

## 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

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Secretary to close loans on the automatic basis pursuant to 38 U.S.C. 3702(d);

(2) The requirements in §36.4803(1) concerning the giving of notice in assumption cases under 38 U.S.C. 3714;

(3) The requirement in §36.4824(d)(3) that no claim is payable unless it is submitted within 1 year after the liquidation sale;

(4) The requirement in §36.4823(a) to submit notice of election to convey a property to VA within 15 days of the date of liquidation sale;

(5) The determination by the holder in §36.4823(b) of the amount of indebtedness that must be waived in order to make a property eligible for conveyance;

(6) The determination in §36.4814(f)(2) of the date beyond which no additional fees or charges will be allowed;

(7) The determination in §36.4824(a)(3) of the interest payable on a claim under guaranty; and

(8) The reconsideration in §36.4824(e) of the holder's electronic request for review of any denied items within the claim;

(b) Authority is hereby granted to the Loan Guaranty Officer to redelegate authority to make any determinations under this section.

(Authority: 38 U.S.C. 3714 and 3720)

**§36.4839 Eligibility of loans; reasonable value requirements.**

(a) Evidence of guaranty or insurance shall be issued in respect to a loan for any of the purposes specified in 38 U.S.C. 3710(a) only if all of the following conditions are met:

(1) The proceeds of such loan have been used to pay for the property purchased, constructed, repaired, refinanced, altered, or improved.

(2) Except as to refinancing loans pursuant to 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), (a)(11), or (b)(7) and energy efficient mortgages pursuant to 38 U.S.C. 3710(d), the loan (including any scheduled deferred interest added to principal) does not exceed the reasonable value of the property or projected reasonable value of a new home which is security for a graduated payment mortgage loan, as appropriate, as determined by the Secretary. For the purpose of determining the reasonable

value of a graduated payment mortgage loan to purchase a new home, the reasonable value of the property as of the time the loan is made shall be calculated to increase at a rate not in excess of 2.5 percent per year, but in no event may the projected value of the property exceed 115 percent of the initially established reasonable value.

(Authority: 38 U.S.C. 3703(d)(2))

(3) The veteran has certified, in such form as the Secretary may prescribe, that the veteran has paid in cash from his or her own resources on account of such purchase, construction, alteration, repair, or improvement a sum equal to the difference, if any, between the purchase price or cost of the property and its reasonable value.

(b) A loan guaranteed under 38 U.S.C. 3710(d) which includes the cost of energy efficient improvements may exceed the reasonable value of the property. The cost of the energy efficient improvements that may be financed may not exceed \$3,000; provided, however, that up to \$6,000 in energy efficient improvements may be financed if the increase in the monthly payment for principal and interest does not exceed the likely reduction in monthly utility costs resulting from the energy efficient improvements.

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

(c) Notwithstanding that the aggregate of the loan amount in the case of loans for the purposes specified in paragraph (a) of this section, and the amount remaining unpaid on taxes, special assessments, prior mortgage indebtedness, or other obligations of any character secured by enforceable superior liens or a right to such lien existing as of the date the loan is closed exceeds the reasonable value of such property as of said date and that evidence of guaranty or insurance credit is issued in respect thereof, as between the holder and Secretary (for the purpose of computing the claim on the guaranty or insurance and for the purposes of §36.4823, and all accounting), the indebtedness which is the subject of the guaranty or insurance shall be deemed to have been reduced as of the date of the loan by a sum equal to such excess, less any amounts secured by