeds of a loan or the purposes described in the report of the lender in respect of such loan to the Secretary either:

(1) By payment to those contracting with the borrower for such purposes, or

(2) By payment to the borrower, or

(3) By transfer to an account against which the borrower can draw at will, or

(4) By transfer to an escrow account, or

(5) By transfer to an earmarked account if

(i) The amount is not in excess of 10 percent of the loan, or

(ii) The loan is an Acquisition and Improvement loan pursuant to § 36.4801, or

(iii) The loan is one submitted by a lender of the class specified in 38 U.S.C. 3702(d) or 3703(a)(2).

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

Graduated payment mortgage loan. A loan for the purpose of acquiring a single-family dwelling unit involving a plan for repayment in which a portion of the interest due is deferred for a period of time. The interest so deferred is added to the principal balance thus resulting in a principal amount greater than at loan origination (negative amortization). The monthly payments increase on an annual basis (graduate) for a predetermined period of time until the payments reach a level which

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will fully amortize the loan during the remaining loan term.

(Authority: 38 U.S.C. 3703(c) and (d))

Guaranty. Guaranty means the obligation of the United States, assumed by virtue of 38 U.S.C. chapter 37, to repay a specified percentage of a loan upon the default of the primary debtor.

Holder. The lender or any subsequent assignee or transferee of the guaranteed obligation or the authorized servicing agent (also referred to as “the servicer”) of the lender or of the assignee or transferee.

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

Home. Home means place of residence.

Improvements. Any alteration that improves the property for the purpose for which it is occupied.

Insurance. Insurance means the obligation assumed by the United States to indemnify a lender to the extent specified in this subpart for any loss incurred upon any loan insured under 38 U.S.C. 3703(a)(2).

Insurance account. Insurance account means the record of the amount available to a lender or purchaser for losses incurred on loans insured under 38 U.S.C. 3703(a).

Lender. The payee or assignee or transferee of an obligation at the time it is guaranteed or insured. This term also includes any sole proprietorship, partnership, or corporation and the owners, officers and employees of a sole proprietorship, partnership, or corporation engaged in the origination, procurement, transfer, servicing, or funding of a loan which is guaranteed or insured by VA.

(Authority: 38 U.S.C. 3703(c)(1) and 3704(d))

Lien. Lien means any interest in, or power over, real or personal property, reserved by the vendor, or created by the parties or by operation of law, chiefly or solely for the purpose of assuring the payment of the purchase price, or a debt, and irrespective of the identity of the party in whom title to the property is vested, including but not limited to mortgages, deeds with a defeasance therein or collaterally, deeds of trust, security deeds, mechan-

ics’ liens, lease-purchase contracts, conditional sales contracts, consignments.

Liquidation sale. Any judicial, contractual or statutory disposition of real property, under the terms of the loan instruments and applicable law, to liquidate a defaulted loan that is secured by such property. This includes a voluntary conveyance made to avoid such disposition of the obligation or of the security. This term also includes a compromise sale.

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

Lot. A parcel of land acceptable to the Secretary as a manufactured home site.

(Authority: 38 U.S.C. 3710(a)(9))

Manufactured home. A moveable dwelling unit designed and constructed for year-round occupancy by a single family, on land, containing permanent eating, cooking, sleeping and sanitary facilities. A double-wide manufactured home is a moveable dwelling designed for occupancy by one family and consisting of:

(1) Two or more units intended to be joined together horizontally when located on a site, but capable of independent movement or

(2) A unit having a section or sections which unfold along the entire length of the unit. For the purposes of this section of VA regulations, manufactured home/lot loans guaranteed under the purview of §§36.4800 through 36.4893 must be for units permanently affixed to a lot and considered to be real property under the laws of the State where it is located. If the loan is for the purchase of a manufactured home and lot it must be considered as one loan.

(Authority: 38 U.S.C. 3710(a)(9))

Net loss (insured loans). Net loss on insured loans means the indebtedness, plus any other charges authorized under §36.4814, remaining unsatisfied after the liquidation of all available security and recourse to all intangible rights of the holder against those obligated on the debt.

Net value. The fair market value of real property, minus an amount representing the costs that the Secretary estimates would be incurred by VA in acquiring and disposing of the property. The number to be subtracted from the fair market value will be calculated by multiplying the fair market value by the current cost factor. The cost factor used will be the most recent percentage of the fair market value that VA calculated and published in the Notices section of the FEDERAL REGISTER (it is intended that this percentage will be calculated annually). In computing this cost factor, VA will determine the average operating expenses and losses (or gains) on resale incurred for properties acquired under § 36.4823 which were sold during the preceding fiscal year and the average administrative cost to VA associated with the property management activity. The final net value derived from this calculation will be stated as a whole dollar amount (any fractional amount will be rounded up to the next whole dollar). The cost items included in the calculation will be:

(1) *Property operating expenses.* All disbursements made for payment of taxes, assessments, liens, property maintenance and related repairs, management broker's fees and commissions, and any other charges to the property account excluding property improvements and selling expenses.

(2) *Selling expenses.* All disbursements for sales commissions plus any other costs incurred and paid in connection with the sale of the property.

(3) *Administrative costs.* (i) An estimate of the total cost for VA of personnel (salary and benefits) and overhead (which may include things such as travel, transportation, communication, utilities, printing, supplies, equipment, insurance claims and other services) associated with the acquisition, management and disposition of property acquired under § 36.4823 of this part. The average administrative costs will be determined by:

(A) Dividing the total cost for VA personnel and overhead salary and benefits costs by the average number of properties on hand and adjusting this figure based on the average holding

time for properties sold during the preceding fiscal year; and

(B) Dividing the figure calculated in paragraph (3)(i)(A) of this definition by the VBA ratio of personal services costs to total obligations.

(ii) The three cost averages will be added to the average loss (or gain) on property sold during the preceding fiscal year (based on the average property purchase price) and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the preceding fiscal year to derive the percentage to be used in estimating net value.

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

Purchase price. The entire legal consideration paid or payable upon or on account of the sale of property, exclusive of acquisition costs, or for the cost of materials and labor to be applied to the property.

Real-estate loan. Any obligation incurred for the purchase of real property or a leasehold estate as limited in §§ 36.4800 through 36.4893 or for the construction of fixtures or appurtenances thereon or for alterations, improvements, or repairs thereon required by §§ 36.4800 through 36.4893 to be secured by a lien on such property or is so secured. Loans for the purpose specified in 38 U.S.C. 3710(a)(5) (refinancing of mortgage loans or other liens on a dwelling or farm residence), loans for the purpose specified in 38 U.S.C. 3710(a)(8) (refinancing of a VA guaranteed, insured or direct loan to lower the interest rate), loans for the purposes specified in 38 U.S.C. 3710(a)(9) (purchase of manufactured homes/lots or the refinancing of such loans in order to reduce the interest rate or purchase a lot, in States in which manufactured homes, when permanently affixed to a lot, are considered real property, and loans to purchase one-family residential units in condominium housing developments or projects within the purview of 38 U.S.C. 3710(a)(6) and §§ 36.4860 through 36.4865 shall also be considered real estate loans.

Reasonable value. Reasonable value means that figure which represents the

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amount a reputable and qualified appraiser, unaffected by personal interest, bias, or prejudice, would recommend to a prospective purchaser as a proper price or cost in the light of prevailing conditions.

Registered mail. The term registered mail wherever used in the regulations concerning guaranty or insurance of loans to veterans shall include certified mail.

Repairs. Any alteration of existing improved realty or equipment which is necessary or advisable for protective, safety or restorative purposes.

Repayment plan. A repayment plan is a written executed agreement by and between the borrower and the holder to reinstate a loan that is 61 or more calendar days delinquent, by requiring the borrower to pay each month over a fixed period (minimum of three months duration) the normal monthly payments plus an agreed upon portion of the delinquency each month.

Repossession. Repossession means recovery or acquisition of such physical control of property (pursuant to the provisions of the security instrument or as otherwise provided by law) as to make further legal or other action unnecessary in order to obtain actual possession of the property or to dispose of the same by sale or otherwise.

Residential property. (1) Any one-family residential unit in a condominium housing development within the purview of 38 U.S.C. 3710(a)(6) and §§ 36.4860 through 36.4865;

(2) Any manufactured home permanently affixed to a lot owned or being purchased by a veteran and considered to be real property under the laws of the State where it is located;

(3) Any improved real property (other than a condominium housing development or a manufactured home and/or lot) or leasehold estate therein as limited by this subpart, the primary use of which is for occupancy as a home, consisting of not more than four family units, plus an added unit for each eligible veteran if more than one participates in the ownership thereof; or

(4) Any land to be purchased out of the proceeds of a loan for the construc-

tion of a dwelling, and on which such dwelling is to be erected.

(Authority: 38 U.S.C. 3703(c)(1) and 3710(a))

Secretary. The Secretary of Veterans Affairs, or any employee of the Department of Veterans Affairs authorized to act in the Secretary's stead.

Servicer. The authorized servicer is either:

(1) The servicing agent of a holder; or

(2) The holder itself, if the holder is performing all servicing functions on a loan. The servicer is typically the entity reporting all loan activity to VA and filing claims under the guaranty on behalf of the holder. VA will generally issue guaranty claims and other payments to the servicer, who will be responsible for forwarding funds to the holder in accordance with its servicing agreement. Incentives under § 36.4819 will generally be paid directly to the servicer based on its performance under that section and in accordance with its tier ranking under § 36.4818.

Servicing agent. An agent designated by the loan holder as the entity to collect installments on the loan and/or perform other functions as necessary to protect the interests of the holder.

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

Special forbearance. This is a written agreement executed by and between the holder and the borrower where the holder agrees to suspend all payments or accept reduced payments for one or more months, on a loan 61 or more calendar days delinquent, and the borrower agrees to pay the total delinquency at the end of the specified period or enter into a repayment plan.

Total indebtedness. For purposes of 38 U.S.C. 3732(c), the veteran's "total indebtedness" shall be the sum of: the unpaid principal on the loan as of the date of the liquidation sale, accrued unpaid interest permitted by § 36.4824(a) of this part, and allowable advances/other charges permitted to be included in the guaranty claim by § 36.4814 of this part.

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