

§ 36.4830

building or personal property securing a loan at any time during the term of the loan that such security is located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended. The amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage available for the particular type of property under the National Flood Insurance Act, as amended. The Secretary cannot guarantee a loan for the acquisition or construction of property located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program.

(Authority: 38 U.S.C. 3703(c)(1), 42 U.S.C. 4106(a))

§ 36.4830 Substitution of trustees.

In jurisdictions in which valid, any deed of trust or mortgage securing a guaranteed or insured loan, if it names trustees, or confers a power of sale otherwise, shall contain a provision empowering any holder of the indebtedness to appoint substitute trustees, or other person with such power to sell, who shall succeed to all the rights, powers and duties of the trustees, or other person, originally designated.

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

§ 36.4831 Capacity of parties to contract.

Nothing in §§ 36.4800 through 36.4880 shall be construed to relieve any lender of responsibility otherwise existing, for any loss caused by the lack of legal capacity of any person to contract, convey, or encumber, or caused by the existence of other legal disability or defects invalidating, or rendering unenforceable in whole or in part, either the loan obligation or the security therefor.

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

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

§ 36.4832 Geographical limits.

Any real property purchased, constructed, altered, improved, or repaired with the proceeds of a guaranteed or insured loan shall be situated within the United States which for purposes of 38 U.S.C. chapter 37 is here defined as the several States, Territories and possessions, and the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

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

§ 36.4833 Maintenance of records.

(a)(1) The holder shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto and the dates thereof, including copies of bills and receipts for such disbursements. These records shall be maintained until the Secretary ceases to be liable as guarantor or insurer of the loan, or, if the Secretary has paid a claim on the guaranty, until 3 years after such claim was paid. For the purpose of any accounting with the Secretary or computation of a claim, any holder who fails to maintain such record and, upon request, make it available to the Secretary for review shall be presumed to have received on the dates due all sums which by the terms of the contract are payable prior to date of claim for default, or to have not made the disbursement for which reimbursement is claimed, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such holder.

(2) The holder shall maintain records supporting their decision to approve any loss mitigation option for which an incentive is paid in accordance with § 36.4819(a). Such records shall be retained a minimum of 3 years from the date of such incentive payment and shall include, but not be limited to, credit reports, verifications of income, employment, assets, liabilities, and other factors affecting the obligor's credit worthiness, work sheets, and other documents supporting the holder's decision.

(3) For any loan where the claim on the guaranty was paid on or after February 1, 2008, or action described in

Department of Veterans Affairs

§ 36.4838

paragraph (a)(2) of this section was taken after February 1, 2008, holders shall submit any documents described in paragraph (a)(1) or (a)(2) of this section to the Secretary in electronic form; *i.e.*, an image of the original document in .jpg, .gif, .pdf, or a similar widely accepted format.

(b) The lender shall retain copies of all loan origination records on a VA-guaranteed loan for at least two years from the date of loan closing. Loan origination records include the loan application, including any preliminary application, verifications of employment and deposit, all credit reports, including preliminary credit reports, copies of each sales contract and addendums, letters of explanation for adverse credit items, discrepancies and the like, direct references from creditors, correspondence with employers, appraisal and compliance inspection reports, reports on termite and other inspections of the property, builder change orders, and all closing papers and documents.

(Authority: 38 U.S.C. 501, 3703(c)(1))

(c) The Secretary has the right to inspect, examine, or audit, at a reasonable time and place, the records or accounts of a lender or holder pertaining to loans guaranteed or insured by the Secretary.

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

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0515.)

§ 36.4835 Delivery of notice.

Except where otherwise specified in this part, any notice required by §§ 36.4800 to 36.4880 to be given the Secretary must be in writing or such other communications medium as may be approved by an official designated in § 36.4845 and delivered, by mail or otherwise, to the VA office at which the guaranty or insurance was issued, or to any changed address of which the holder has been given notice. Such notice must plainly identify the case by setting forth the name of the original veteran-obligor and the file number assigned to the case by the Secretary, if available, or otherwise the name and serial number of the veteran. If mailed,

the notice shall be by certified mail when so provided by §§ 36.4800 to 36.4880.

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

§ 36.4836 [Reserved]

§ 36.4837 Conformance of loan instruments.

Regulations issued under 38 U.S.C. chapter 37 and in effect on the date of any loan which is submitted and accepted or approved for a guaranty or for insurance thereunder, shall govern the rights, duties, and liabilities of the parties to such loan and any provisions of the loan instruments inconsistent with such regulations are hereby amended and supplemented to conform thereto.

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

§ 36.4838 Supplementary administrative action.

(a) Notwithstanding any requirement, condition, or limitation stated in or imposed by the regulations concerning the guaranty or insurance of loans to veterans, the Under Secretary for Benefits, or the Director, Loan Guaranty Service, within the limitations and conditions prescribed by the Secretary, is hereby authorized, if he or she finds the interests of the Government are not adversely affected, to relieve undue prejudice to a debtor, holder, or other person, which might otherwise result, provided no such action may be taken which would impair the vested rights of any person affected thereby. If such requirement, condition, or limitation is of an administrative or procedural (not substantive) nature, any employee designated in § 36.4845 is hereby authorized to grant similar relief if he or she finds the failure or error of the lender was due to misunderstanding or mistake and that the interests of the Government are not adversely affected. Provisions of the regulations considered to be of an administrative or procedural (nonsubstantive) nature are limited to the following:

(1) The requirement in § 36.4808(a) that a lender obtain in prior approval of the Secretary before closing a joint loan if the lender or class of lenders is eligible or has been approved by the