

**FEDERAL RESERVE BANK
OF DALLAS**

Dallas, Texas, November 8, 1944

**To All Banking Institutions
in the Eleventh Federal Reserve District:**

There is enclosed a copy of the regulations of the United States Veterans' Administration relating to the guaranty of loans under the provisions of the Servicemen's Readjustment Act of 1944, for the purposes of buying or constructing homes. At the request of the Veterans' Administration and in order to give the regulations as wide and prompt a distribution as possible, they are being distributed to the commercial banks of the country by the Federal Reserve banks.

We understand that field offices of the Veterans' Administration will soon be established in various cities for the purpose of administering the Servicemen's Readjustment Act of 1944. If additional information is desired prior to the time the field offices are set up, it is suggested that requests for such information be addressed to the Central Office of the Veterans' Administration, Washington 25, D. C.

We have been informed that regulations relating to the guaranteeing of loans to veterans for business purposes and for the purchase of farms have not as yet been issued.

Yours very truly,

R. R. GILBERT

President



UNITED STATES OF AMERICA
VETERANS ADMINISTRATION

GUARANTY OF LOANS

Regulations Under Title III

SERVICEMEN'S READJUSTMENT ACT OF 1944

(Public Law 346—78th Congress)

(Chapter 268—2d Session)

(58 Statutes at Large 284)

(38 U. S. Code 693 et seq.)



(NOTE: This pamphlet covers the subject of Guaranty of Home Loans pursuant to Section 501 of the Act. The subjects of Guaranty of Loans for the Acquisition of Farms and Farm Equipment pursuant to Section 502, and the Guaranty of Loans for the Purchase of Businesses, etc., pursuant to Section 503, will be printed in separate pamphlets.)

FOREWORD

The Servicemen's Readjustment Act of 1944 and these regulations constitute a part of each contract of guaranty issued by the Administrator of Veterans' Affairs on behalf of the United States of America, pursuant to Title III of said Act.

The officials and employees of the Veterans' Administration from time to time assigned to duties in connection with the administration of the Act shall act on behalf of the Administrator of Veterans' Affairs, and when so acting within the scope of authority delegated to them shall for all purposes of the Act and these regulations be deemed to be acting for said Administrator.

Central Office of the Veterans' Administration, Washington 25, D. C., is the main office of the Administrator of Veterans' Affairs. The functions pursuant to Title III of the Act will also be performed in field offices of the Veterans' Administration from time to time designated for that purpose. Transactions and communications with, and contracts by such designated field offices shall have the same effect as if with, or made by, Central Office.

These regulations should be carefully read. The completed application or

other papers submitted should be carefully examined by the applicants, (borrowers and lenders) in order to be certain of accuracy and avoid any possible embarrassment resulting from errors.

It will facilitate the service of the Veterans' Administration to the veterans and the lenders if, in correspondence, reference is made to the appropriate section numbers, if any, involved in the subject of the correspondence.

In view of the large number of veterans with the same or similar names, it is important not only in correspondence, but also in documents to use the veteran's full first name instead of his initial only, and also his middle initial. If unobjectionable, it will be helpful to use his full middle name. In addition to the full name, other available identifying data should be used in correspondence, such as serial number allocated to the veteran while in active service, rank, and organization at date of discharge, current residence address, etc. In mortgages and other documents it will be desirable to use the service serial number in addition to the full name, although if there is objection the number will not be required. If there has been a guaranty

application previously submitted by the veteran and the number assigned thereto by the Veterans' Administration is known, that number should be used in all communications; and on all documents pertaining to that application.

It should be clearly understood that the Act does not authorize the Veterans' Administration or the Administrator of Veterans' Affairs to lend money to the veteran under Title III; but only to guarantee loans within the prescribed limitations.

NOTICE

Federal statutes provide severe penalties including forfeitures, fines and imprisonment, for fraud on the part of the applicant and also as to "any person who shall knowingly make or cause to be made, or conspire, combine, aid, or assist in, agree to, arrange for, or in any wise procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such" concerning any application for the guaranty of a loan by the Administrator. (38 U. S. C. A. 697, 715, 450, 451, 454 (a), 556 (a); 18 U. S. C. A. 80.)

**TITLE 38—PENSIONS, BONUSES AND
VETERANS' RELIEF¹**

Chapter I—Veterans' Administration

**PART 36—REGULATIONS UNDER SERVICE-
MEN'S READJUSTMENT ACT OF 1944**

GUARANTY OF LOANS

OCTOBER 18, 1944.

The following regulations govern the guaranty of loans under Title III of the Servicemen's Readjustment Act of 1944:

Sec.

36.4000 Definitions.

- (a) Administrator.
- (b) United States.
- (c) State.
- (d) Designated agency or agency.
- (e) Federal agency.
- (f) Guaranty.
- (g) Mortgage.
- (h) Secondary or junior loans.
- (i) Guaranteed loan.
- (j) Home and residential property.
- (k) Reasonable normal value.
- (l) Property and lot.
- (m) Indebtedness.
- (n) Note.
- (o) Appraiser.
- (p) Certificate of title.
- (q) Credit report.
- (r) Eligible veteran.
- (s) Eligible lender.
- (t) Creditor.
- (u) Debtor.

36.4001 Miscellaneous.

LOANS ELIGIBLE FOR GUARANTY

- 36.4002** Eligible loans.
- 36.4003** Purchase or construction.
- 36.4004** Repairs, etc.
- 36.4005** Increase in value due to repairs, etc.
- 36.4006** Prior liens.
- 36.4007** First liens required.
- 36.4008** Mortgages required.
- 36.4009** Transfer of title.
- 36.4010** Obligation of guarantor.
- 36.4011** Contract provisions.
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- 36.4016** Loan charges.
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GUARANTY BY THE ADMINISTRATOR

- 36.4020** Limits.
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- 36.4029** Disposition of papers.

¹ As printed in the FEDERAL REGISTER, Volume 9, Number 210, Washington, Friday, October 20, 1944.

Sec.

- 36.4030** Loan procedure after approval of guaranty.
- 36.4031** Guaranty when effective.
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- 36.4033** Losses which are not guaranteed.

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- 36.4035** Claim on notice of default.
- 36.4036** Legal action.
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- 36.4039** Death or insolvency of creditor.
- 36.4040** Filing claim under guaranty.
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- 36.4042** Refinancing and extension of guaranty.
- 36.4043** Subrogation.
- 36.4044** Future action against mortgagor.
- 36.4045** Suit by Administrator.
- 36.4046** Creditor's records and reports required.
- 36.4047** Failure to supply information.
- 36.4048** Notice to Administrator.
- 36.4049** Right to inspect books.

AUTHORITY: §§ 36.4000 to 36.4049, inclusive, issued under 58 Stat. 284.

§ 36.4000 *Definitions.* Wherever used in these regulations, unless the context otherwise requires, the terms defined in this section shall have the meaning herein stated, namely:

(a) "Administrator" means the Administrator of Veterans Affairs or any employee of the Veterans' Administration designated by him to act in his stead.

(b) "United States" used geographically means the several States, Territories and possessions, and the District of Columbia.

(c) "State" means any of the several States, Territories and possessions, and the District of Columbia.

(d) "Designated Agency" or "Agency" as used in respect to processing applications for guaranty of loans, means any Federal instrumentality designated by the Administrator (including Veterans' Administration if so designated) to certify whether an application meets the requirements of the act and regulations, and recommend whether the application should be approved if the applicant is found eligible.

(e) "Federal Agency" as used with respect to agencies making, guaranteeing or insuring primary loans, means any Executive Department, or administrative agency or unit of the United States Government (including a corporation essentially a part of the Executive Branch) at any time authorized by law to make, guarantee or insure such loans.

(f) "Guaranty" means the obligation of the United States of America assumed by virtue of the guaranty by the Administrator as provided in Title III of the Servicemen's Readjustment Act of 1944 (58 Stat. 284; 38 U.S.C. 693), and subject to the limitations and conditions thereof and of these regulations.

The subject of the guaranty is that portion of an eligible loan procured by an eligible veteran which may be subject to being guaranteed as provided in said Title III, as determined by the Administrator upon application in accordance with these regulations.

(g) "Mortgage" means an applicable type of security instrument commonly used or legally available to secure loans or the unpaid portion of the purchase price of real or personal property in a State, District, Territory, or possession of the United States of America in which the property is situated. It includes, for example, deeds of trust, security deeds, escrow instruments, real estate mortgages, conditional sales agreements, chattel mortgages, etc.

(h) "Secondary" or "junior" loan means a loan which is secured by a lien or liens subordinate to any other lien or liens on the same property.

(i) "Guaranteed loan" means a loan unsecured, or secured by a primary lien, or where permissible under the act and these regulations, a secondary lien, which loan is guaranteed in whole or in part by the Administrator as evidenced by endorsement thereon; or by Loan Guarantee Certificate issued by the Administrator, and which shall have become effective as prescribed by these regulations; or by such other legal evidence as may be provided by the Administrator.

(j) "Home" and "residential property" means any dwelling consisting of not more than four family units, or any combination dwelling and business property, the primary use of which is occupation by the veteran as his home.

(k) (1) "Reasonable normal value" for the purposes and intent of the act is that which can be justified as a fair and reasonable price to be paid for a property for the purposes for which it is being acquired, assuming a reasonable business risk, but without undue speculative or other hazard as to the future of such value.

(2) The purpose and intent are (i) to assure that the price to be paid represents a fair and reasonably permanent value in the real property to be acquired, (ii) to give, so far as the real estate is concerned, the basis for a fair but not unreasonable risk on the part of the United States Government when executing its guarantee, (iii) to assure that the appraisal shall be founded upon true and reasonably permanent values.

(3) Each valuation shall be justified, inter alia, (i) by the history of values and prices for this and similar properties, (ii) by the future resale possibilities as indicated by trends in the immediate locality and (iii) by the most probable and reasonably assured long term future economic and real estate conditions, national and local, as they will affect prop-

erties similar to and competitive with that under appraisal.

(4) "Reasonable normal value" is not necessarily "fair market value" nor "fair market price" in the usual legal sense of those terms, nor is it necessarily the same as "value for mortgage purposes."

(1) "Property" and "lot" as used in section 501 of the act refer to an interest in realty defined in this section, and subject to the conditions therein.

(1) An interest in realty may be a fee simple estate, or certain other estates indicated in subparagraphs (1) to (6) (including an estate for years) eligible as security for guaranteed loans. But in any event the estate shall be one limited to end at a date more than 14 years after the ultimate maturity date of the loan, or when the fee simple title shall vest in the lessee; except that, if it is a leasehold that terminates earlier, it shall nevertheless be acceptable if lessee has the irrevocable right to renew for a term ending more than 14 years after the ultimate maturity date of the loan or until the fee simple title shall vest in lessee: *Provided*, The mortgagee obtains a mortgage lien of the required dignity upon such option right or anticipated reversion or remainder in fee.

(2) A life estate or other estate of uncertain duration is excluded, unless the remainder interests are also encumbered by lien of the same dignity to secure the same debt.

(3) A remainder interest in realty shall be eligible as security for a mortgage loan only in the event that all the owners of intervening immediate or remainder interests lawfully can and do (i) join in the mortgage in such manner as to subject all such intervening estates to the lien; or (ii) execute and deliver a lease or other proper conveyance to the owner of the ultimate remainder in fee simple in such manner as to assure his legal right to possession and enjoyment until the vesting of his ultimate remainder interest.

(4) If other than a fee simple estate or estate for years with minimum duration as stated in subparagraph (1) of this paragraph, is offered as security full information may be submitted to the Administrator before taking application from the veteran. The Administration shall determine the eligibility of any such estate.

(5) The existence of any of the following will not require denial of the guaranty; hence will not require special submission:

(i) Outstanding easements for public utilities, party walls, driveways, and similar purposes;

(ii) Customary building or use restrictions for breach of which there is no reversion and which have not been violated to a material extent;

(iii) Slight encroachments by adjoining improvements;

(iv) Outstanding water, oil, gas or other mineral, or timber rights, which do not materially impair the value for residential purposes, or which are customarily waived by prudent lenders in the community: *Provided, however*, That

if there is outstanding any legal right to quarry, mine or drill within 400 feet of the encumbered building the application for guaranty may be denied for that reason unless upon consideration of all the facts the Administrator determines otherwise. Such determination at the option of the lender or borrower may be obtained upon a special submission of all the facts prior to taking application for guaranty.

(6) A mortgage on an undivided interest in realty shall not be acceptable unless all co-tenants of the veteran join in the mortgage, and unless such joinder has the legal effect of creating a lien on the property such as is otherwise required. In such case it shall not be required that the co-tenants join in, endorse, or otherwise become personally liable on the veteran's indebtedness. Notwithstanding such joinder in the mortgage by the co-tenants the value of the security for purpose of guaranty shall be determined with respect to the individual interest of the veteran only, and the guaranty will be limited to the proper proportion of that sum, irrespective of the actual amount of the loan.

(m) "Indebtedness" means the unpaid principal and accrued interest on the note, bond or other obligations, the subject of the guaranty, and includes also taxes, insurance premiums and any other items for which the debtor is liable under the terms of the mortgage, or other contract, including proper contractual or statutory trustee fees and attorney fees, if any.

(n) "Note" means a promissory note, a bond, or other instrument evidencing the debt and the debtor's promise to pay same.

(o) "Appraiser" means an individual or firm or corporation of recognized standing, approved in writing by the Administrator to appraise property. An applicant for designation as an approved appraiser shall show to the satisfaction of the Administrator that he is of good character and that his experience and information enable him to form sound opinions as to the reasonableness of the purchase price or cost of property to be appraised in the territory in which he expects to operate.

A list of appraisers, considered by the Administrator to be in good standing at the time these regulations become effective, may be approved.

(p) "Certificate of title" means a written and signed opinion or statement as to title by a qualified member of the bar of, or by a title company authorized to do such business in, the jurisdiction in which the mortgaged property is situated; or at the option of borrower and lender a title insurance or guaranty contract by a corporation authorized to engage in such business in the State wherein the property is situated; or appropriate evidence of title in the proposed encumbrancer pursuant to a Torrens or other similar title registration statute.

(q) "Credit report" means the report submitted by any credit reporting agency of at least five years' experience with fa-

cilities for national coverage, approved by the Administrator, or any other form of report acceptable to the Administrator for the purpose of determining the applicant's credit standing.

(r) "Eligible veteran" means a veteran who:

(1) Served in the active military or naval service of the United States on or after September 16, 1940, and before the officially declared termination of World War II.

(2) Shall have been discharged or released from active service under conditions other than dishonorable, either

(i) After active service of ninety days or more, or

(ii) Because of injury or disability incurred in service in line of duty, irrespective of the length of service; and

(3) Applies for the benefits of this title within two years after separation from the military or naval forces, or within two years after the officially declared termination of World War II, whichever is later. In no event, however, may an application be filed later than five years after such termination of such war.

(s) "Eligible lenders" are persons, firms, associations, corporations, and "governmental agencies and corporations, either State or Federal." (Section 500 (c))

(t) "Creditor" means the payee, or any subsequent holder of the "indebtedness" and includes a mortgagee.

(u) "Debtor" means the maker of the note, or obligor in any other obligation, or any other person who is, or becomes, liable thereon, by reason of a contract of assumption or otherwise.

§ 36.4001 *Miscellaneous*. Throughout these regulations unless the context otherwise requires:

(a) The singular includes the plural;

(b) The masculine includes the feminine and neuter;

(c) Person includes corporations, partnerships and associations;

(d) Month means calendar month, i. e., the period beginning on a certain date in one month and ending at midnight on the preceding date of the next month;

(e) "The act" or "the statute" means the Servicemen's Readjustment Act of 1944, Ch. 268, 78th Congress, 2nd Session, (Public Law No. 346), 58 Stat. 284; 38 U.S.C. 693;

(f) Title III means Title III of the act.

LOANS ELIGIBLE FOR GUARANTY

§ 36.4002 *Eligible loans*. Real or personal property encumbered to secure a loan guaranteed pursuant to Title III of the act shall be situated within the United States.

§ 36.4003 *Purchase or construction*. Section 501 (a) of the act provides for granting to an eligible veteran "the guaranty of a loan to be used in purchasing residential property or in constructing a dwelling on unimproved property owned by him to be occupied as his home". The application therefor "may be approved by the Administrator", if he finds that:

(a) The proceeds of such loan will be used to pay for such property * * * (including construction cost);

(b) The contemplated terms of payment of any mortgage loan bear a proper relation to the veteran's present and anticipated income and expenses;

(c) The property is suitable for dwelling purposes;

(d) The purchase price or the construction cost, plus the value of the lot, does not exceed the reasonable normal value of the entire property as determined by proper appraisal; and,

(e) The loan appears practicable.

§ 36.4004 *Repairs, etc.* Section 501 (b) provides: "Any application for the guaranty of a loan under this section for the purpose of making repairs, alterations, or improvements in, or paying delinquent indebtedness, taxes or special assessments on, residential property owned by the veteran and used by him as his home may be approved by the Administrator if he finds that the proceeds of such loan will be used for such purpose or purposes."

(b) For the purpose of section 501 (b):

(1) "Alterations or improvements", means any structural changes in or additions to the property, including heating and other equipment that become fixtures, or the replacement of either, or operations of a protective nature, which will increase the usefulness of the property as a home.

(2) "Repairs" means the work and material necessary to restore the building, or a fixture therein, to a condition that is useful and appropriate to the circumstances, the need therefor having arisen because of wear and tear, accident, or other cause.

(3) "Taxes" means general or special taxes assessed against the property.

(4) "Special assessments" means any charges for improvement purposes assessed against the property.

(5) "Delinquent indebtedness" means past due amounts of principal or interest (without giving effect to any acceleration provisions) on an obligation secured in whole or in part by a lien or liens on property of an eligible veteran and occupied as his home.

(6) Satisfactory evidence will be required to establish that the proceeds of such loan will be used for one or more of the purposes stated in paragraph (b) of this section.

§ 36.4005 *Increase in value due to repairs, etc.* An application pursuant to section 501 (b) for the guaranty of a loan for repairs, alterations, or improvements of the property, must show that the amount of the loan will bear a proper relation to the value of the property, and that the repairs, alterations or improvements will enhance such value to a reasonable degree.

§ 36.4006 *Prior liens.* The existence of a lien or liens on the property in respect to which a guaranty of a loan is sought pursuant to section 501 (b) will not necessarily require a denial of the application for guaranty; but full consideration will be given to the amount,

rate of interest, and maturity dates of the primary loan in determining whether a suitable relation will exist between the veteran's obligation and probable available income.

§ 36.4007 *First liens required.* Except as provided in section 505 of the act, loans for the purpose of purchasing or constructing homes, and in respect to which any guaranty is sought, shall be secured by a first lien on such property; but the existence of tax or special assessment prior liens will not disqualify security which is adequate and otherwise acceptable.

§ 36.4008 *Mortgages required.* (a) Each loan guaranteed in whole or in part by the Administrator shall be secured by a mortgage except that when the principal amount of a loan to be guaranteed does not exceed \$500 and the lender does not require a mortgage, the Administrator may nevertheless guarantee such loan provided it complies otherwise with the act and these regulations (as to procedure see § 36.4024 (e)).

(b) The law of the State where the contract is made determines the capacity of the parties to contract. Similarly the law of the State wherein the real estate is situated determines the capacity of mortgagor to encumber and of the mortgagee to hold the legal rights resulting from encumbrance. The act does not modify such law of the State. The guaranty by the Administrator will be available only in the event that under the applicable State law the contract between the borrower and lender is binding on both, and the mortgage has the legal effect intended. Paragraph (b) of this section will be applicable particularly in cases involving minors, "persons of unsound mind," and persons under other legal disability by reason of the law of the State. It will be applicable also in cases involving mortgage or other loans which any guardian, conservator, or other fiduciary seeks to make, or obtain; and to a guaranty thereof for which application is submitted.

(c) *Type of loan and mortgage.* (1) Except as otherwise provided in paragraph (a) of this section each loan guaranteed under the provisions of Title III must be evidenced by a note or notes secured by appropriate security instrument or instruments ("mortgage legally sufficient in the jurisdiction in which the property to be encumbered is situated.")

(2) A term loan, which is in accord with applicable State or Federal law, and regulations, if any, may be eligible for guaranty if the amount of the loan to be guaranteed plus the unpaid amount of all obligations secured by liens superior to the lien securing the proposed loan does not exceed two-thirds of the reasonable normal value of the property encumbered to secure the loan and if the ultimate maturity date of the mortgage indebtedness so secured, and to be guaranteed, is not more than five years from the date of the note. Such superior liens shall not be mortgage liens, except when the guaranty is issued pursuant to sections 501 (b) or 505 of the act. (3) Except as provided

in subparagraph (2) of this paragraph the loan shall be amortized. The obligation to be amortized may, and except for the first year shall, require such periodical payments of stated sums as will in accordance with standard amortization practice result in payment of the entire principal and interest within not more than 20 years from the date of the loan, or the date of assumption by the veteran, whichever is later. At the request of the mortgagor the payments during the first year shall be less than the amount required thereafter, by the sum representing the interest charge on the guaranteed part of the loan, and which interest charge the Administrator will pay at the end of that year.

§ 36.4009 *Transfer of title.* The conveyance of, or other transfer of title to the property after the creation of a lien thereon to secure the veteran's debt, which is guaranteed in whole or in part by the Administrator, shall not terminate or otherwise affect the contract of guaranty, unless (a) the creditor by express agreement for that purpose releases or otherwise discharges the veteran from personal liability thereon; or (b) by indulgence of, or by agreement with, the veteran's immediate or remote grantee contrary to these regulations and without the consent of the Administrator the creditor so alters the contract made by the veteran with the lender as to cause discharge of the veteran by operation of law.

§ 36.4010 *Obligation of guarantor.* To the extent prescribed the obligation of the United States is that of a guarantor, not an indemnitor.

§ 36.4011 *Contract provisions.* Subject to the provisions of the act and these regulations, the contract between the lender and borrower, may contain such provisions as they may agree upon and which are reasonable and customary in the locality where the property is situated.

§ 36.4012 *Repayment provisions.* (a) If the loan be an amortized loan the lender and borrower may contract for such periodical payments at monthly or other intervals but not less frequently than annually.

(b) If the mortgagor consents the mortgage may provide that each monthly or periodical payment shall include in addition to the proper amount to be credited to principal and interest a proportionate part of the estimated amounts required annually for all taxes, ground rents if any, special assessments if any, and fire and other hazard insurance premiums. Such provisions may direct the method of crediting the additional amounts included in the periodical payments for the purposes stated in this paragraph.

(c) The method may be by crediting the note with the amounts so received and debiting same with disbursements by the creditor for such purposes; or by crediting and debiting a separate "trust account", or otherwise as the debtor and creditor agree. Unless otherwise provided by the parties, all periodical pay-

ments made by the debtor on the obligation shall be applied to the following items in the order set forth:

(1) Taxes, special assessments, fire and other hazard insurance premiums, and ground rents (allocated among such items as the creditor elects);

(2) Interest on the mortgage debt; and

(3) Principal of the mortgage debt.

§ 36.4013 *Prepayments.* (a) When the debt is to be amortized the note or other evidence thereof, or the mortgage securing same, shall contain appropriate provisions granting any person liable for such debt, the right to pay at any time the entire unpaid balance or any part thereof. Unless otherwise agreed all such prepayments shall be credited to the unpaid principal balance of the loan as of the due date of the next installment. No premiums shall be charged for any partial or entire prepayment.

(b) Any person liable shall be entitled to prepay a term loan, or any part thereof, upon not less than one month's notice. The note or mortgage shall so provide.

(c) Any prepayment shall be applied in the manner and to the items directed by the person making the prepayment.

§ 36.4014 *Pro rata decrease of guaranty.* The amount of the guaranty shall decrease pro rata with any decrease in the amount of the unpaid principal of the loan, prior to the date the claim is submitted.

§ 36.4015 *Insurance coverage required.* (a) Buildings the value of which enter into the appraisal forming the basis for the loan guaranteed shall be insured against fire, and other hazards against which it is customary in the community to insure and in amount at least equal to the amount by which the loan exceeds the value of the encumbered land plus that of the improvements included in the appraisal but which are not subject to the hazards insured against; *Provided*, That upon a satisfactory showing at the time of application for guaranty that (1) it is impossible or impracticable to obtain such insurance because of location, prohibitive cost, or other good reason; (2) prudent lenders in such community customarily do not require such insurance, or some portion thereof, (amount or hazard) and (3) the lender submitting the application is willing to make the loan without insurance coverage on one or more of the buildings, or without certain coverage, or in a reduced amount, and subject to the provisions of paragraphs (b) and (c) of this section; the Administrator may at the time of approving the application waive all or part of such insurance requirements, subject to the provisions of said paragraphs (b) and (c) of this section. No waiver will be granted on the basis of premium cost in any case wherein the premium cost on an annual basis does not exceed \$5.00 per \$1000 of insurance against the hazard of fire, or \$10.00 per \$1000 for fire and all other hazards covered by the insurance. The procuring of insurance of the amount and coverage stated in the approved application shall

constitute conclusive evidence of waiver by the Administrator of insurance in excess of the amount stated in or in connection with the application and also all hazards not mentioned therein as hazards to be covered.

The creditor shall require that there be maintained in force such insurance of the coverage stated in the approved application in an amount not less than the amount stated or the amount of the unpaid indebtedness whichever is the lesser.

In the event insurance becomes unavailable the fact shall be reported to the Administrator for determination whether waiver shall be granted or loan declared in default.

(b) For the sole purpose of determining the amount payable upon a claim under the guaranty after an uninsured loss (partial or total) has been sustained, the unpaid balance of the loan (except as provided in paragraph (c) of this section) will be deemed to have been reduced by an amount equal to the amount of the uninsured loss, but in no event below an amount equal to the value of the land and other property remaining and subject to the mortgage.

(c) There shall be no reduction of the amount of the guaranty as provided in paragraph (b) of this section by reason of an uninsured loss which is uninsured (as to hazard or amount) by reason of a waiver by the Administrator as provided in paragraph (a) of this section.

(d) All insurance effected on the mortgaged property shall contain appropriate provisions for payment to the creditor, (or trustee, or other appropriate person for the benefit of the creditor), of any loss payable thereunder. If by reason of the creditor's failure to require such loss payable provision in the insurance policy payment is not made to the mortgagee the liability on the guaranty nevertheless shall be reduced as provided in paragraph (b) of this section with respect to an uninsured loss, except to the extent that the liability under the policy was discharged by restoring the damaged property, by the insurer, or out of payments thereunder to the insured, or otherwise. No waiver pursuant to paragraph (a) of this section shall modify this paragraph (d).

(e) Upon the creditor (or trustee or other person) collecting the proceeds of any insurance contract, or other sum from any source by reason of loss of or damage to the mortgaged property, he shall be obligated to account for same, by applying it on the indebtedness, or by restoring the property to the extent the expenditure of such proceeds will permit. As to any portion of such proceeds the mortgagee is not entitled to retain for credit on such indebtedness or by reason of other legal right, he shall hold and be obligated to pay over the same as trustee for the United States and for the debtor, as their respective interest may appear.

(f) Nothing in these regulations shall operate to prevent the veteran from procuring acceptable insurance through any authorized insurance agent or broker he

selects. In all cases the insurance carrier shall be one licensed to do such business in the State wherein the property is situated.

§ 36.4016 *Loan charges.* (a) In the case of a purchase of real or personal property by the veteran and a guaranty pursuant to the act and these regulations of an indebtedness representing part of the purchase price, there may be charged to the veteran and included in said note amounts actually paid or incurred by the seller (mortgagee) for such expenses and charges as are chargeable to such purchaser in accord with local custom, if the purchaser so agrees, such as fees for appraisals, credit and character report on the veteran, surveys, fees of purchaser's (not seller) attorney, recording fees for recording the deed and the mortgage only, premiums on fire and other hazard insurance that may be required in accordance with these regulations.

(b) In the case of a loan to the veteran, charges in accord with local custom, such as fees for appraisals, credit and character report, surveys, abstract, or title search, curative work and instruments, attorney fees, fees for tax certificates showing all taxes paid, premiums on fire and other hazard insurance that may be required in accordance with these regulations, revenue stamps, recording fees, etc., all limited to amounts actually paid or incurred by the lender, may be charged to the borrower and withheld from the gross amount of the loan.

(c) Any unreasonable charges shall be ground for denying an application for guaranty. No brokerage or other charges shall be made against the veteran for obtaining any loan guaranty under this title.

§ 36.4017 *Interest.* (a) The rate of interest chargeable on a loan guaranteed fully or in part, shall not exceed 4 per centum per annum on unpaid principal balances. Interest may be computed in accordance with standard amortization practices.

(b) The rate of interest on a secondary loan which is guaranteed pursuant to section 505 of the act may exceed by not more than 1% per annum the rate charged on the principal loan, but in no event shall the rate on the secondary loan exceed 4% per annum.

§ 36.4018 *Advances.* (a) Nothing herein shall prevent the creditor from making advances for the benefit of the mortgagor to pay taxes, assessments, and insurance premiums as they become due, and the cost of the emergency repairs needed to protect the property. The amount guaranteed by the Administrator shall be increased pro rata with all such increases in the unpaid principal balance of the loan; *Provided*: (1) That the annual interest rate on all advances shall not exceed 4 per centum per annum; (2) that the terms of repayment shall not extend the date of the amortization of the loan and (3) that the amount of the guaranty shall in no event exceed the original amount thereof,

nor exceed the percentage of the indebtedness originally guaranteed.

(b) In the case of any advance made by a creditor to a debtor, the creditor with the consent of the debtor, may apply any and all payments made by the debtor for a period of twelve months to the liquidation of the advance without considering the original loan in default. This shall not be construed to extend the period of indulgence contemplated by §§ 36.4034 and 36.4035.

§ 36.4019 *Construction loans.* Under certain circumstances loans relating to new construction may be guaranteed pursuant to the Act. (See § 36.4032)

GUARANTY BY THE ADMINISTRATOR

§ 36.4020 *Limits.* In no event will the aggregate obligations of the United States as guarantor under Title III exceed \$2,000 in respect to one veteran, whether there be one or several loans, and whether some are obtained for the acquisition of a home, others for a farm, and others for business, or equipment, or other purposes. Repayment of a loan or loans in whole or in part, or transfer of the encumbered property does not modify or enlarge such limitation. The guaranty shall not at any time exceed 50 per centum of the aggregate of the indebtedness for any of the purposes specified in sections 501, 502 and 503 of the act.

§ 36.4021 *Second loan under section 505 (a).* Section 505 (a) of the act provides that when the principal loan for any of the purposes stated in sections 501, 502 or 503 is "approved by a Federal agency to be made or guaranteed or insured by it pursuant to applicable law and regulations, and the veteran is in need of a second loan to cover the remainder of the purchase price or cost, or a part thereof," the Administrator may guarantee the full amount of the second loan, *Provided:*

(a) It does not exceed 20 per centum of the purchase price or cost.

(b) The amount guaranteed together with all other guarantees under Title III for the same veteran does not exceed \$2,000.

(c) The loan conforms to all other applicable requirements of these regulations.

§ 36.4022 *Two or more eligible veterans or borrowers.* (a) In the absence of a statement to the contrary, an application signed by two or more eligible veterans shall be conclusively presumed to be an application by each for the guaranty of an equal proportionate part of the entire amount to be guaranteed; *Provided, however,* That if husband and wife execute the application, both being eligible veterans, it will be conclusively presumed in the absence of a contrary statement in the application that it is an application for guaranty on behalf of the husband only. Unless the amount of guaranty then available to the husband is insufficient to meet the requirements of the case for guaranty of a proper amount under these regulations and the terms of the application; in which event

the deficiency may be charged against the amount available to the wife, unless she has in the application or otherwise (before approval) stated in writing her unwillingness to be so charged.

(b) The Administrator will not require a wife to sign an application made by her husband. If she also is an eligible veteran and desires to exercise her right as such to obtain a guaranty, a separate application by her will be required. Signature of her husband to indicate his pro forma joinder will be required only when the wife is resident of, or the application is signed in, or the property to be encumbered is situated in, a State under the laws of which such contract cannot be legally executed by a married woman alone as in the case of an unmarried woman.

§ 36.4023 *Maximum liability where there are two or more veterans.* (a) For the purpose of determining the maximum amount of the potential liability of the United States under a guaranty incident to an obligation on which two or more eligible veterans who applied for the guaranty are liable, the obligation will be deemed a several, and not a joint, obligation of the respective applicants who were charged with the guaranty or a part thereof notwithstanding that as among the debtors or any of them, and as between them, or any of them, and the creditor, the obligation is in fact and law a joint obligation or a joint and several obligation.

(b) In no event will the amount of any veteran's debt thereunder be deemed to exceed for guaranty purposes the amount for which such veteran is legally liable to the holder of the obligation, nor the value of the interest of the veteran in the property. If more than one of the obligors is an eligible veteran and application by him or them is granted, the maximum aggregate amount of the guaranty will be the sum of the amounts available to each applying veteran but in no event will the aggregate of the guarantees for more than one veteran exceed 50 per centum of the total loan except as provided under section 505 of the Act.

(c) For the purpose of this § 36.4023 the wife of a principal obligor shall not be counted unless (1) she is legally liable on the obligation under the law of jurisdiction where she executed it, and (2) if she is a veteran she be properly chargeable with a part or all of the guaranty as provided in § 36.4022.

§ 36.4024 *Veteran's application.* (a) To apply for a guaranteed loan the veteran and the prospective lender shall complete and sign in duplicate Finance Form 1802, Application for a Home Loan Guaranty. The lender shall inquire of the nearest office of the Veterans Administration whether the proposed borrower is eligible and the amount of his available guaranty. This information will be supplied on Finance Form 1800, Certification of Eligibility. The Administrator will also supply the name and address of an approved appraiser to be used in the course of processing the application.

(b) Before forwarding the executed application the prospective lender shall procure a credit report on the borrower and an appraisal of the property by the appraiser designated. The appraiser's report shall include photographs necessary to reflect generally existing conditions, and in any event those specified in the application, or appraisal forms prescribed. They may be snapshots. (See instructions for appraisers.)

(c) If the proposed loan is for alteration or improvement purposes the appraisal report shall reflect an examination of the building contract, the plans and specifications, and include appropriate data sufficient to afford a basis for estimating the increased value of the property to result from completion of such improvements.

(d) In every case the appraiser's report shall indicate the basis, by survey or otherwise, of identifying the property appraised as that to be encumbered to secure the proposed loan.

(e) If (1) the loan does not exceed \$500, (2) the lender does not require a mortgage, and (3) the loan otherwise complies with these regulations, the provisions of paragraphs (b), (c), and (d) of this section; paragraphs (d), (e), and (h) of § 36.4025; paragraphs (a), (c), and (d) of § 36.4030; subparagraphs (2) and (3) of paragraph (a) of § 36.4031; and paragraphs (c) and (e) of § 36.4032 shall be inapplicable to such loan and any guaranty thereof.

§ 36.4025 *Papers required.* The prospective lender shall submit to the agency the following papers:

- (a) Certification of eligibility.
- (b) Loan guaranty certificate.
- (c) Original application for guaranty signed by prospective lender and borrower.
- (d) The credit report.
- (e) The appraisal report.
- (f) Copy of the "conditional sales agreement" if the loan is to be predicated on such an instrument.
- (g) Proposed loan closing statement of the estimated amounts to be disbursed by the lender for the account of the borrower.

(h) Unless stated in the mortgage, or otherwise in the papers submitted, a statement of the kinds and amounts of insurance to be required to protect the mortgagor, the lender and the Administrator against loss by fire and other hazards, and the estimated premium cost thereof. (See § 36.4015)

§ 36.4026 *Recommendation for approval of guaranty.* The Agency shall review the papers to determine whether it will recommend approval of the application for guaranty. Thereupon the Agency shall forward all the papers to the appropriate office of the Administrator with recommendation that (a) the Administrator approve the application, or (b) he disapprove it. If disapproval is recommended the reasons therefor shall be stated in writing at the time the papers are forwarded. A recommendation that the application be approved,

shall be appropriately endorsed on the original of the application.

§ 36.4027 Administrator's action on application. (a) Upon receipt of the papers from the Agency, the Administrator will determine whether to approve the application. If disapproved he shall return to the proposed lender all papers except the original application for guaranty and shall state that the application for guaranty has been denied and the reasons therefor. He shall send a copy of the letter to the veteran and the Agency. Upon denial any expenses incurred by the lender or the borrower shall be borne by them or either of them as they shall have agreed.

(b) (1) The veteran and the proposed lender, or either, may appeal to the Administrator for review of a denial of the application.

(2) Such appeal may be by letter, or on any prescribed form, and mailed or delivered to central office of the Veterans Administration within one month after receipt of notice of denial.

§ 36.4028 Execution and form of guaranty. If the Administrator approves the application he shall notify the Agency and the veteran thereof. For the purpose of evidencing the contract of guaranty, he shall execute a loan guaranty certificate, to become effective upon the conditions therein stated. It shall be in substantially the form following:

NOTE: Forms printed in the FEDERAL REGISTER are for information only and do not follow the exact format prescribed by the issuing agency.

UNITED STATES OF AMERICA
LOAN GUARANTY CERTIFICATE

Issued by Veterans' Administration

State -----
(Where property is located)

Number L. H. -----
(To be filled in by Vets. Adm.)

Lender -----
(Exactly as appears as payee of note)

Address -----

Borrower (Veteran) -----
(Exactly as to be signed on note and mortgage)

Address -----

I

A. This certificate shall become effective when the requirements of the statute and regulations have been complied with and the acts certified in Part III hereof have been accomplished in compliance with said requirements.

B. When it becomes effective as hereinabove prescribed, this certificate shall obligate the United States of America to pay to the legal holder of the "note" described on the reverse hereof upon his duly filing claim therefor:--

1. All or such portion of the maximum amount hereby guaranteed as becomes payable upon the conditions, at the times stated in, and in accordance with the provisions of, the Servicemen's Readjustment Act of 1944, (38 U. S. Code 693; 58 Stat. 284), and the regulations issued pursuant thereto which

are in effect on the date of this Certificate. In no event will the obligation under this Certificate exceed \$2,000. Subject to the foregoing this guaranty on this date is for \$-----, being ---- per centum of the face amount of said note, and in no event will it exceed said sum or percentage.

2. At the expiration of one year from the date of the "note", an amount equal to the interest for one year at the contract rate on that portion of the indebtedness ("note") originally guaranteed hereby, such payment to be credited on the indebtedness as prescribed by said regulations.

C. Executed on behalf of the United States of America by the Administrator of Veterans Affairs, through the undersigned authorized agent on this date, to become effective in the manner hereinabove prescribed.

Date -----
ADMINISTRATOR OF VETERANS AFFAIRS,
By: -----
(Authorized Agent)

At: -----
(Post Office)

II

Description of property to be "Mortgaged"

Type lot and block number, if any, or field notes and any other proper language to complete legal description. Include description of personal property if any.

Premises identified as:

(House Number and Street)

(City, Town, Village)

(County, Parish)

(State, District, Territory)

and further described as:

(Continue legal description if necessary in the space below)

III

CERTIFICATION BY BORROWER AND LENDER

A. We hereby warrant that (1) the undersigned borrower named on the reverse hereof executed the note, the principal sum of which is \$-----; (2) it is dated the ----- day of ----- 19-----; (3) borrower(s) and mortgagor(s) delivered it together with the "mortgage" (as defined in the regulations) bearing the same date, and executed to secure payment of said note; (4) said note and mortgage are those approved by the Administrator of Veterans Affairs upon application of the undersigned pursuant to which this loan guaranty certificate was issued; and (5) the amount stated above has been paid to, or according to the directions of, the undersigned borrower(s).

B. The undersigned lender warrants that (1) the same "mortgage", duly executed and acknowledged; was properly filed for record on the ----- day of ----- 19-----; at ----- M.; and was given file No. ----- by the Recorder; (2) that it covers the property described on the reverse hereof, which is the same property described, or otherwise identified, or referred to, in the above-mentioned application for guaranty, and in this loan guaranty certificate; and (3) that no lien superior to said "mortgage" has intervened since the date of said application.

(If a corporation)

(Secretary)

Mr. -----
Mrs. -----
Miss -----

(Lender(s))

By: -----
Title--(President, Vice-President, etc.)

Mr. -----
Mrs. -----
Miss -----
Mr. -----
Mrs. -----
Miss -----
(Borrower(s))

(Sign in ink on these lines)

If the note is unsecured but is eligible for guaranty under the regulations, references to "mortgage" in paragraphs "A" and "B" above are inapplicable. (See Regulations sec. 4008, par. 1)

§ 36.4029 Disposition of papers. The original application for guaranty will be retained in the files of the Veterans' Administration. The loan guaranty certificate and all other papers will be forwarded to the proposed lender with instructions as to closing the loan in a manner to make the guaranty effective.

§ 36.4030 Loan procedure after approval of guaranty. Upon receipt of the papers from the Administrator, the lender shall:

(a) Satisfy himself by title certificate, as defined in these regulations, as to the title to the property to be encumbered.

(b) Cause all necessary instruments to be properly signed and those to be recorded properly witnessed, acknowledged or proved so as to entitle them to recordation.

(c) Disburse all funds in substantial accord with the proposed loan closing statement submitted with the application. (See § 36.4025 (g))

(d) File with the proper public official for record the mortgage and any other appropriate instrument which under the law of the State is required or permitted to be recorded.

§ 36.4031 Guaranty when effective. (a) Within two months after closing the loan and filing the proper instrument for record, the lender shall complete and forward to the Administrator (using prescribed form, if available) a properly signed report of closing the loan stating that:

(1) The disbursement of the amount named as the principal of the note has been completed by the lender.

(2) Such disbursements were as estimated on the loan closing statement submitted with the application, except as otherwise stated on the reverse side of the report of closing loan. (See §§ 36.4016 (a) and 36.4025 (g))

(3) The note and the mortgage (or other security instrument) were properly executed stating the date, and the latter "was duly acknowledged, witnessed, or proved, to that it was legally eligible for recording; the date and hour and county in which it was properly filed for record; and the filing number thereof."

(4) The note was dated, (stating the date thereon), and signed by the "debtor", and the rate of interest provided therein.

(5) The loan guaranty certificate (stating its L-number) was completed, and appropriately signed by the lender and the borrower as therein provided.

(b) If lender is a corporation its corporate seal shall be impressed on such report.

§ 36.4032 Construction loans. (a) Upon the submission to an agency of an application made pursuant to section 501 (a) of the act for the guaranty of a loan for the construction of a dwelling on unimproved property owned by the veteran, or under section 501 (b) for construction involving alterations or improvements, the guaranty will be issued to become effective only upon completion of the construction project, and upon fulfillment of the same requirements of these regulations as are applicable to the guaranty of loans for the acquisition of homes other than by construction.

(b) Notwithstanding the provisions of paragraph (a) hereof, the guaranty mentioned therein may become effective without the entire amount of the loan having been disbursed if:

(1) Complete disbursement is prevented, in the exercise of ordinary care, by reason of the filing of mechanic liens or other liens, or other controversy or threat of litigation, as to entitlement to any part of the proceeds of such loan; and

(2) There is paid to an Escrow Agent approved by the Administrator so much of such proceeds as have not been disbursed, or other arrangements satisfactory to the Administrator have been made for assuring the availability of such sums; and

(3) There is issued by the Administrator Finance Form 1810, Approval of Escrow Certificate, which may be attached to the loan guarantee certificate.

(c) For construction loans the lender will follow the procedure provided in §§ 36.4024-36.4031 for the guaranty of loans for the purchase of residential property and in addition will furnish to the Agency:

(1) Complete plans and specifications for the proposed construction.

(2) An estimate, prepared by a qualified appraiser, of the fair market value of the property on which the improvements will be situated together with a separate estimate of the increased value of the property which will result from the improvements according to the plans and specifications. Such estimates of value are in addition to the appraiser's report of the "reasonable normal value".

(3) A copy of the agreement or agreements (which may be unsigned) on which the proceeds of the proposed loan will be disbursed.

(d) Upon the receipt of such papers the Agency will follow the procedure prescribed in § 36.4026 and submit same to the Administrator for action under §§ 36.4027 and 36.4028.

(e) The loan guaranty certificates shall contain a condition precedent to its becoming effective additional to those set forth in § 36.4030 such condition being the supplying to the Administrator of a statement by an appraiser on Finance Form 1803 (a), Statement by Appraiser on Completion of New Construction, which document must be supplied in ad-

dition to those specified in § 36.4031. It shall state that:

(1) He has inspected the building as constructed;

(2) The same has been constructed and completed in substantial conformity with the contract, plans and specifications, (if any);

(3) The increased value of the property as completed and which will be encumbered is substantially in accord with his estimate.

(f) During the course of construction the Administrator shall be entitled at his expense, to cause such inspection of the construction work at such time or times as he may determine.

(g) Upon compliance with the requirements of this section and of §§ 36.4030 and 36.4031 relating to the guaranty becoming effective in other than construction loan cases, said Loan Guaranty Certificate shall become effective.

(h) The borrower and lender may contract for the payment to the lender of a reasonable sum for the advance of funds during the construction and the supervision or inspection of the construction.

§ 36.4033 Losses which are not guaranteed. The guaranty shall not cover any loss sustained by the creditor as the result of:

(a) The acceptance by the mortgagee of a mortgage on any property, title to which is not merchantable according to customary practices in the community where the property is situated;

(b) Failure of the mortgagee to procure a duly recorded lien of the dignity required by these regulations;

(c) Failure of the mortgagee to comply with § 36.4015 with respect to insurance, or

(d) A tax sale pursuant to execution, or otherwise as provided by law, occasioned by nonpayment of taxes accruing against the mortgaged property after the date of the mortgage if mortgagee fails to give notice to the Administrator of the delinquent taxes at least one month before such sale.

CLAIMS UNDER A GUARANTY

§ 36.4034 Default. (a) In the event of default, not cured, continuing three months on an amortized loan or one month on a term loan the creditor may elect to assert claim under the guaranty, and give notice thereof to the Administrator.

(b) If any default occasioned by failure seasonably to pay to the creditor entitled any amount of principal or interest due him under the contract (not cured) shall have persisted as long as six months the holder of the indebtedness shall give notice thereof to the Administrator notwithstanding the failure results from payments on advances as provided in § 36.4018, or from any indulgences of the debtor as provided in § 36.4041.

(c) (1) The notice shall state the loan guaranty number if available. If not available other identifying data shall be included, such as date and amount of original obligation, location of Veterans Administration office that issued the

guaranty and the property encumbered.

(2) In all cases the notice shall state the name and last known address of the debtor, of the veteran, and of the creditor, and the date and manner of default, and amount past due. If he desires, the creditor may also state his views as to any indulgence that should be extended.

(3) The notice to the Administrator shall be mailed by registered mail or personally delivered in exchange for a written receipt within one month after the expiration of said 6 months' period.

§ 36.4035 Claim on notice of default. (a) In the notice of default or separately, then, or later, the creditor may make claim under the guaranty.

(b) Then or thereafter the creditor may also give notice of his intention to foreclose the lien or liens securing the indebtedness.

(c) The Administrator may approve the creditor's request, if any, to postpone action to press his claim against the mortgagor, or the property, such postponement, with the consent of the Administrator, shall not operate to void or diminish the ultimate liability under the guaranty. In no event shall indulgence or postponement of action authorized by these regulations impair any right of the creditor to thereafter proceed within the applicable statute of limitations period as if there had been no indulgence or postponement.

§ 36.4036 Legal action. (a) The creditor shall not begin action in court, or give notice of sale under a power of sale, until the expiration of 30 days after receipt by the Administrator of the notice of intention to foreclose. Notwithstanding paragraph (a) of § 36.4034 such notice may be given at any time after a default.

(b) (1) If the circumstances require immediate action to protect the interest of the creditor or the Administrator, the Administrator may waive the requirement for prior notice if notice of the action taken is immediately given.

(2) Without limiting the foregoing, the existence of conditions justifying the appointment of a Receiver for the property shall be sufficient excuse for beginning suit without prior notice to the Administrator if within ten days after commencement of the suit or action, plaintiff gives the Administrator notice thereof.

§ 36.4037 Notice of suit and subsequent sale. (a) Within ten days after beginning suit or causing notice of sale without suit to be given, the creditor shall notify the Administrator thereof by registered mail or personal delivery in exchange for written receipt. It shall state whether the foreclosure will be by proceeding in court, or under a power of sale; the style and number of the suit, if any, and the name and location of the court in which pending.

(b) The creditor shall give written notice to the Administrator by registered mail (or delivery) of any foreclosure sale, judicial, or under a power of sale; or of any proposed termination of the rights of any vendee or his immediate

or remote grantee (assignee) pursuant to any power or option in a sales contract, or in any other instrument affecting the property which constitutes any security for the obligation guaranteed. Such notice shall be given so that it is received at least thirty days before such sale or other proposed action. It shall state the date, hour and place thereof. The Administrator may bid thereat on the same terms as the lender or other bidders, and may exercise any right the debtor could exercise by virtue of the contract, or any statute, or otherwise. This section is applicable whether the suit, or the sale, or termination, occur before or after payment of the guaranty.

§ 36.4038 *Death of veteran.* (a) In the event the creditor has knowledge of the death of the veteran, or of any owner of an interest in the encumbered property, or the death of any other person liable on the indebtedness which is guaranteed in whole or in part, the creditor shall take such steps, if any, as are legally necessary, and reasonably available, in the jurisdiction where the encumbered property is situated, to avoid loss of the lien, or impairment thereof, or of all or part of the proceeds of any sale of the property as a result of, or incident to, such death, or of any probate proceedings thereby occasioned in said jurisdiction.

(b) In addition to protecting the lien rights as required by paragraph (a) of this section, the creditor at his discretion may proceed in probate, or otherwise, as may be permissible and feasible, in any jurisdiction where administration proceedings are pending or properly may be instituted, or other appropriate legal action taken against assets or persons, to assert any rights, by means of any remedies, therein available to a similarly situated creditor or the decedent.

(c) Upon direction of the Administrator and his designation of an accessible attorney for the purpose, and making appropriate provisions for advancing or paying the costs and expenses of the proceeding, the creditor shall proceed as provided in paragraph (b) of this section: *Provided, however,* That in any case the Administrator may, at his option, proceed immediately in respect to protecting the lien, or asserting claim as contemplated by paragraph (b) of this section, or as to both remedies. If the Administrator takes action, it may be in his name or the name of the creditor as the Administrator may elect and as may be appropriate under applicable law. If action is taken by the Administrator he shall seasonably notify the creditor thereof.

(d) Nothing in this section shall impair any right of set-off or other right or remedy of the Administrator.

§ 36.4039 *Death or insolvency of creditor.* (a) Immediately upon the death of the creditor and without the necessity of request or other action by the debtor or the Administrator, all sums then standing as a credit balance in a "trust", or "deposit", or other account to cover taxes, insurance accruals, or other

items in connection with the loan secured by the encumbered property, whether stated to be such or otherwise designated, and which have not been accredited on the note shall, nevertheless, be treated as a set-off and shall be deemed to have been credited thereon as of the date of the last debit to such account, so that the unpaid balance of the note as of that date will be reduced by the amount of such credit balance: *Provided, however,* That any unpaid taxes, insurance premiums, ground rents, or advances may be paid by the holder of the indebtedness, at his option, and the amount which otherwise would have been deemed to have been credited on the note reduced accordingly. This section shall be applicable whether the estate of the deceased creditor is solvent or insolvent.

(b) The provisions of paragraph (a) of this section shall also be applicable in the event of:

(1) Insolvency of creditor;

(2) Initiation of any bankruptcy or reorganization, or liquidation proceedings as to the creditor, whether voluntary or involuntary;

(3) Appointment of a general or ancillary receiver for the creditor's property; or, in any case

(4) Upon the written request of the debtor if all secured and due insurance premiums, taxes, and ground rents have been paid, and appropriate provisions made for future accruals.

(c) Upon the occurrence of any of the events enumerated in paragraphs (a) or (b) of this section interest on the note and on the credit balance of the "deposits" mentioned in paragraph (a) shall be set-off against each other at the rate payable on the principal of the note, as of the date of last debit to the deposit account. Any excess credit of interest shall be treated as a set-off against the unpaid "advances," if any, and the unpaid balance of the note.

(d) The provisions of paragraphs (a), (b) and (c) of this section shall apply also to corporations. The dissolution thereof by expiration of charter, by forfeiture, or otherwise shall be treated as is the death of an individual as provided in paragraph (a).

§ 36.4040 *Filing claim under guaranty.* Claim under the guaranty may be made on Finance Form 1805, Claim under the Guaranty. Subject to the limitation that the total amount payable under the guaranty shall in no event exceed the original amount thereof, the amount payable under the guaranty shall be the percentage of the indebtedness originally guaranteed applied to the indebtedness (as defined in § 36.4000 (a)), computed as of the date of the claim, and reduced by any payments theretofore made by the United States pursuant to the guaranty.

§ 36.4041 *Options available to Administrator.* Upon receipt of claim under the guaranty the Administrator shall have the following options:

(a) Pay to the creditor not later than one month after receipt of notice of any default, as a partial payment of any ac-

tual or potential claim under the guaranty, the amount of principal, interest, taxes, advances, or other items in default; and in consideration of such payment the lender shall be deemed to have agreed to refrain from giving effect to any acceleration provisions by reason of defaults prior to the date of notice of default theretofore given: *Provided, however,* That unless the creditor consents, the Administrator may exercise this option once only, and in an amount not exceeding an amount equivalent to the aggregate of principal and interest payable in one year, or not exceeding ten per centum of the original amount of the guaranty, whichever sum is less.

(b) Pay the creditor within one month after receipt of claim the full amount payable under the guaranty without requiring foreclosure, or personal action.

(c) Pay to the creditor promptly after receipt of claim any amount agreed upon, not exceeding the amount due under the guaranty; and notify him to institute appropriate foreclosure proceedings, with, or without, legal action to reduce the debt to judgment, against all or any of the parties liable thereon, and whose names are stated in such notice to the creditor.

(d) If the creditor does not begin appropriate action within two months after receipt of notice to institute action as provided in paragraph (c) above, the Administrator shall be entitled to begin and prosecute the same to completion in the name of the creditor, or of the Administrator on behalf of the United States, as may be appropriate under applicable laws and rules of procedure: *Provided, however,* That in such event the Administrator shall pay (in advance if required under the practice in the jurisdiction) all court costs, and other expenses, and provide the legal services required.

§ 36.4042 *Refinancing and extension of guaranty.* (a) When the Administrator shall have received notice from the creditor that he intends to institute foreclosure proceedings, the Administrator shall be entitled to obtain a refinancing which will prevent the consummation of the foreclosure sale. Nothing herein shall be construed to require a creditor to lend money for such refinancing.

(b) If refinanced in any manner the Administrator may continue in effect the guaranty granted with respect to the previous loan in such manner as to cover the loan which effected the refinancing.

(c) The Administrator in appropriate cases shall be entitled to exercise any redemption rights of a debtor, or a creditor, in connection with the loan guaranteed, or property rights arising out of, or incident to, such loan,

§ 36.4043 *Subrogation.* (a) Any amounts paid to the creditor by the Administrator pursuant to the guaranty shall constitute a debt due to the United States by the veteran on whose application the guaranty was made; and by his estate upon his death. The Administrator is subrogated to the contract and the lien rights of the creditor to the extent of such payments, but junior to the credi-

tor's rights as against the debtor or the encumbered property, until the creditor shall have received the full amount payable under his contract with the debtor. No partial or complete release by the creditor of the debtor or of the lien shall impair any rights of the Administrator, by virtue of the lien, or otherwise.

(b) The creditor, upon request, shall execute, acknowledge and deliver an appropriate instrument tendered him for that purpose, evidencing any payment received from the Administrator and the Administrator's resulting right of subrogation.

§ 36.4044 *Future action against mortgagor.* In addition to the amount, if any, collected from the proceeds of the encumbered property by reason of the right of subrogation, the United States will collect from the veteran, or his estate, by set-off against any amounts otherwise payable to the veteran or his estate; or in any other lawful manner, any sums disbursed by the United States on account of the claim pursuant to the guaranty.

§ 36.4045 *Suit by administrator.* (a) Whenever pursuant to these regulations, the Administrator institutes, or causes to be instituted by the creditor, or otherwise, any suit in equity; action at law; or probate proceedings or the filing of a claim in such; or other legal or equitable proceedings of any character, or any sale, in court or pursuant to any power of sale, the person or persons properly instituting the same (including the Administrator), shall be entitled to recoup from any proceeds realized therefrom any expenses reasonably incurred, including trustee fees, court costs, and attorney fee paid (or the reasonable value of the services of the trustee and of

the attorney, if performed by salaried person or persons, or by the party himself, when proper).

(b) The net proceeds, after setting off such items that may properly be recouped, shall be credited to the indebtedness, or otherwise as may be proper under the facts.

(c) In determining the propriety of recoupment and the amount thereof consideration shall be given to any provisions in the note or mortgage relating to such items, and any amounts actually realized pursuant thereto.

§ 36.4046 *Creditor's records and reports required.* (a) The creditor shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto, and the dates thereof. Any creditor who fails to maintain such record 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, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such creditor; not on the debtor, or the United States.

(b) On any delinquent loan the creditor shall report annually on the anniversary of the earliest unremedied default any amount received or disbursed, the unpaid balance of principal and accrued interest and any other items chargeable; and the nature of any defaults not already reported. He shall include such additional information, if reasonably necessary and obtainable, which may, from time to time be requested by the Administrator.

(c) A proposed lender may be required to submit evidence satisfactory to the Administrator of his equipment for maintenance of adequate records on,

and his ability to service, loans if guaranteed pursuant to the provisions of the act and these regulations.

§ 36.4047 *Failure to supply information.* Failure to supply any available information required by these regulations within two months after request therefor will entitle the Administrator to obtain such information otherwise, and the expense of so obtaining it, plus ten dollars to cover estimated overhead expenses, shall be chargeable to the creditor who failed to comply with such request.

§ 36.4048 *Notice to administrator.* Any notice required by these regulations to be given the Administrator shall be sufficient if in writing, and delivered at, or mailed to, the Veterans Administration office at which the application for guaranty was approved or to any changed address of which the creditor has been given notice or, at the option of the creditor, to the central office of the Veterans Administration, Washington 25, D. C. If mailed the notice shall be by registered mail when so provided by these regulations.

§ 36.4049 *Right to inspect books.* The Administrator has the right to inspect, at a reasonable time and place the papers and records pertaining to the loan and guaranty. If permission to inspect is declined the Administrator may enforce the right by subpoena under the provisions of Title III, Public No. 844, 74th Congress, 49 Stat. 2031-35, 38 U.S.C. 131, or in any other lawful manner.

[SEAL] FRANK T. HINES,
Administrator of Veterans Affairs.

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