

Department of Veterans Affairs

§ 36.4600

from the mortgage contract once a certain amount of the mortgage loan has been paid;

(4) Processing release of lien fee, not to exceed \$15, for the release of an obligor from a mortgage loan in connection with a division of real property;

(5) Processing payoff statement fee, not to exceed \$30, for a payoff statement showing the itemized amount due to satisfy a mortgage loan as of a specific date;

(6) Processing payment by phone fee, not to exceed \$12, when a payment is made by phone and handled by a servicing representative; and

(7) Processing payment by phone fee, not to exceed \$10, when a payment is made by phone and handled through an interactive voice response system, without contacting a servicing representative.

(b) The specific fees to be charged on each account may be negotiated between the Secretary and the borrower. The Secretary will review the maximum fees under paragraph (a) of this section bi-annually to determine that they remain reasonable.

(c) The Secretary may charge a borrower reasonable fees established in the loan instrument, including but not limited to the following:

- (1) Property inspection fees;
- (2) Property preservation fees;
- (3) Appraisal fees;
- (4) Attorneys' fees;
- (5) Returned-check fees;
- (6) Late fees; and
- (7) Any other fee the Secretary determines reasonably necessary for the protection of the Secretary's investment.

(d) Any fee included in the loan instrument and permitted under paragraph (c) of this section would be based on the amount customarily charged in the industry for the performance of the service in the particular area, the status of the loan, and the characteristics of the affected property.

(Authority: 38 U.S.C. 2041, 3720, 3733)

[82 FR 35904, Aug. 2, 2017]

§ 36.4530 Vendee loan other fees.

(a) In addition to the fees that may be charged pursuant to §§ 36.4528 and 36.4529 and the statutory loan fee

charged pursuant to 38 U.S.C. 3729, the borrower may be required to pay third-party fees for services performed in connection with a vendee loan.

(b) Examples of the third party fees that may be charged in connection with a vendee loan include, but are not limited to:

- (1) Termite inspections;
- (2) Hazard insurance premiums;
- (3) Force-placed insurance premiums;
- (4) Courier fees;
- (5) Tax certificates; and
- (6) Recorder's fees.

(Authority: 38 U.S.C. 2041, 3720, 3733)

[82 FR 35904, Aug. 2, 2017]

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 Flood Insurance Act, as amended. The notice requirements of 38 CFR 36.4709 shall apply to loans sold pursuant to this section.

(Authority: 42 U.S.C. 4012a, 4104a)

(4) To obtain a consideration equal to the fair market value of any real estate released from the first lien securing the loan, except where the loan will be paid in full, and to apply the entire consideration in reduction of the principal balance of the loan.

(5) To maintain the tax and insurance account as provided for in the loan instruments and to pay accrued taxes, special assessments, ground or water rents and premiums on fire or other insurance properly chargeable to the tax and insurance account.

(6) To submit to the Secretary notice of any suit or action or other legal or equitable proceeding to which the holder is a party (including a copy of every procedural paper filed on behalf of the holder or served on the holder), brought on or in connection with a loan sold under this section or involving title to, or other lien on, the property securing the loan, within the time that would be required if the Secretary were a party to the proceeding.

(7) To submit to the Secretary for prior approval any proposal to recast or extend the repayment terms of the loan.

(8) To take no action to accelerate the indebtedness or terminate the debtor's interest in the property without the prior approval of the Secretary.

(9) To make advances only for the maintenance and repairs reasonably necessary for the preservation of the security, or for the payment of accrued taxes, special assessments, ground or water rents, premiums on fire or other insurance against loss or damage to the property, or for other purposes approved in advance by the Secretary.

(10) To furnish the Secretary prompt notice of the cancellation of any repurchase endorsement or notice on the note or bond upon the payment in full of any loan sold pursuant to this section or of the release of the Secretary from liability to repurchase the loan.

(11) To maintain adequate accounting records and to provide the Secretary with such data relating to the loan as the Secretary may request incident to the Secretary's determination of the amount payable in connection with a request for the repurchase of the loan.

(12) To service the loans properly in accordance with established practices.

(13) To permit the Secretary to inspect, examine or audit at reasonable times and places the records of loans which are subject to repurchase under this section.

(14) To sell any loan to the Secretary for the amount specified in paragraph (e)(1) of this section upon request of the Secretary if the loan is six (6) full installments or more in default.

(15) To dispose of partial payments in accordance with the provisions of this paragraph. A partial payment is a remittance on a loan in default 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 default is a failure of a borrower to comply with the terms of a loan agreement.

(i) Except as provided in paragraph (c)(15)(ii) 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.

Department of Veterans Affairs

§ 36.4600

(ii) 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:

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

(b) 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 written repayment plan;

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

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

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

(f) 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.

(g) The loan has been submitted to the Department of Veterans Affairs for repurchase;

(h) The lien position of the security instrument would be jeopardized by acceptance of the partial payment.

(iii) A failure by the holder to comply with the provisions of this paragraph may result in a deduction from the repurchase price pursuant to paragraph (e)(1) of this section.

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

NOTE: In any instance in which the holder desires Department of Veterans Affairs prior approval to a proposed action the holder may submit the facts to the Loan Guaranty Officer as provided in paragraph (i) of this section.

(16) To obtain and forward a current credit report(s) on the debtor(s) to the Secretary when requesting that the Secretary repurchase the loan.

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

(d) The Secretary's guaranty liability under this section shall consist of and be limited solely to liability to repurchase the loan from the holder thereof whenever,

(1) The debtor is in default by reason of nonpayment of not less than two full installments and default has continued for three months or more on the date the holder submits its written request for repurchase by the Secretary; or

(2) The property securing the loan has been abandoned by the debtor; or

(3) The debtor has failed to comply with any other covenant or obligation of the loan contract and on the date of the holder's request for repurchase such failure has continued for more than 90 days after the holder's demand for compliance with the covenant or obligation, except that if the failure is due to nonpayment of real estate taxes the failure to pay when due has persisted for a continuing period of 180 days; or

(4) The Secretary determines, upon request of the holder to repurchase any loan, that such repurchase is in the best interests of the Government notwithstanding that the account is ineligible for repurchase under paragraphs (d) (1) through (3) of this section.

(e)(1) A cash payment shall be made to the holder upon the repurchase of a loan by the Secretary and shall be an amount equal to the price paid by the purchaser when the loan was sold by the Secretary, less repayments received by the holder which are properly applicable to the principal balance of the loan, plus any advances made for the purposes described in paragraph (c)(9) of this section, but no payments shall be made for accrued unpaid interest, except that with respect to loans sold by the Secretary after July 15, 1970, payment will be made for unpaid accrued interest from the date of the first uncured default to the date of the claim for repurchase, but not in excess of interest for 120 days. If, however, there has been a failure of any holder to comply with the provisions of paragraph (c) of this section the Secretary shall be entitled to deduct from the repurchase price otherwise payable such amount as the Secretary determines to be necessary to restore the Secretary to the position the Secretary would

§ 36.4600

38 CFR Ch. I (7-1-20 Edition)

have occupied upon repurchase of the loan in the absence of any such failure. Incident to the repurchase by the Secretary, the holder will pay to the Secretary an amount equal to the balance, if any, remaining in the tax and insurance account.

(2) The holder shall be deemed to have received as trustee for the benefit of the Secretary any amounts received on account of the loan indebtedness subsequent to submitting its request to repurchase and shall pay such amounts to the Department of Veterans Affairs upon the assignment and delivery of the note, bond and security instruments to the Department of Veterans Affairs.

(3) The holder may be reimbursed for the cost of a current credit report(s) on the debtor(s) which is (are) forwarded to the Secretary along with the request for repurchase and for any other costs or expenses incurred which are approved in advance by the Secretary as being necessary to protect the Government's interest.

(f) Notwithstanding any other provision of this section, the Secretary shall be released from liability and shall not be obligated to repurchase any loan in respect to which:

(1) An obligor has been released from personal liability by any act or omission of the holder without the prior approval of the Secretary, except that a holder shall not be under any duty to establish the debt as a valid claim against the assets of the estate of any deceased or bankrupt obligor when such failure will not impair the validity or effectiveness of the lien securing the loan; or

(2) The holder has instituted foreclosure action against the property securing the loan without the prior approval of the Secretary, and such action has proceeded to the point where the judicial sale or sale under the power in the deed of trust has been held or the owner's interest in the property has been terminated by the holder by strict foreclosure, acceptance of a voluntary deed, or by other liquidation action; or

(3) Any material alteration has been made to the note, bond, security instrument, or installment sale contract after sale and delivery of the instru-

ments by the Secretary to the purchaser.

(g)(1) Each employee of the Department of Veterans Affairs heretofore or hereafter appointed to or lawfully filling, any position designated in paragraph (g)(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 sale, assignment, transfer, and repurchase of loans, including, but not limited to the offering of such loans for sale, the acceptance of purchase offers, the assignment or transfer of notes or bonds and security instruments evidencing the loans sold, granting the prior approval of the Secretary under this section, determining the eligibility of the loans for repurchase and to calculate and pay the sum due the holder upon repurchase of the loan by the Department of Veterans Affairs.

(2) Designated positions:

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

(h) No waiver, consent, or approval required or authorized by this section shall be valid unless in writing signed by an employee of the Department of Veterans Affairs authorized in this section to act for the Secretary.

(i) Whenever prior approval or consent of the Secretary is desired in respect to an action to be taken by a holder of a loan, the holder may address such request to the Loan Guaranty Officer in the Regional Office or Center having jurisdiction over the area in which the real estate security is located.

(j) Notwithstanding any requirement, condition, or limitation stated in or imposed by this section concerning the sale and repurchase of loans, the Under Secretary for Benefits, or the Director, Loan Guaranty Service, within the limitations and conditions prescribed by the Secretary may take such action as may be necessary or appropriate to relieve undue prejudice to a holder, debtor or other person, which might

otherwise result, as long as such action shall not impair the vested rights of any person affected thereby. If such requirement, condition, or limitation is of an administrative or procedural nature, such action may be taken by an employee authorized to act under paragraph (g) of this section.

(k) This section will apply to all loans sold by the Department of Veterans Affairs after the effective date of this section which were originated or acquired by the Secretary of Veterans Affairs under chapter 37, title 38, U.S.C., or title III of the Servicemen's Readjustment Act of 1944, as amended, except that it shall not apply to direct loans sold pursuant to section 3711(g) of chapter 37, title 38, U.S.C.

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

(Information collection requirements contained in paragraphs (c) and (e) were approved by the Office of Management and Budget under control number 2900-0840)

[27 FR 2686, Mar. 22, 1962, as amended at 39 FR 7785, Feb. 28, 1974; 44 FR 25839, May 3, 1979; 45 FR 31065, May 12, 1980; 51 FR 4596, Feb. 6, 1986; 52 FR 6548, Mar. 4, 1987; 53 FR 34296, Sept. 6, 1988; 61 FR 28059, June 4, 1996; 62 FR 5532, Feb. 6, 1997]

§ 36.4700 Authority, purpose, and scope.

(a) *Authority.* Sections 36.4700 through 36.4709 of this part are issued pursuant to 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) *Purpose.* The purpose of sections 36.4700 through 36.4709 of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4129).

(c) *Scope.* Sections 36.4700 through 36.4709 of this part, except for §§ 36.4705 and 36.4707, apply to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 36.4705 and 36.4707 apply to loans secured by buildings or mobile homes, regardless of location.

(Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128)

[62 FR 5532, Feb. 6, 1997]

§ 36.4701 Definitions.

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001-4129).

(b) *Secretary* means the Secretary of Veterans Affairs.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(f) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term mobile home does not include a recreational vehicle. For purposes of this part, the term mobile home means a mobile home on a permanent foundation. The term mobile home includes a manufactured home as that term is used in the NFIP.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(j) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.