

**Department of Veterans Affairs**

**§ 36.4814**

section 3701(b) of title 38, United States Code.

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

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0474 and 2900-0516.)

**§ 36.4814 Advances and other charges.**

(a) A holder may advance any amount reasonably necessary and proper for the maintenance or repair of the security, or for the payment of accrued taxes, special assessments, ground or water rents, or premiums on fire or other casualty insurance against loss of or damage to such property and any such advance so made may be added to the guaranteed or insured indebtedness. A holder may also advance the one-half of one percent funding fee due on a transfer under 38 U.S.C. 3714 when this is not paid at the time of transfer. All security instruments for loans to which 38 U.S.C. 3714 applies must include a clause authorizing the collection of an assumption funding fee and an advance for this fee if it is not paid at the time of transfer.

(Authority: 38 U.S.C. 3703, 3714, 3732)

(b) In addition to advances allowable under paragraph (a) of this section, the holder may charge against the proceeds of the sale of the security; may charge against gross amounts collected; may include in any accounting to the Secretary after payment of a claim under the guaranty; may include in the computation of a claim under the guaranty, if lawfully authorized by the loan agreement and subject to § 36.4824(a); or, may include in the computation of an insurance loss, any of the following items actually paid:

- (1) Any expense which is reasonably necessary for preservation of the security;
- (2) Court costs in a foreclosure or other proper judicial proceeding involving the security;
- (3) Other expenses reasonably necessary for collecting the debt, or repossession or liquidation of the security;
- (4) Reasonable trustee's fees or commissions not in excess of those allowed by statute and in no event in excess of 5 percent of the unpaid indebtedness;

(5)(i) Fees for legal services actually performed, not to exceed the reasonable and customary fees for such services in the State where the property is located, as determined by the Secretary.

(ii) In determining what constitutes the reasonable and customary fees for legal services, the Secretary shall review allowances for legal fees in connection with the foreclosure of single-family housing loans, including bankruptcy-related services, issued by HUD, Fannie Mae, and Freddie Mac. The Secretary will review such fees annually and, as the Secretary deems necessary, publish in the FEDERAL REGISTER a table setting forth the amounts the Secretary determines to be reasonable and customary. The table will reflect the primary method for foreclosing in each state, either judicial or non-judicial, with the exception of those States where either judicial or non-judicial is acceptable. The use of a method not authorized in the table will require prior approval from VA. This table will be available throughout the year on a VA controlled Web site, such as at <http://www.homeloans.va.gov>.

(iii) If the foreclosure attorney has the discretion to conduct the sale or to name a substitute trustee to conduct the sale, the combined total paid for legal fees under paragraph (b)(5)(i) of this section and trustee's fees pursuant to paragraph (b)(4) of this section shall not exceed the applicable maximum allowance for legal fees established under paragraph (b)(5)(ii) of this section. If the trustee conducting the sale must be a Government official under local law, or if an individual other than the foreclosing attorney (or any employee of that attorney) is appointed as part of judicial proceedings, and local law also establishes the fees payable for the services of the public or judicially appointed trustee, then those fees will not be subject to the maximum established for legal fees under paragraph (b)(5)(ii) of this section and may be included in the total indebtedness.

(6) The cost of a credit report(s) on the debtor(s), which is (are) to be forwarded to the Secretary in connection with the claim;

(7) Reasonable and customary costs of property inspections;

**§ 36.4815**

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

(8) Any other expense or fee that is approved in advance by the Secretary.

(Authority: 38 U.S.C. 3720(a)(3), 3732)

(c) Any advances or charges enumerated in paragraph (a) or (b) of this section may be included as specified in the holder's accounting to the Secretary, but they are not chargeable to the debtor unless he or she otherwise be liable therefor.

(d) Advances of the type enumerated in paragraph (a) of this section and any other advances determined by VA to be necessary and proper in order to preserve or protect the security may be authorized by employees designated in §36.4845(b) in the case of any property constituting the security for a loan acquired by the Secretary or constituting the security for the unpaid balance of the purchase price owing to the Secretary on account of the sale of such property. Such advances shall be secured to the extent legal and practicable by a lien on the property.

(e) Notwithstanding the provisions of paragraph (a) or (b) of this section, holders of condominium loans guaranteed or insured under 38 U.S.C. 3710(a)(6) shall not pay those assessments or charges allocable to the condominium unit which are provided for in the instruments establishing the condominium form of ownership in the absence of the prior approval of the Secretary.

(f)(1) Fees and charges otherwise allowable by this section that accrue after the date specified in paragraph (f)(2) of this section may not be included in a claim under the guaranty.

(2) The date referenced in paragraph (f)(1) of this section will be computed by adding 210 calendar days to the due date of the last paid installment, plus the reasonable period that the Secretary has determined, pursuant to §36.4822(a), it should have taken to complete the foreclosure. There will also be added to the time period specified in the previous sentence such additional time as the Secretary determines was reasonably necessary to complete the foreclosure if the Secretary determines the holder was unable to complete the foreclosure within the time specified in that section due to Bankruptcy proceedings, appeal of

the foreclosure by the debtor, the holder granting forbearance in excess of 30 days at the request of the Secretary, or other factors beyond the control of the holder.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§ 36.4815 Loan modifications.**

(a) Subject to the provisions of this section, the terms of any guaranteed loan may be modified by written agreement between the holder and the borrower, without prior approval of the Secretary, if all of the following conditions are met:

(1) The loan is in default;

(2) The event or circumstances that caused the default has been or will be resolved and it is not expected to re-occur;

(3) The obligor is considered to be a reasonable credit risk, based on a review by the holder of the obligor's creditworthiness under the criteria specified in §36.4840, including a current credit report. The fact of the recent default will not preclude the holder from determining the obligor is now a satisfactory credit risk provided the holder determines that the obligor is able to resume regular mortgage installments when the modification becomes effective based upon a review of the obligor's current and anticipated income, expenses, and other obligations as provided in §36.4840;

(4) At least 12 monthly payments have been paid since the closing date of the loan;

(5) The current owner(s) is obligated to repay the loan, and is party to the loan modification agreement; and

(6) The loan will be reinstated to performing status by virtue of the loan modification.

(b) Without the prior approval of the Secretary, a loan can be modified no more than once in a 3-year period and no more than three times during the life of the loan.

(c) All modified loans must bear a fixed-rate of interest, which may not exceed the Government National Mortgage Association (GNMA) current month coupon rate that is closest to par (100) plus 50 basis points. The rate shall be determined as of the close of business the last business day of the