

**§ 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

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month preceding the date the holder approved the loan modification.

(d) The unpaid balance of the modified loan may be re-amortized over the remaining life of the loan. The loan term may extend the maturity date to the shorter of:

(1) 360 months from the due date of the first installment required under the modification, or

(2) 120 months after the original maturity date of the loan.

(e) Only unpaid principal; accrued interest; deficits in the taxes and insurance impound accounts; and advances required to preserve the lien position, such as homeowner association fees, special assessments, water and sewer liens, etc., may be included in the modified indebtedness. Late fees and other charges may not be capitalized.

(f) Holders shall not charge a processing fee under any circumstances to complete a loan modification. However, late fees and any other actual costs incurred and legally chargeable, including but not limited to the cost of a title insurance policy for the modified loan, but which cannot be capitalized in the modified indebtedness, may be collected directly from the borrower as part of the modification process.

(g) Holders will ensure the first lien status of the modified loan.

(h) The dollar amount of the guaranty may not exceed the greater of:

(1) The original guaranty amount of the loan being modified (but if the modified loan amount is less than the original loan amount, then the amount of guaranty will be equal to the original guaranty percentage applied to the modified loan), or

(2) 25 percent of the loan being modified subject to the statutory maximum specified at 38 U.S.C. 3703(a)(1)(B).

(i) The obligor may not receive any cash back from the modification.

(j) This section does not create a right of a borrower to have a loan modified, but simply authorizes the loan holder to modify a loan in certain situations without the prior approval of the Secretary.

(Authority: 38 U.S.C. 3703(c)(1), 3720)

**§ 36.4816 Acceptability of partial payments.**

A partial payment is a remittance by or on behalf of the borrower on a loan in default (as defined in § 36.4801) of any amount less than the full amount due under the terms of the loan and security instruments at the time the remittance is tendered.

(a) Except as provided in paragraph (b) of this section, or upon the express waiver of the Secretary, the mortgage holder shall accept any partial payment and either apply it to the mortgagor's account or identify it with the mortgagor's account and hold it in a special account pending disposition. When partial payments held for disposition aggregate a full monthly installment, including escrow, they shall be applied to the mortgagor's account.

(b) A partial payment may be returned to the mortgagor, within 10 calendar days from date of receipt of such payment, with a letter of explanation only if one or more of the following conditions exist:

(1) The property is wholly or partially tenant-occupied and rental payments are not being remitted to the holder for application to the loan account;

(2) The payment is less than one full monthly installment, including escrows and late charge, if applicable, unless the lesser payment amount has been agreed to under a documented repayment plan;

(3) The payment is less than 50 percent of the total amount then due, unless the lesser payment amount has been agreed to under a documented repayment plan;

(4) The payment is less than the amount agreed to in a documented repayment plan;

(5) The amount tendered is in the form of a personal check and the holder has previously notified the mortgagor in writing that only cash or certified remittances are acceptable;

(6) A delinquency of any amount has continued for at least 6 months since the account first became delinquent and no written repayment plan has been arranged;