

Department of Veterans Affairs

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to 2 percent of the funds being reserved, which amount shall be non-refundable. The commitment shall be nontransferable except with the written approval of the Department of Veterans Affairs.

(b) Notwithstanding that direct loan funds may be available for reservation when issuance of a reservation commitment is requested by a builder or sponsor, the Department of Veterans Affairs may withhold issuance of such commitment in any case in which it determines that the experience or technical qualifications of the builder in respect to home construction are not acceptable, or that other factors bearing on the likelihood of the success of the proposed project are such as to justify withholding issuance of a fund reservation commitment.

[23 FR 2340, Apr. 10, 1958]

§ 36.4527 Direct housing loans to Native American veterans on trust lands.

(a) The Secretary may make a direct housing loan to a Native American veteran if:

(1) The Secretary has entered into a memorandum of understanding with respect to such loans with the tribal organization that has jurisdiction over the veteran; or

(2) The tribal organization that has jurisdiction over the veteran has entered into a memorandum of understanding with any department or agency of the United States with respect to such loans and the memorandum complies with the requirements of paragraph (b) of this section.

(Authority: 38 U.S.C. 3762(a))

(3) The memorandum is in effect when the loan is made and will remain in effect until the maturity of the subject loan.

(b)(1) Subject to paragraph (b)(2) of this section, each memorandum of understanding entered into by the Secretary with a tribal organization shall provide for the following:

(i) That each Native American veteran who is under the jurisdiction of the tribal organization and to whom the Secretary makes a direct loan under this section

(A) Holds, possesses, or acquires using the proceeds of the loan a meaningful interest in a lot and/or dwelling that is located on trust land; and

(B) Will purchase, construct, or improve a dwelling on the lot using the proceeds of the loan.

(ii) That each Native American veteran obtaining a direct loan under this section will convey to the Secretary by an appropriate instrument the interest referred to in paragraph (A) as security for the direct loan or, if the laws of the tribal organization do not allow the veteran to convey the meaningful interest to the Secretary, the memorandum of understanding may authorize the tribe to serve as Trustee for the Secretary for purposes of protecting the interest of the Secretary as lender.

(iii) That the tribal organization and each Native American veteran obtaining a direct loan under this section will permit the Secretary or his or her designee to enter upon the trust land of that organization or veteran for the purposes of carrying out such actions as the Secretary or his or her designee determines may be necessary:

(A) To evaluate the advisability of the loan; and

(B) To monitor any purchase, construction, or improvements carried out using the proceeds of the loan.

(C) To protect the improvements from vandalism and the elements,

(D) To make property inspections in conjunction with loan servicing, financial counseling, foreclosure, acquisition, management, repair, and resale of the secured interest.

(iv) That the tribal organization has established standards and procedures that authorize the grantee to legally establish the interest conveyed by a Native American veteran pursuant to subsection (B) and terminate all interest of the veteran in the land and improvements, including:

(A) Procedures for foreclosing the loan in the event of a default;

(B) Procedures for acquiring possession of the veteran's interest in the property; and

(C) Procedures for the resale of the property interest and/or the dwelling purchased, constructed, or improved using the proceeds of the loan.

(v) That the tribal organization agrees to such other terms and conditions with respect to the making of direct loans to Native American veterans under the jurisdiction of the tribal organization as the Secretary and the tribal organization may negotiate in order to ensure that direct loans made under this section are made in a responsible and prudent manner.

(2) The Secretary, or his or her designee, may only enter into a memorandum of understanding with a tribal organization under this section if the Secretary, or designee, determines that the memorandum provides for standards and procedures necessary to reasonably protect the financial interests of the United States.

(c)(1) Except as otherwise provided in this paragraph, and notwithstanding the provisions of section 36.4503 of this title, the principal amount of any loan made under this section may not exceed \$80,000. The original principal amount of any loan made under this section shall not exceed an amount which bears the same ratio to \$80,000 as the amount of the guaranty to which the veteran would be entitled under 38 U.S.C. 3710 at the time the loan is made bears to \$36,000.

(2) The Secretary may make loans which exceed the amount specified in paragraph (c)(1) of this section in geographic areas in which the Secretary has determined that housing costs are significantly higher than average housing costs nationwide. The Secretary shall determine the maximum loan amounts in such areas. The original principal amount of any such loan shall not exceed an amount which bears the same ratio to the maximum loan amount established by the Secretary as the amount of the guaranty to which the veteran would be entitled under 38 U.S.C. 3710 at the time the loan is made bears to \$36,000.

(3) Loans made under this section shall bear interest at a rate determined by the Secretary after considering yields on comparable mortgages in the secondary market, including bid and ask prices on mortgage-backed securities guaranteed by the Government National Mortgage Association (GNMA).

(4) The minimum requirements for planning, construction, improvement,

and general acceptability relating to any direct loan made under this section shall be consistent with the administrative property standards established for loans made or guaranteed under title 38, U.S.C., chapter 37.

(d) Notwithstanding the provisions of §36.4504(b), for loans made under this section, the Native American veteran-borrower shall pay the following loan closing costs to the parties indicated:

(1) A loan fee of 1.25 percent of the total loan amount (2 percent for Reservists who qualify under the provisions of 38 U.S.C. 3701(b)(5)) to the Department of Veterans Affairs. All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the maximum loan amount. In computing the fee, the Department of Veterans Affairs will disregard any amount included in the loan to enable the borrower to pay such fee.

(2) The fee described in paragraph (d)(1) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in §3701(b)(2) of title 38 U.S.C.

(3) If the Secretary designates a third party to process the loan package on VA's behalf, a processing fee to that third party not to exceed \$300 plus the actual cost of any credit report required.

(4) Costs or expenses normally paid by a purchaser or mortgagee incident to loan closing including but not limited to the following:

(i) Fees of the Department of Veterans Affairs designated appraisers and compliance inspectors;

(ii) Recording fees or other charges incident to recordation;

(iii) That portion of assessments and other similar items for the current year chargeable to the borrower; and

(iv) Hazard insurance premiums, if such insurance is available.

(5) Charges or costs payable by the Native American veteran-borrower, except for the loan fee described in paragraph (d)(1) of this section, shall be paid in cash and may not be paid out of the proceeds of the loan. No service or

brokerage fee shall be charged against the Native American veteran-borrower by any third party for procuring a direct loan.

(e)(1) The credit underwriting standards of 38 CFR 36.4337 shall apply to loans made under this section except to the extent the Secretary determines that they should be modified on account of the purpose of the program to make available housing to Native American veterans living on trust lands.

(2) The Secretary shall determine the reasonable value of the leasehold or other property interest that will serve as security for a loan made under this section in accordance with §37.4519, of this chapter, unless the Secretary determines that such requirements are impractical to implement in a geographic area, on particular trust lands, or under circumstances specified by the Secretary.

(f) In connection with the origination of any loan under this section, the Secretary may make advances in cash to provide for repairs, alterations, and improvements and to meet incidental expenses of the loan transaction.

(g) Loans made under this section shall be amortized under a generally recognized plan which provides for equal monthly installments consisting of principal and interest, except for the final installment, which may not be in excess of two times the regular monthly installment. The limitation on the amount of the final installment shall not apply in the case of any loan extended, ballooned and/or reamortized.

(h) The Secretary may:

(1) Take any action that the Secretary determines to be necessary for the custody, management, and protection of properties and the realization or sale of investments under the VA Native American Direct Loan Program;

(2) Determine any necessary expenses and expenditures and the manner in which such expenses and expenditures shall be incurred, allowed, and paid;

(3) Employ, utilize, and compensate persons, organizations, or departments or agencies (including departments and agencies of the United States) designated by the Secretary to carry out necessary functions, including but not limited to loan processing and serv-

icing activities, appraisals, and property inspections.

(i) Notwithstanding any requirement, condition, or limitation stated in or imposed by any provision of this regulation, the Under Secretary for Benefits, or the Director, Loan Guaranty Service, within the limitations and conditions prescribed by the Secretary, may execute memoranda of understanding, make determinations concerning the maximum direct loan amount as provided in paragraph (c) of this section, and take such supplementary administrative action as may be necessary or appropriate to relieve any undue prejudice to a debtor, or other person, which might otherwise result, provided such action shall not impair the vested rights of any person affected thereby. If such a requirement, condition, or limitation is of an administrative or procedural nature, such action may be taken by any employee authorized to act under paragraph (j) of this section.

(j)(1) Except as hereinafter provided, each employee of the Department of Veterans Affairs appointed to, or otherwise lawfully filling, any position designated in paragraph (j)(2) of this section is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect to the making of loans and the rights and liabilities arising therefrom, including, but not limited to the collection or compromise of amounts due, in money or other property, the extension, rearrangement, or sale of loans, and the management and disposition of secured or unsecured notes and other property. In connection with direct loans made and held by the Department of Veterans Affairs, such designated employees may take any action which they are authorized to consent to or approve in respect to guaranteed loans under §36.4342. Incidental to the exercise and performance of the powers and functions hereby delegated, each such employee is authorized to execute and deliver (with or without acknowledgment) for, and on behalf of, the Secretary such certificates, forms, conveyances, and other instruments as may be appropriate in connection with

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the acquisition, ownership, management, sale, transfer, assignment, encumbrance, rental, or other disposition of real or personal property or of any right, title, or interest therein, including, but not limited to, contracts of sale, installment contracts, deeds, leases, bills of sale, assignments, and releases; and to approve disbursements to be made for any purpose authorized by 38 U.S.C. chapter 37.

(2) Designated positions:

Under Secretary for Benefits
Deputy Under Secretary for Benefits
Director, Loan Guaranty Service
Director, Medical and Regional Office Center
Director, VA Regional Office and Insurance Center
Director, Regional Office
Loan Guaranty Officer
Assistant Loan Guaranty Officer

The authority hereby delegated to employees of the positions designated in this paragraph may, with the approval of the Under Secretary for Benefits, be redelegated.

(3) Nothing in this section shall be construed to authorize any such employee to exercise the authority vested in the Secretary under 38 U.S.C. 501(a) or 3703(a)(2) or to sue or enter appearance for and on behalf of the Secretary or confess judgment against the Secretary in any court without the Secretary's prior authorization.

(4) Each Regional Office, Regional Office and Insurance Center, and Medical and Regional Office Center shall maintain and keep current a cumulative list of all employees of that Office or Center who, since May 1, 1980, have occupied the positions of Director, Loan Guaranty Officer, and Assistant Loan Guaranty Officer. This list will include each employee's name, title, date the employee assumed the position, and the termination date, if applicable, of the employee's tenure in such position. The list shall be available for public inspection and copying at the Regional Office, or Center, during normal business hours.

(Authority: 38 U.S.C. 3761-3764)

[58 FR 59660, Nov. 10, 1993, as amended at 68 FR 6627, Feb. 10, 2003]

Subpart E—Sale of Loans, Guarantee of Payment, and Flood Insurance

§ 36.4600 Sale of loans, guarantee of payment.

(a) Whenever loans are sold by the Department of Veterans Affairs, they will be clearly identified as loans sold with or without recourse.

(b) The payment of all loans sold with recourse shall be guaranteed in accordance with the provisions of this section.

(c) Wherever the term "holder" appears in this section it shall mean the purchaser of a loan sold by the Secretary and any subsequent transferee or assignee of such loan. The holder of each loan sold subject to guaranty shall be deemed to have agreed with the Secretary as follows:

(Authority: 38 U.S.C. 501, 3720):

(1) To furnish the Secretary with notice of default within 60 days after a loan has become two full installments in default.

(Authority: 38 U.S.C. 501, 3720)

(2) To maintain on the real estate a lien of the dignity assigned or transferred to the purchaser by the Secretary.

(3) To maintain insurance in an amount sufficient to protect the security against risks or hazards to which it may be subjected to the extent customary in the locality, and to apply the proceeds of loss payments to the loan balance or the restoration of the security, as the holder may in the holder's discretion deem proper. Flood insurance will be required on any 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