

### § 36.4507

into an agreement with the borrower which will permit the latter temporarily to repay the obligation on a basis appropriate to the borrower's apparent current ability to pay or may enter into an appropriate recasting or extension agreement: *Provided*, That no such agreement shall extend the ultimate repayment of a loan beyond the expiration of 30 years and 32 days from the date of the loan. *Provided further*, That nothing in this section shall be deemed to limit the forbearance or indulgence which the Secretary may extend in an individual case pursuant to the provisions of 38 U.S.C. 3720(f).

[46 FR 43675, Aug. 31, 1981]

### § 36.4507 Refinancing of mortgage or other lien indebtedness.

(a) Loans may be made for the purpose of refinancing (38 U.S.C. 3710(a)(5)) an existing mortgage loan or other indebtedness secured by a lien of record on a dwelling or farm residence owned and occupied by an eligible veteran as the veteran's home, provided that:

(1) The amount of the loan does not exceed the sum due the holder of the mortgage or other lien indebtedness on such dwelling or farm residence, and also is not more than the reasonable value of the dwelling or farm residence, and

(2) The loan is otherwise eligible.

(b) A refinancing loan for an amount which exceeds the sum due the holder of the mortgage or other lien indebtedness (the excess proceeds to be paid to the veteran) may also be made, *Provided, That*:

(1) The loan is otherwise eligible, and

(2) The issuance of a commitment to make any such loan for an amount which exceeds eighty (80) percent of the reasonable value of the veteran's dwelling or farm residence shall require, unless the Under Secretary for Benefits otherwise directs, the approval of the Executive Director, Loan Guaranty Service.

(c) Nothing shall preclude making a loan pursuant to the provisions of 38 U.S.C. 3710(a)(5) to an eligible veteran having home loan guaranty entitlement to refinance a loan previously guaranteed insured or made by the Secretary which is outstanding on the dwelling or farm residence owned and

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occupied or to be reoccupied after the completion of major alterations, repairs, or improvements to the property, by the veteran as the veteran's home.

(Authority: 38 U.S.C. 3711)

(d) A refinancing loan may include contractual prepayment penalties, if any, due the holder of the mortgage or other lien indebtedness to be refinanced.

(e) Nothing in this section shall preclude the refinancing of the balance due for the purchase of land on which new construction is to be financed through the proceeds of the loan, or the refinancing of the balance due on an existing land sale contract relating to a veteran's dwelling or farm residence.

[35 FR 18872, Dec. 11, 1970, as amended at 46 FR 43675, Aug. 31, 1981; 49 FR 42571, Oct. 23, 1984; 61 FR 28059, June 4, 1996]

### § 36.4508 Transfer of property by borrower.

(a) Direct loans for which commitments are made on or after March 1, 1988, are not assumable without the prior approval of the Department of Veterans Affairs or its authorized agent. The following shall apply:

(1) The Department of Veterans Affairs shall include in the mortgage or deed of trust and the promissory note or bond on any loan for which a commitment was made on or after March 1, 1988, the following warning in a conspicuous position in capital letters on the first page of the document in type at least 2½ times larger than the regular type on such page: "THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT". Due to the difficulty in obtaining some commercial type sizes which are exactly 2½ times larger in height than other sizes, minor deviations in size will be permitted based on commercially available type sizes nearest to 2½ times the size of the print on the document.

(2) The instrument securing a direct loan for which a commitment is made on or after March 1, 1988, shall include:

(i) A provision that the Department of Veterans Affairs or other holder may

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declare the loan immediately due and payable upon transfer of the property securing such loan to any transferee unless the acceptability of the assumption of the loan is established pursuant to section 3714. This option may not be exercised if the transfer is the result of:

(A) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property;

(B) The creation of a purchase money security interest for household appliances;

(C) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(D) The granting of a leasehold interest of three years or less not containing an option to purchase;

(E) A transfer to a relative resulting from the death of a borrower;

(F) A transfer where the spouse or children of the borrower become a joint owner of the property with the borrower;

(G) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse of the borrower becomes the sole owner of the property. In such a case the borrower shall have the option of applying directly to the Department of Veterans Affairs regional office of jurisdiction for a release of liability under 1813(a); or

(H) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

(ii) A provision that a funding fee equal to one-half of one percent of the loan balance as of the date of transfer shall be payable to the Department of Veterans Affairs or its authorized agent. Furthermore, this provision shall provide that if this fee is not paid it shall constitute an additional debt to that already secured by the instrument; and,

(iii) A provision authorizing an assumption processing charge, not to exceed the lesser of \$300 and the actual cost of a credit report or any maximum prescribed by applicable State law.

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

(b) Whenever any veteran disposes of residential property securing a direct loan obtained under 38 U.S.C. chapter 37, the Department of Veterans Affairs, upon application made by such borrower, shall issue to the borrower a release relieving the borrower of all further liability to the Department of Veterans Affairs on account of such loan (including liability for any loss resulting from any default of the transferee or any subsequent purchaser of such property) if the Department of Veterans Affairs has determined, after such investigation as it deems appropriate, that there has been compliance with the conditions prescribed in 38 U.S.C. 3713(a) or 1814, as appropriate. The assumption of full liability for repayment of the loan by the transferee of the property must be evidenced by an agreement in writing in such form as the Department of Veterans Affairs may require. Any release of liability granted to a veteran by the Department of Veterans Affairs shall inure to the spouse of such veteran.

(c) If, on or after July 1, 1972, any veteran disposes of the property securing a direct loan obtained under 38 U.S.C. chapter 37, without receiving a release from liability with respect to such loan under 38 U.S.C. 3713(a) and a default subsequently occurs which results in liability of the veteran to the Secretary on account of the loan, the Secretary may relieve the veteran of such liability if the Secretary determines that:

(1) A transferee either immediate or remote is legally liable to the Secretary for the debt of the original veteran-borrower established after the termination of the loan, and

(2) The original loan was current at the time such transferee acquired the property, and

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(3) The transferee who is liable to the Secretary is found to have been a satisfactory credit risk at the time the transferee acquired the property.

(Approved by the Office of Management and Budget under control number 2900-0516)

[15 FR 6289, Sept. 29, 1950, as amended at 33 FR 5362, Apr. 4, 1968; 37 FR 24034, Nov. 11, 1972; 46 FR 43675, Aug. 31, 1981; 55 FR 37477, Sept. 12, 1990]

**§ 36.4509 Joint loans.**

(a) No loan will be made unless an eligible veteran is the sole principal obligor, or such veteran and spouse or eligible veteran co-applicant are the principal obligors thereon, nor unless such veteran alone, or together with a spouse or eligible veteran co-applicant, acquire the entire fee simple or other permissible estate in the realty for the acquisition of which the loan was obtained. Nothing in this section shall preclude other parties from becoming liable as comaker, endorser, guarantor, or surety.

(b) Notwithstanding that an applicant and spouse or other co-applicant are both eligible veterans and will be jointly and severally liable as borrowers, the original principal amount of the loan may not exceed the maximum permissible under § 36.4503(a). In any event the loan may not exceed \$33,000.

(Authority: 38 U.S.C. 3711(d)(2)(A) and (3))

[43 FR 60460, Dec. 28, 1978]

**§ 36.4510 Prepayment, acceleration, and liquidation.**

(a) Any credit on the loan not previously applied in satisfaction of matured installments, other than the gratuity credit required by prior provisions of law to be credited to principal, may be reapplied by the Department of Veterans Affairs at the request of the borrower for the purpose of curing or preventing a default.

(b) The Department of Veterans Affairs shall include in the instruments evidencing or securing the indebtedness provisions relating to the following:

(1) The right of the borrower to prepay at any time without premium or fee, the entire indebtedness or any part thereof: *Provided*, That any such pre-

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payment, other than payment in full, may not be made in any amount less than the amount of one installment, or \$100, whichever is less: *And provided further*, That any prepayment made on other than an installment due date will not be credited until the next following installment due date, but not later than 30 days after such prepayment.

(2) The right of the Department of Veterans Affairs to accelerate the maturity of the entire indebtedness in the event of default.

(3) The right of the Department of Veterans Affairs to foreclose or otherwise proceed to liquidate or acquire property which is the security for the loan in the event of the borrower's delinquency in the repayment of the obligation or in the event of default in any other provisions of the loan contract.

(c) The Department of Veterans Affairs shall have the right to accelerate the entire indebtedness and to foreclose or otherwise proceed to liquidate, or acquire the security for the loan, in the event the veteran is adjudged a bankrupt, or if the property has been abandoned by the borrower or subjected to waste or hazard, or in the event conditions exist which warrant the appointment of a receiver by court.

[15 FR 6289, Sept. 20, 1950, as amended at 20 FR 6260, Aug. 26, 1955; 24 FR 2658, Apr. 7, 1959; 41 FR 44859, Oct. 13, 1976; 61 FR 28059, June 4, 1996]

**§ 36.4511 Advances after loan closing.**

(a) The Department of Veterans Affairs may at any time advance any sum or sums as are reasonably necessary and proper for the maintenance, repair, alteration, or improvement of the security for a loan or for the payment of taxes, assessments, ground or water rights, or casualty insurance thereon: *Provided*, That no advance shall be made for alterations or improvements which are not necessary for the maintenance or repair of the security if such advance will increase the indebtedness to an amount in excess of \$33,000.

(b) All sums disbursed incident to the making of advances under this section shall be added to the indebtedness. Department of Veterans Affairs may require any such advances to be secured