

## Chapter VA 4

## HOUSING LOANS

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**History:** Chapter VA 4 as it existed on October 31, 1974 was repealed and a new chapter VA 4 was created, Register, October, 1974, No. 226, effective November 1, 1974.

**VA 4.01 Definitions.** In this chapter the terms defined in s. 45.71, Stats., shall have the meanings designated therein and the statutory definitions are incorporated herein by reference. The following terms shall have the meanings designated:

(1) "Adequate housing" means a structurally sound housing accommodation ready for immediate occupancy, sufficient in size to accommodate the applicant and the applicant's dependents, with electrical amperage of at least 100 amperes, heating and sanitary facilities, all of which are in good condition of repair. The housing accommodation must have sufficient bedrooms to provide sleeping accommodations segregated by sex for the applicant's unmarried dependents. However, dependents less than 6 years old need not have segregated sleeping areas if the housing accommodation provides space for necessary expansion or if older dependents will be leaving the housing accommodation permanently in the near future.

(2) "Annual income" means "current monthly income" multiplied by 12.

(3) "Anticipated annual shelter payment" means the total annual payments anticipated for the following, as determined by the authorized lender or department on the basis of the loan applied for:

(a) Real estate taxes on the housing accommodation to be mortgaged. On properties with previously untaxed improvements, the appraiser shall determine the anticipated tax. Estimated real estate taxes shall be based upon the current appraised value times the prior year's mill rate for state, county, municipal and school taxes;

(b) Hazard insurance premium (including flood insurance, if required) for coverage required;

(c) Required payment on principal and interest on all loans which will be secured by encumbrances against the housing accommodation after the closing of the housing loan;

(d) Homeowner's share of common expenses. This applies to condominiums, planned unit developments and neighborhood associations;

(e) Holding tank monthly pumping fees annualized when such systems are permissible under s. VA 4.03.

(4) "Applicant" means a person who applies for a loan certificate of eligibility or a veteran who applies for a housing loan under subch. II of ch. 45, Stats. The term "applicant" also means the applicant and co-applicant, if there is a co-applicant, unless the context clearly limits the meaning to the applicant only.

(5) "Basement survey" means the placement of stakes delineating, by survey, the perimeter of the proposed basement within the lot upon which an applicant's housing accommodation will be constructed. A basement constructed pursuant to such a survey must comply with sideyard, setback and other applicable requirements.

(6) "Co-applicant" means any person who is eligible to apply and does apply with an applicant for a housing loan.

(6m) "Creditworthy guarantor" means any Wisconsin resident who the department determines has adequate resources or income and an acceptable credit history so as to enable the person to act as a guarantor on a loan of \$3,000 or less for a purpose designated in s. 45.76 (1) (c), Stats.

(7) "Current monthly income" means an applicant's current monthly adjusted gross income at the time of application, or in appropriate cases 1/12 of an applicant's annual income computed on the basis of the applicant's current adjusted gross income at the time of application, except in the case of a self-employed applicant, an applicant who is a seasonal employee, or an applicant who must pay substantial job connected expenses where current monthly income shall be computed on the basis provided in s. VA 4.05 (5) (a), together with such other income as the department determines to be regular and dependable or includable as income.

(8) "Debt servicing payments" means 1/12 of an applicant's "anticipated annual shelter payment" and monthly repayments required on installment debts with 13 or more remaining monthly payments due at the time of application for a housing loan. Debt servicing payments shall include 10% of the applicant's total indebtedness on which regular monthly payments are not required except when the applicant has sufficient assets to repay the indebtedness in full and agrees to submit evidence of full payment of the indebtedness prior to the closing of the transaction involving the housing loan.

(8m) "Dependent child" means any natural child, any legally adopted child, or any stepchild of a veteran as defined in s. 45.71 (16) (a), Stats., who is at least 18 years of age and under the age of 26 if in full attendance at a recognized school of instruction or any age if incapable of self-support by reason of mental or physical disability.

(12) "Housing accommodation" means the building in which the applicant will live. In the case of condominiums, the applicant's dwelling unit therein, but not the land appertaining thereto, is included.

(13) "Housing loan" or "loan" means a "primary loan" as defined in s. 45.79 (1), Stats.

(14) "Lender" means either an authorized lender or "primary lender" or both.

(16) "Mortgagee" means the department or the authority.

(17) "Mortgagor" means a successful housing loan applicant named in a mortgage or a chattel security agreement or the co-applicant spouse of a successful applicant named therein.

(17m) "Primary loan" means a housing loan under s. 45.79, Stats.

(19) "Property" means the housing accommodation, garage, land and any other non-housing improvements thereon, the purposes for which a housing loan may be made.

(20) "Residence" means the fixed primary housing accommodation of an applicant situated on an amount of land reasonably

necessary to maintain the housing accommodation's basic livability. The applicant shall occupy or intend to occupy the residence.

(21) "Secondary loan" means a housing loan under s. 45.352, 1971 Stats., or s. 45.80, Stats.

(22) "Shelter cost ratio" means an applicant's "anticipated annual shelter payment" divided by such applicant's "annual income".

(23) "Stable employment" means employment for the same employer for not less than 6 months or employment in the same or similar circumstances for not less than 2 years or if verified by the employer as permanent.

(24) "Total debt payments" means the applicant's "debt servicing payments" plus monthly payments required on installment debts with one or more but less than 13 remaining monthly payments due at the time of application for a housing loan.

(25) "Veteran" means either a veteran as defined in s. 45.71 (16) (a), Stats., or a deceased veteran's unremarried surviving spouse or minor or dependent child who is a resident of and living in this state at the time of making application for a certificate of eligibility or a primary loan.

(26) "Work credit" or "sweat equity" means actual labor performed by the applicant and shall not include the cost or value of materials used.

**History:** Cr. Register, October, 1974, No. 226, eff. 11-1-74; r. and recr. Register, September, 1978, No. 273, eff. 10-1-78; am. (11) and (24), Register, December, 1979, No. 288, eff. 1-1-80; am. (7), Register, November, 1980, No. 299, eff. 12-1-80; am. (1), (4), (13), (16) and (25), r. (9), cr. (17m), Register, February, 1989, No. 398, eff. 3-1-89; am. (intro.), (1), (3) (a), (d) and (e), (4), (5), (12), (13), (15) to (17), (20) and (25), r. (3) (f), (10), (11), (12) and (18), Register, June, 1992, No. 438, eff. 7-1-92; cr. (6m), (8m) and r. (15), Register, July, 1998, No. 511, eff. 8-1-98.

**VA 4.02 Mobile home loans. (1) SECURITY.** A chattel security agreement is required on a mobile home purchase.

(2) **REPAYMENT OF LOANS.** All loans on mobile homes will be amortized on a monthly payment basis and shall have a maximum repayment term of 12 years.

(3) **ITEMS EXCLUDED FROM COST.** Furniture and appliances, moving and utility hookup expenses and taxes included as a part of the purchase price of the mobile home and skirting and tie-downs shall be considered a part of the total cost of the mobile home for the purposes of ss. 45.74 and 45.77, Stats. The furniture and appliances shall be included in the chattel security agreement. Furniture and appliances which are not fixtures shall be separately valued and shall be paid for by the applicant and be conveyed by separate bill of sale at the time of the closing.

(5) **REGISTRATION.** All mobile homes upon which primary loans are made must be registered with the department of transportation.

(6) **CONSENT TO REMOVAL.** No mobile home upon which a primary loan has been made shall be moved from the site of original hookup without the consent of the authorized lender and the department and no mobile home upon which a secondary loan has been made shall be moved from the site of original hookup without the consent of the department.

**History:** Cr. Register, October, 1974, No. 226, eff. 11-1-74; am. (3) and (7), Register, September, 1978, No. 273, eff. 10-1-78; am. (3), Register, April, 1986, No. 364, eff. 5-1-86; am. (6), Register, February, 1989, No. 398, eff. 3-1-89; am. (3), Register, January, 1990, No. 409, eff. 2-1-90; am. (1) to (3) and (5), r. (4) and (7), Register, June, 1992, No. 438, eff. 7-1-92.

**VA 4.03 General loan policy. (1) Loan repayment record.** The department may not issue a certificate of eligibility to a veteran or approve a loan to a veteran who is delinquent on a loan from the department.

(2) **CONSTRUCTION TAKEOUT LOAN.** (a) A primary loan may be made to replace a loan, the purpose of which was construction of a residence, including garage and the acquisition of land, if the original term of the loan did not exceed 24 months.

(b) Applications for loans on residences where construction has not been completed shall be processed under sub. (4).

(3) **CONSTRUCTION LOANS.** (a) Construction loans shall be made for a term not exceeding 29 years and 4 months, in addition to the construction period not exceeding 8 months.

(b) The applicant may not act as the applicant's own general contractor. Unless the applicant's occupation is directly related to the task involved, the applicant cannot perform any construction tasks other than painting and staining. The general contractor must warrant all work performed by the applicant.

(c) On construction loans, payment on principal may be waived for up to 8 months. However, payment of interest and 1/12 of the estimated annual taxes and insurance premiums shall be made monthly. The interest is to be charged on principal actually disbursed during the previous month based on the number of days of such usage and billed as of the first of the month.

(d) Construction contracts must be written on a firm price basis. No cost adjustment clause will be permitted. Change orders in construction contracts may be permitted only with the approval of the authorized lender. The applicant shall deposit the full cost of the change order with the lender.

(e) Construction loan agreements shall be completed on closing of all construction loans.

(f) When required, all building permits, septic adequacy reports and well drilling permits must be obtained prior to the advance of any primary loan funds by the authorized lender. The lender shall retain copies of all permits and tests in the loan file. All percolation tests, when required, must be completed prior to the approval of the application.

(g) The following documents shall be submitted to the department with every construction loan application:

1. Offer to purchase vacant land or deed showing ownership of vacant land;
2. Construction contract;
3. Signed cost breakdown;
4. Specifications;
5. Building plans.

(h) A basement survey shall be required in connection with every construction loan before closing. The lender may waive a basement survey under the following circumstances: the lender obtains a certificate from the local building inspector or zoning authority indicating that the proposed basement is located within the bounds of the described property, is in compliance with all applicable side yard and set back requirements and has a proper elevation. The authorized lender must agree to sign the lender's warranty on the basis of the certificate.

(i) There must be a general contractor who will warrant in writing against defects in materials and workmanship for a period of not less than one year from the date of completion. Home owners warranty corporation warranties should be obtained whenever possible.

(j) The lender shall approve the builder's qualifications and credit and require evidence that the builder carries or that the applicant will carry builder's risk insurance. The insurance will be on a standard form 17c or a comparable form and shall include fire and extended coverage, vandalism and collapse coverage. If theft coverage is available, it is recommended that this coverage be carried also. The policy shall name the builder or mortgagor as the insured with a loss payable clause in favor of the mortgagee. The original policy shall be retained by the lender with a memorandum copy to the mortgagor. The mortgagor shall obtain a general liability policy naming the mortgagor as the insured. This policy shall remain in effect until completion of construction.

(k) Authorized lenders must establish that the builder is credit-worthy.

(l) Certificates of satisfactory completion of each stage of construction completed shall be submitted to and retained by the lender, signed by the builder(s) and mortgagor prior to disbursement of any additional funds. Lender or its agent will inspect com-

pleted work prior to any draw and retain a copy of the inspection report on file.

(m) Lien waivers must be obtained. If any question arises concerning the adequacy of the lien waivers, such waivers shall be cleared through a title company.

(n) All down payment monies received by any of the parties to the construction transaction shall be deposited with the lender. The amounts that are necessary for closing shall be disbursed at closing. Monies not disbursed at closing will be retained by the lender in an escrow account until the next draw is requested by the builder. No housing loan proceeds may be disbursed until all of the down payment monies have been fully expended. Advances prior to completion may equal 80% of the cost of completed construction unless the cost breakdown shows profit as a separate entry in which case 100% of the cost of completed construction may be disbursed. Disbursements shall not exceed 75% of the total committed primary loan funds until after final inspection. Funds remaining after each and every draw shall be sufficient to complete the construction. Advances shall be made on construction completed, in place, and inspected by the lender or agent using VA/FHA guidelines. Such advances will take place:

1. Upon purchase of the lot, if not already owned by the mortgagor;
2. Upon completion of the footings and foundation;
3. When the roof is on, the house is enclosed, and all other work is roughed in to include electrical, plumbing, heating and carpentry including windows and doors; and
4. After final inspection.

(p) Landscaping is not required, other than rough grading and backfilling.

(q) Painting of the exterior of the housing accommodation and garage, if not pre-finished, is required. At least one coat of finish on the interior woodwork, kitchen and bathroom walls is required. A finished product, such as hardwood properly sealed, tile or carpeting, is required on all floors. Access walks and driveways must be completed.

(r) In primary loan applications work credits and sweat equity shall be allowed only after the applicant evidences that the down payment is unborrowed funds and that the applicant has adequate funds for closing and moving expenses. The primary loan shall be the total cost of the construction minus the down payment. The work credits and sweat equity shall be deducted from the loan principal amount after the construction has been completed. An authorized lender may, however, at its discretion, waive firm price contracts for labor for required painting provided that:

1. The authorized lender obtains an agreement from the general contractor stating that should painting become necessary, the contractor will do such painting at no expense to the mortgagor, authorized lender or the department;
2. The contract and supporting documents include a firm price for all painting materials required; and
3. The authorized lender and general contractor agree not to authorize occupancy by the mortgagor until the required painting and other sweat equity tasks are completed.

(s) Plans and specifications for any unusual type of construction should be submitted to the department prior to loan processing by the lender.

**(4) PURCHASE LOANS FOR A HOUSING ACCOMMODATION TO BE CONSTRUCTED.** (a) A purchase loan for a housing accommodation and, if applicable, a garage to be constructed, may be made for a term not exceeding 360 months.

(b) The loan documents shall be submitted to the department as an application for purchase of a completed housing accommodation and, if applicable, a garage.

(c) The housing accommodation and garage must be fully constructed not more than 8 months from the date of commitment.

(d) A single payment construction contract for a complete, finished, firm price, warranted housing accommodation shall be submitted in all cases, together with either:

1. An offer to purchase the land on which the housing accommodation is to be constructed, if the land is owned by the builder or a third party; or

2. A copy of the recorded deed, if the land is owned by the applicant.

(e) Work credit may be agreed to between the applicant and the builder in order to arrive at a reduced sale price or a reduced contract-to-construct price to the applicant, but the amount of the loan applied for shall not include the value of the work credit agreed to so as to result in payment to the applicant for the work credit. No part of the required downpayment can be made up of the value of the work credit. No payment for work credit shall be made to the applicant by either the lender or builder.

(f) The appraisal submitted to the department shall be based upon the value of the property after completion of construction in accordance with the plans and specifications.

(g) Upon completion of construction, the general contractor shall warrant, in writing, against defects in materials and workmanship for a period of not less than one year from the date of completion. Home owners warranty corporation warranties shall be obtained if possible.

(h) Lien waivers shall be obtained and submitted to the lender upon completion.

(i) The housing accommodation and garage, if applicable, shall be fully completed. Final inspection shall be made by an appropriate inspector prior to closing.

(j) A single disbursement by the department will be made only upon compliance with all of the foregoing requirements.

**(6) SECOND APPLICATIONS.** (a) When an applicant for a certificate of eligibility remains obligated to the department on either a secondary loan or another primary loan and the applicant is otherwise qualified for the certificate, a conditional certificate of eligibility will be prepared authorizing application for a primary loan, subject to the requirement that the existing secondary or primary loan be fully paid prior to or at the time of closing of the primary loan.

(b) If an applicant failed to repay a department loan in a timely manner or quitclaimed real estate back to the department in lieu of foreclosure within the 5 years preceding application for a second certificate of eligibility, the applicant shall be ineligible to receive a second certificate of eligibility or a primary housing loan unless the applicant can establish strong offsetting characteristics. The department may consider whether or not the department incurred a loss as a result of the quitclaim and whether a loss of employment due to no fault of the applicant or other unavoidable circumstances caused the underlying repayment problem.

**(7) SURVEY.** Where the legal description of the property is in metes and bounds, a survey, or copy of a survey, clearly delineating a single perimeter of the entire plot and location of any existing or proposed improvements shall be required in connection with a primary loan, unless the cost of such a survey would be more than \$500 and it is determined by the department that there is little question as to the location of the improvements within the perimeter. In these cases a surveyor's or professional engineer's letter will be required.

**(8) FLOOD PLAIN.** In purchase loan applications, if the subject property is in a 100 year flood plain, the offer to purchase shall contain a statement by the broker or seller to that effect. If it is in a 100 year flood plain, flood insurance shall be obtained on the property and shall be available at the time of closing. The property shall be deemed to be in a 100 year flood plain only if the buildings thereon are in the 100 year flood plain.

**(9) WELLS AND SEPTIC SYSTEMS** (a) An application for a purchase or construction loan involving property with a well, with a

community water supply that is not municipally operated or with a private septic disposal system shall include one of the following:

1. A well agreement.
2. A safe water report from a laboratory certified by the state of Wisconsin.
3. Percolation tests for construction loans.
4. Other documentation showing an adequate sewage disposal system.

(b) Housing loans will not be approved for the purchase of or construction of housing accommodations on properties where the septic disposal systems are gas fired or where chemical toilets are utilized.

(c) A housing loan for the purpose specified in s. 45.76 (1) (b), Stats., will be approved on any property where the septic disposal system relies upon a holding tank with regular pumping and removal on a contract basis required only if, with the exception of the septic disposal systems referred to in par. (b), a holding tank is the only system of sewage disposal permitted for the construction site and only if the installation thereof has been approved by the local unit of government and all permits necessary for the installation thereof have been obtained. A loan for the purposes specified in s. 45.76 (1) (a) and (b), Stats., shall be permitted only where the size of the holding tank equals or exceeds the size required under ch. Comm 83, Wis. Adm. Code, based upon the number of bedrooms the existing housing accommodation has or the housing accommodation to be constructed will have, and where the applicant:

1. Has entered into a contract with a properly licensed sewage hauling contractor; and
2. Has demonstrated sufficient financial ability to handle future increased costs of pumping by having acquired the proposed down payment on the property to be purchased or constructed by savings rather than by gift and by having debt servicing payments and a shelter cost ratio not exceeding the percentages set forth in s. VA 4.05 (8), unless the applicant meets the criteria for larger than normal debt servicing payments and shelter cost ratios set forth in said section, has a down payment of at least 7 1/2% and will be able to retain funds in the amount of at least \$1,500 after making a contemplated down payment and paying closing costs in relation to the home purchase or construction.

(10) **SEPARATE HOUSING ACCOMMODATIONS.** The department shall not approve a housing loan to an applicant and co-applicant for a duplex or a multiple unit housing accommodation where the applicant and co-applicant are occupying or intend to occupy separate dwelling units therein even though both are veterans.

(11) **TERM.** The amortization period of a housing loan must be at least 5 years less than the remaining economic life of the housing accommodation as set forth in the appraisal, not to exceed 30 years.

(12) **ESCROW FUNDS.** (a) Payment for work which cannot be completed for reasons acceptable to the authorized lender, but does not affect occupancy of the housing accommodation, shall not be made until completion of such work.

(b) At the discretion of the authorized lender, primary mortgage funds may be escrowed for uncompleted work, provided that:

1. The uncompleted work is the result of unavoidable circumstances and the work does not affect occupancy;
2. The escrowed amount is not less than twice the cost of the completion of the work including all labor and materials;
3. The escrowed amount is not disbursed until the authorized lender or agent has inspected and approved the completed work.

(13) **BUSINESS USE.** Except for a housing loan for a purpose designated in s. 45.76 (1) (c), Stats., the department shall not approve a housing loan for a residence, other than a multi-family residence which may be financed under sub. (14), in which it is

reasonably expected that more than 15% of the total area is to be used in a trade or business.

(14) **MULTI-FAMILY RESIDENCE.** Except for a housing loan for a purpose designated in s. 45.76 (1) (c), Stats., the department shall not approve a housing loan for a multi-family residence unless the housing accommodation has four units or less, the applicant intends to occupy one unit of the housing accommodation and the housing accommodation was first occupied as a residence at least 5 years before the mortgage is executed.

(15) **PRIOR FINANCING.** Except for a housing loan for a purpose designated in s. 45.76 (1) (c), Stats., the department shall not approve a housing loan for an applicant who had a mortgage or any other secured financing on the housing accommodation, while using the housing accommodation as a residence, whether or not paid off, at any time prior to the execution of the mortgage.

**Note:** This section interprets subch. II of ch. 45, Stats.

**History:** Cr. Register, October, 1974, No. 226, eff. 11-1-74; emerg. am. (5), eff. 2-21-74; emerg. am. (3), eff. 5-1-75; emerg. am. (3), eff. 1-30-76; am. (2), Register, July, 1976, No. 247, eff. 8-1-76; r. and recr. Register, September, 1978, No. 273, eff. 10-1-78; emerg. am. (2) (intro.), eff. 11-11-78; emerg. renum. (9) to be (9) (a) and (b), cr. (9) (c), eff. 11-24-78, renum. (9) to be (9) (a) and (b), cr. (9) (c), Register, February, 1979, eff. 3-1-79; am. (2) (intro.), Register, June, 1979, No. 282, eff. 7-1-79; am. (5) (b), (c) and (d) and (6) (d), Register, December, 1979, No. 288, eff. 1-1-80; am. (5) (a) and (9) (b), r. (5) (d), Register, February, 1981, No. 302, eff. 3-1-81; r. (5), am. (7), Register, January 1984, No. 337, eff. 2-1-84; correction in (9) (c) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1986, No. 364; am. (3) (a), (c), (h), (k), (n) (intro.), (o) (intro.), and 3., (r) (intro.), and (7), r. and recr. (6), Register, February, 1989, No. 398, eff. 3-1-89; am. (3) (d) to (f), Register, January, 1990, No. 409, eff. 3-1-90; correction in (9) (c) 2. made under s. 13.93 (2m) (b) 5., Stats., Register, January, 1990, No. 409; am. (1) and (6) (b), Register, September, 1990, No. 417, eff. 10-1-90; am. (1), (3) (a) to (f), (h), (j), (k), (n) (intro.), (q), (r) (intro.) and 3., (4) (a), (d) 1. and 2., (c), (g), (i) and (j), (6) (a) and (b), (7), (8), (9) (a) and (c) (intro.) and 1. and (11), r. and recr. (2) and (3) (g), r. (3) (o), cr. (12), Register, June, 1992, No. 438, eff. 7-1-92; r. and recr. (9) (a), Register, June, 1994, No. 462, eff. 7-1-94; cr. (13), (14), and (15), Register, July, 1998, No. 511, eff. 8-1-98; correction in (9) (c) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1998, No. 511.

**VA 4.05 Financial requirements.** (1) **FUNDS.** (a) Includes cash on hand, liquid investments, and except as provided in par. (b), any asset the conversion of which to cash would not result in substantial loss. Stocks and bonds, including U.S. Savings Bonds, are valued at market price as of the date of application.

(b) Funds shall not include cash value of automobiles, household furnishings and appliances, personal effects, life insurance policies, retirement investment plans, stock or interest in an employer's business required as a condition of current employment, irrevocable trusts of which the applicant or co-applicant is the settlor but not the beneficiary or the proceeds of loans, except that proceeds from loans against life insurance policies shall be considered funds.

(c) Business assets of a self-employed applicant shall not be included as funds unless working capital is determined to be in excess of normal business requirements in which case the excess shall be considered funds.

(2) **VETERAN'S CONTRIBUTION.** If the applicant's contribution required under ss. 45.74 (5) and 45.77, Stats., or any closing costs and moving expenses as the applicant may be required to pay has been or is to be acquired by borrowing, the application shall not be approved. The applicant must be financially able with the aid of the housing loan applied for to complete the contemplated purchase, construction or improvement and to pay all required closing and moving expenses. When the sales price, construction cost or total cost exceeds the value pursuant to s. VA 4.07 (2), the applicant's contribution required under ss. 45.74 (5) and 45.77, Stats., will be increased by the excess. Work credits, rent credits or other reductions of the price of the property being acquired by an applicant may be allowed but only after the applicant evidences that a 5% down payment has been made from such applicant's own funds. In the case of a loan under s. 45.76 (1) (c), Stats., the applicant shall have at least 10% equity in the property upon completion of the improvements. Mortgage funds shall not be utilized to pay closing costs. Applicants shall submit verifications of all deposits in excess of \$100 which will constitute a portion of their contribution.

**(3) OTHER OWNED REAL ESTATE.** (d) When an applicant has sold real estate on a land contract, the department shall consider as income the payment being received by the applicant less the payment made on any underlying debt on the real estate.

(e) All or any portion of or interest in other owned real estate assigned to or encumbered in favor of the department in connection with primary loans may be released pursuant to s. VA 4.08 (9), and from secondary loans pursuant to s. VA 4.09 (12).

**(5) INCOME.** (a) The adjusted gross income shown on an applicant's income tax return for the prior year shall be the income of a self-employed applicant or of an applicant who must pay substantial job-connected expenses. However, in proper cases involving such applicants, the authorized lender or the department may accept a recent profit and loss statement and balance sheet covering a period of not less than 6 months or a recent profit and loss statement and balance sheet covering a lesser period and a copy of the income tax return of the former owner of the applicant's business as evidence of the income of such applicant. The profit and loss statements and balance sheets must be professionally prepared. A seasonal employee's income will be based on the applicant's previous year's tax return plus unemployment compensation if such compensation is customary for the applicant's type of employment and is verified.

(b) The income to be used for an applicant with an individual retirement account (IRA) or who participates in a deferred compensation plan is the adjusted gross income. The IRA adjustment to income or the amount invested in a deferred compensation plan or both shall not be added back to the applicant's income.

(c) One-half of gross rental income will be considered income if services are furnished to tenants and 2/3 of gross rental income will be considered income if no services are furnished. Income from residential property other than the subject property shall be the net rent. Income shall be applied in full in the case of a sole applicant. In the case of an applicant and co-applicant, such income shall be divided equally between the applicant and co-applicant. Income shall not include income from room rental in the housing accommodation proposed for purchase, construction or improvement with a housing loan.

(d) Unless temporary in nature, tax free pensions and disability compensation may be considered income at 120% of face value if necessary to qualify an application.

(e) Part-time or overtime pay, bonuses, national guard or military reserve pay, unemployment compensation and the regular income of the applicant or co-applicant will be considered income only if acceptable, independent evidence is submitted to substantiate the regular and dependable nature thereof. The gross income the applicant is receiving from regular work shall in all cases be verified by the employer.

(em) Income from national guard or military reserves shall not be used to disqualify an application.

(en) Service connected disability compensation received by a veteran from the U.S. department of veterans affairs under 38 USC 315, 331 to 337 and 351 to 363 will not be included in the "maximum annual income limitation" but may be used in qualifying a veteran for a loan.

(f) Piece work pay and incentive pay may be considered income only if a history or other acceptable evidence of such income is submitted and accepted by the department.

(g) Scholarships, stipends and education benefits for actual time in school may be considered income only if they are regular and dependable.

(h) An application from an applicant about to retire or who is retired shall be analyzed based upon retirement income.

(i) Child support payments, separate maintenance payments, or alimony shall be considered as income to the extent that they are likely to be received consistently.

(j) The income of an applicant who is required by court order to make alimony or child support payments shall be reduced by the amount of the court ordered payment provided the payment is current or the applicant has a satisfactory repayment agreement under s. VA 4.05 (13).

(k) The income of the co-applicant and part-time income of the applicant or co-applicant shall be evaluated by the same standards as the income the applicant is receiving for regular work.

(L) Where income exceeds the maximum annual income limitation the application will be denied.

(m) The annual income from payments received for foster care shall be computed by determining the number of months each child was cared for in the 12 months prior to the date of application, totalling the results, and multiplying the total by the monthly foster care rate in effect on the date of the application. Income from providing foster care to children shall be considered regular and dependable only if:

1. The applicant has provided foster care for at least 24 months immediately prior to the date of application,

2. The applicant, on the date of application, is receiving a monthly income from foster care of at least 1/12th of annual income from foster care for the previous 12 months, and

3. The agencies from whom the applicant receives foster care payments verify the total amount of payments made to the applicant in the preceding 24 months, and verify that they are likely to continue making foster care placements with the applicant.

**(6) GIFTS.** Money or the value of real estate received by an applicant as a gift shall be considered the applicant's own funds. However, to be considered funds of the applicant, the donor shall certify that the gift is outright and irrevocable and no repayment is required. All gifts that have been transferred prior to or at the time of closing shall be verified in writing. The donor may not be party to or have an interest in the real estate or construction transaction involving the residence proposed for purchase or construction. However, the seller may pay the buyer's closing costs. The value of real estate given to an applicant shall be either its assessed value as equalized for state purposes, its appraised value, or the original cost thereof to the donor where the donor has given the applicant all contiguous land acquired by such donor by any single conveyance, whichever is most advantageous to the applicant. The value of such real estate, as elected above, shall be its cost for all purposes.

**(7) PERSONAL PROPERTY.** The cost of any personal property included in a construction or improvement contract shall be paid by the veteran-borrower. The payment shall not constitute part of the applicant's equity in the property. Carpeting, built-ins, fixtures or other items permanently affixed to the structure shall not be considered personal property. No personal property may be financed with primary housing loans.

**(8) DEBT SERVICE RATIO, SHELTER COST RATIO, AND TOTAL DEBT PAYMENTS.** Where an applicant's debt service ratio exceeds 35% of current monthly income or where an applicant's shelter cost ratio exceeds 25%, the application will be denied unless the applicant has a history of excellent debt service combined with either a demonstrated ability to accumulate savings as evidenced by a larger than normal down payment of at least 7 1/2% or such other factors as the department finds to be relevant to the applicant's ability and motivation to make higher than normal debt service or shelter payments. In the recommendation concerning the application, the lender should cite factors which evidence the applicant's ability to make higher than normal shelter cost payments or debt service payments. Where total debt payments are excessive the application will be denied.

**(9) EMPLOYMENT.** The applicant must have stable employment and must evidence sufficient income and financial stability to assure repayment according to the terms of the loan. In the case of a primary loan, income and employment that is not maintained



at closing as stated on the application should result in the authorized lender canceling the loan commitment. Employment must be verified for at least the past 2 years, or since separation from the U.S. armed forces, whichever is less. If there has been more than one employer in the past 2 years, additional verifications must be completed by each employer. Any anticipated increase in income, if it is to be used, shall be verified by the employer and shall be effective prior to the date of the first payment.

**(10) LIABILITIES.** To determine whether the level of indebtedness is excessive, the department and authorized lender shall analyze the stated purposes for which an applicant's debts were incurred, the total amount of the indebtedness in relation to income, and the applicant's record of meeting past financial obligations. The purpose for which all debts were incurred shall be stated on the application. If the department or authorized lender determines the accumulated indebtedness indicates financial instability or the amount of monthly payments will impair the applicant's ability to make shelter cost payments and meet ordinary living expenses, the loan application shall be denied. Accumulation of net worth may be considered an indication of credit-worthiness.

**(11) INCREASE IN HOUSING OBLIGATIONS.** Where an applicant whose total housing obligations on a property which the applicant proposes to purchase, construct or improve with the assistance of a housing loan will exceed the rental or housing obligations which the applicant is required to pay for the housing accommodation being occupied on the date of application, and where such applicant has been operating at a breakeven point or less as evidenced by increasing debts, the application will be approved only if the applicant has a history of acceptable credit practices.

**(12) BAD CREDIT PRACTICES.** Applications from applicants who have failed to pay their obligations in a timely manner or have quitclaimed previously owned real estate back to a lender in lieu of foreclosure within the last 5 years shall be denied unless such applications have strong offsetting characteristics. Examples of such offsetting characteristics are whether the lender did not incur a loss as a result of the quitclaim and whether a loss of employment due to no fault of the applicant or other unavoidable circumstances caused the underlying repayment problem.

**(13) BANKRUPTCY, JUDGMENTS, ETC.** Applications from applicants currently under federal chapter 13 plans will not be accepted unless the applicants are in the final year of their plans, have satisfactory payment records under their plans and have made all required payments under their plans. Any application from an applicant who has been subject to bankruptcy proceedings or to liens and judgments within the 5 years immediately preceding the application, shall be examined carefully and the circumstances fully analyzed to determine whether the applicant is creditworthy and has demonstrated financial recovery. A copy of the petition, schedules of debts and discharge in bankruptcy along with the applicant's signed statement of the reason for such bankruptcy must be submitted with the housing loan application. In the absence of an acceptable reason for the bankruptcy, liens or judgments, there must be a strong history of recovery and good present financial standing. If the applicant's credit is to be considered favorable, liens and judgments must be satisfied prior to the time of closing of a housing loan and alimony and support payments must be current as of the date of approval of the housing loan application by the department. Evidence from the clerk of courts that the applicant is current or, if the applicant is in arrears, that regular payments have been made every month for not less than 12 months immediately preceding the loan application date and that such applicant has made arrangements which the department deems satisfactory for payment or deferment of the obligation to repay the arrearage owing shall be submitted to the department in the case of support, alimony and separate maintenance payments.

**(14) WORKING CAPITAL.** In the case of a self-employed applicant operating a business, the cash flow shall be considered and

if the department determines that the applicant will have insufficient cash or working capital remaining to fulfill the applicant's obligations, the loan shall not be approved.

**Note:** This section interprets subch. II, ch. 45, Stats.

**History:** Cr. Register, October, 1974, No. 226, eff. 11-1-74; emerg. am. (5) (d) and r. (5) (c), eff. 7-29-75; am. (5) (e) and (7) (b), r. and recr. (5) (c) and (d), Register, July, 1976, No. 247, eff. 8-1-76; r. and recr. Register, September, 1978, No. 273, eff. 10-1-78; am. (5) (j), (6) and (13), Register, December, 1979, No. 288, eff. 1-1-80; am. (5) (a), Register, November, 1980, No. 299, eff. 12-1-80; am. (5) (i) and (k), cr. (5) (m), Register, February, 1981, No. 302, eff. 3-1-81; am. (2), (3) (d), (5) (j) and (7), Register, April, 1986, No. 364, eff. 5-1-86; am. (2), (3) (d) and (e), (5) (b), (7) and (12), r. (3) (a) to (c) and (g), cr. (5) (em), Register, February, 1989, No. 398, eff. 3-1-89; am. (2), r. (3) (f) and (4), Register, January, 1990, No. 409, eff. 2-1-90; am. (1) (a) and (b), (2), (3) (e), (5) (a) to (c), (f), (g), (i), (j) and (l), (6) to (11), cr. (5) (en), Register, June, 1992, No. 438, eff. 7-1-92; correction in (5) (en) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1998, No. 511.

#### VA 4.06 Property qualifications. (s. 45.76 (3), Stats.)

**(1) GENERAL.** A housing loan will be approved only on a housing accommodation which is determined to be adequate housing, either at the time of loan closing or after the completion of the improvements or rehabilitation to be completed with the assistance of a housing loan. The housing accommodation must be located in Wisconsin and its total cost shall not exceed its appraised value by more than 10%. The housing accommodation shall be occupied by the applicant as the applicant's and dependent's residence and shall not be more than 50 miles from the applicant's principal place of employment. However, exceptions to the mileage limitation may be made by the department if the applicant has no principal place of employment, or is transferred routinely by the applicant's employer, or hiring agent, on a job-to-job basis, or if travel beyond the 50 mile limit conforms to local conditions and customs.

**(3) SUB-STANDARD HOUSING ACCOMMODATIONS.** Applications shall not be approved for housing loans to purchase substandard housing accommodations, temporary dwellings, or housing accommodations not meeting minimum requirements of health and sanitation, such as garages, basements, or cottages inadequately converted for permanent occupancy.

**(4) LOTS.** An application to purchase a housing accommodation situated on a lot deemed to be of inadequate size will not be approved.

**(5) PROPERTY ANALYSIS.** Federal home loan mortgage corporation (FHLMC) guidelines and standards shall be used for evaluating properties. Loans will not be approved on properties that fail to meet such standards and such standards and guidelines will be used for determining the maximum number of years for which loans will be made on properties offered as security therefor.

**History:** Cr. Register, October, 1974, No. 226, eff. 11-1-74; am. (1), (2), (3) and (4), cr.; (6), Register, September, 1978, No. 273, eff. 10-1-78; am. (2), Register, April, 1986, No. 364, eff. 5-1-86; r. (2) and (6), Register, February, 1989, No. 398, eff. 3-1-89; am. (1), Register, January, 1990, No. 409, eff. 2-1-90; am. (1), (3) and (4), Register, June, 1992, No. 438, eff. 7-1-92.

**VA 4.07 Appraisals. (1) GENERAL.** Except in the case of applications for loans made for the purposes set forth in s. 45.76 (1) (c), Stats., appraisals must be submitted with all housing loan applications. In the case of applications for primary loans, an appraiser, selected by the authorized lender from the department's approved list, must complete an appraisal on a form prescribed by the department.

**(2) USE OF APPRAISALS.** Appraisals will be used to determine whether the properties so appraised will adequately secure proposed housing loans, but such appraisals are advisory only. The department may determine the value of properties for its purposes by means of property inspection by department representatives, by obtaining appraisal reports at its own expense, or by such other means as it may deem practical. When the sales price or construction cost exceeds either the appraisal figure by more than 10% or the department's determination of value, the housing loan application will not be approved.

**(3) APPRAISERS.** The secretary may designate appraisers in any county for the protection of veterans and the department. The

department shall maintain and publish from time to time a list of appraisers whose appraisals will be accepted by the department.

(4) **DISINTEREST.** The appraiser shall not have an interest in the property to be purchased or constructed, or be employed by the lender, except under exceptional circumstances with prior approval of the department.

(5) **ADDRESSES.** The appraisal must be addressed jointly to the applicant, lender and the department on the form itself or in a letter accompanying the appraisal, clearly identifying the subject property and a. A copy of the appraisal must be given to the applicant before closing.

(6) **MISCELLANEOUS REQUIREMENTS.** (a) The appraiser shall consider and comment upon encroachments, easements, code violations or variances.

(b) The appraisal shall contain a statement indicating whether or not the subject property is in a 100 year flood plain. Construction loans in a flood plain shall not be approved unless the plans and specifications comply with the requirements of ch. NR 116, Wis. Adm. Code. The appraisal shall state whether or not they comply with such requirements.

(c) Condominium appraisals must be submitted on Form FHLMC #465.

(d) The appraiser shall state the previous year's property taxes on existing properties or the estimated property taxes on new or proposed construction properties.

(e) If the property has rental units, the appraisal shall state the estimated fair market rental of the rental units.

(f) The appraiser may evaluate personal property if personal property of value is included in the property to be purchased or constructed.

(7) **ALTERNATE VALUE ESTABLISHMENT.** In the case of an application for a loan under s. 45.76 (1) (c), Stats., the department may accept the current equalized assessed value or fair market value as stated on the last year's property tax statement plus one-half of the cost of the proposed improvements as the cost and value of the residence for all purposes.

**History:** Cr. Register, October, 1974, No. 226, eff. 11-1-74; am. (2), cr. (4), (5) and (6), Register, September, 1978, No. 273, eff. 10-1-78; am. (6) (f), Register, December, 1979, No. 288, eff. 1-1-80; am. (1), Register, February, 1989, No. 398, eff. 3-1-89; am. (1), cr. (7), Register, January, 1990, No. 409, eff. 2-1-90; am. (1) to (5), (6) (b), (e) and (f), (7), Register, June, 1992, No. 438, eff. 7-1-92.

**VA 4.08 Primary loan program. (1) CERTIFICATE OF ELIGIBILITY.** (a) **Application.** Except in the cases of applications for loans made for the purposes set forth in s. 45.76 (1) (c), Stats., an application for issuance of a certificate of eligibility shall be submitted to the department through the applicant's county veterans service officer and shall be in the same form as an application for the establishment of eligibility for general benefits from the department but shall contain a specific request for issuance of such certificate. In the case of an application for a loan for the purposes set forth in s. 45.76 (1) (c), Stats., the department shall not issue a separate certificate of eligibility but shall certify a veteran as eligible prior to approving the application.

(b) **Issuance.** A certificate of eligibility shall be issued only to a veteran whose previous transactions with the department would in no way bar approval of another loan by the department.

(c) **Expiration.** If the applicant is a veteran who was a resident of the state of Wisconsin at time of entry into military service, the certificate of eligibility shall be issued for an indefinite period. If the applicant qualifies as a veteran by virtue of being the unremarried spouse of a deceased veteran, the certificate shall become null and void upon the remarriage of the applicant and shall so state upon its face. If the applicant established eligibility for the certificate on the basis of 5 years continuous residence in the state of Wisconsin, it shall expire 6 months from date of issuance.

(d) **Reissue.** If the original certificate has expired or has been lost and the applicant is still an eligible veteran at time of application for reissue, a certificate of eligibility may be reissued.

(2) **CONTRACTS.** Before authorized lenders willing to participate in the mortgage loan program will be allowed to process mortgage loan applications, they shall enter into contracts with the department. Such contracts shall delineate or include reference to the responsibilities of the authorized lenders and other matters set forth in s. 45.79 (5) (a) 1., Stats., shall vest authorized lenders with such powers as the department deems necessary to enable them to properly carry out their servicing responsibilities, shall specify the minimum number of days notice to the department of anticipated closing or first disbursement dates, and shall specifically require such lenders to execute warranties and servicing agreements in connection with primary loans closed by them, the provisions of which warranties and agreements shall be deemed to be incorporated into the contracts.

(3) **APPLICATION.** Application for a primary loan shall be made through the authorized lender of the applicant's choice. The application shall be completed on forms prescribed by the department, and shall include the applicant's certificate of eligibility, a fact-built credit report, appraisal report, employment and deposit verifications and, where appropriate, plans, specifications, a construction contract, a survey, water analysis report, purchase agreement, and such other instruments and exhibits as the authorized lender deems necessary to complete the application.

(4) **DENIAL BY AUTHORIZED LENDER.** If at any time during the course of the development or evaluation of an application for a loan, the authorized lender determines that the application does not meet the requirements set forth in ch. VA 4 and subch. II of ch. 45, Stats., or that it would not approve a loan to the applicant under its normal underwriting standards because the property to be acquired does not meet its minimum or FHLMC minimum property standards, because the applicant does not meet its credit standards, etc., the authorized lender shall inform the applicant that the application is denied and provide reasons for the denial. Applications denied by authorized lenders shall not be forwarded to the department but the department shall be notified promptly of the denials.

(5) **SUBMISSION TO THE DEPARTMENT.** All applications approved by authorized lenders shall be submitted to the department for review and approval or denial. Immediately upon approval of an application the department shall send a commitment letter to the authorized lender, committing the department to transfer funds as provided under s. 45.79 (5) (a) 4. Stats., subject to such funds being made available to the department. Loan commitments will expire 6 months from date of issuance, commitments for the purchase of a housing accommodation to be constructed (PC) will expire 8 months from the date of issuance, and construction (C) loan commitments will expire 12 months from the date of issuance. Commitments may be extended at the discretion of the department.

(6) **CONSTRUCTION LOANS.** Construction loan funds shall be disbursed on the basis of guidelines set forth in s. VA 4.03 (3), and in compliance with all conditions set forth therein.

(7) **WARRANTY.** As soon as practicable after the closing of a purchase loan or after the first disbursement of funds in a construction loan the authorized lender will transmit the executed mortgage note, summary of closing worksheet, mortgagor's affidavit and lender's warranty to the department. The lender's warranty shall be made on a form furnished by the department and shall contain information sufficient to enable the department to determine that a valid first lien complying with the requirements of all federal and state laws, exists in favor of the authority or of the department on the mortgaged premises and that the mortgagor has obtained, or in the case of construction loans will obtain, adequate fire and extended coverage insurance on the mortgaged premises. The lender's warranty will also contain such other information as the department requires from time to time.

(8) **SERVICING AGREEMENTS.** (b) **Fees and expenses.** Servicing agreements shall specifically empower authorized lenders to

collect and retain late charges, NSF check charges, partial release fees, and amounts representing expenditures made by them with respect to mortgages executed or properties mortgaged to the department or to such lenders or to the authority for which they have not been reimbursed by the department. Late charges, NSF check charges and partial release fees not collected by such lenders from mortgagors, in addition to required principal, interest and escrow payments, may not be deducted from such payments, charged to the department or the authority or added to mortgage loan balances. Such agreements shall specify the items for which authorized lenders may incur reimbursable expenses and the terms and conditions under which the department will pay such expenses.

**(9) PARTIAL RELEASES** An authorized lender may, with the consent of the department, release a portion of the property mortgaged to it or the department or the authority under a primary loan if the release of such property will not unduly diminish the value of the remainder of the property. The authorized lender will require that any funds received by a mortgagor from the sale of property released be applied to reduction of the mortgage loan balance unless it is proposed that a part or all of such funds will be used to improve the property, in which case the authorized lender may approve such use and supervise the disbursement of funds for improvements.

**(10) CONSUMER LAWS.** Notwithstanding any provisions of the lender's manual, subch. II of ch. 45, Stats., the Wisconsin Administrative Code, or contracts and servicing agreements entered into between the department and the lender, the lender shall comply with all applicable federal statutes and regulations and state statutes and rules. The lender shall defend any suits brought for non-compliance therewith and shall be liable for any damages awarded for such noncompliance.

**(11) SUBORDINATION AGREEMENT.** (a) The department may execute a subordination agreement to permit an increase in a mortgagor's present mortgage which is superior to the department mortgage securing a loan under s. 45.76 (1) (c), Stats., or to replace the present superior mortgage with another in an amount equal to or in excess of the balance owing on the present superior mortgage when it is satisfied that the property will provide adequate security for its mortgage after the proposed increase in the superior mortgage.

(b) The mortgagor shall submit evidence of the mortgagor's present income and of the shelter cost payments under the repayment terms of the proposed new note and mortgage to establish that the new shelter cost payments will not be excessive in view of present income.

(c) The department may execute a subordination agreement to give priority to a proposed superior mortgage if the department's mortgage has been prematurely recorded or in exceptional cases without requiring the evidence set forth in par. (a).

(d) The following criteria shall be met for approval of all subordination agreements:

1. Minimum of 10% equity remaining after subordination.
2. A satisfactory repayment record on department loans.
3. The loan under s. 45.76 (1) (c), Stats., is not currently delinquent.
4. Shelter cost ratio is not excessive based upon the criteria established by the department for the approval of loans under s. 45.76 (1) (c), Stats.

(e) In those cases where the proceeds of the mortgage to which the department is requested to subordinate will be used for any purpose except refinancing an existing first mortgage, including the cost of refinancing, the request will be denied if all of the following apply:

1. The veteran's and spouse's total income is greater than the amount specified in s. 45.74 (1) Stats.

2. The veteran's equity in the home after the subordination is greater than 20% as derived from the current appraised value and the outstanding mortgage principal balance.

3. One-twelfth of the veteran's calculated anticipated annual shelter payment after the subordination would be less than 20% of the veteran's and spouse's combined gross monthly income.

**History:** Cr. Register, October, 1974, No. 226, eff. 11-1-74; emerg. am. (5), (7), (8) and (9), eff. 7-29-75; am. (5), (7), (8) and (9), cr. (10), Register, July, 1976, No. 247, eff. 8-1-76; am. (3), (4) (b), (8) and (9), Register, September, 1978, No. 273, eff. 10-1-78; am. (1) (c), (5), (7) and (9), Register, April, 1986, No. 364, eff. 5-1-86; am. (2), (3) (d) and (e), (5) (b), (7) and (12), r. (8) (a), Register, February, 1989, No. 398, eff. 3-1-89; am. (1) (b), (2), (4), (5) and (7), r. and recr. (1) (d) and (10), Register, June, 1992, No. 438, eff. 7-1-92; cr. (11), Register, August, 1993, No. 452, eff. 9-1-93; am. (1) (a), Register, June, 1994, No. 462, eff. 7-1-94.

**VA 4.09 Secondary loan program. (8) TITLE EVIDENCE AND PROPERTY INSURANCE** When the department is notified of the cancellation, lapse or non-renewal of a fire and extended coverage, homeowners or fire and windstorm insurance policy insuring a property in which it has a mortgage interest, or when the mortgagor fails to obtain and pay for this insurance in an amount at least equal to appraised value of the improvements at time of application on property mortgaged to the department, the mortgagor involved shall be notified that it is such mortgagor's responsibility to obtain and pay for adequate insurance coverage and shall be instructed to submit a memorandum of such insurance coverage to the department and, until such memorandum is received, the department shall insure its interest in such property with the state insurance fund.

**(9) PAYMENT DISTRIBUTION** Payments will be applied first to interest, then to mortgage cancellation life insurance premiums, and then to principal.

**(10) REDUCTION IN MONTHLY PAYMENTS.** The terms of the contract between the mortgagor and the department must be complied with by the mortgagor after the note and mortgage have been executed, but the department may change the time and manner of repaying the obligation at the request of the mortgagor when such change is justified by circumstances not in existence at the time the loan was made.

**(11) SUBORDINATION AGREEMENT.** The department may execute a subordination agreement to permit an increase in a mortgagor's present primary mortgage or to replace a present primary mortgage with another in an amount equal to or in excess of the balance owing on the present primary mortgage when it is satisfied that the property will provide adequate security for its mortgage after the proposed increase in the primary mortgage.

(a) The mortgagor must submit evidence of such mortgagor's present income and of the shelter cost payments under the repayment terms of the proposed new primary note and mortgage to establish that the new shelter cost payments will not be excessive in view of present income.

(b) The department may execute a subordination agreement to give priority to a proposed primary mortgage where the department's mortgage has been prematurely recorded or in exceptional cases without requiring the evidence set forth in par. (a).

(c) The following criteria must be met for approval of all subordination agreements:

1. Minimum of 5% equity remaining after subordination.
2. A satisfactory repayment record on the secondary loan.
3. Loan is not currently delinquent.
4. Shelter cost ratio is not excessive based upon the criteria established by the department for the approval of primary loans.

(d) In those cases where the proceeds of the mortgage to which the department is requested to subordinate will be used for any purpose except refinancing an existing first mortgage, including the cost of refinancing, the request will be denied if:

1. The veteran's and spouse's total income is greater than the amount contained in s. 45.74 (1), Stats., and,



2. The veteran's equity in the home after the subordination is greater than 20% as derived from the current appraised value and the outstanding mortgage principal balance; and,

3. One-twelfth of the veteran's calculated anticipated annual shelter payment after the subordination would be less than 20% of the veteran's and spouse's combined gross monthly income.

**(12) PARTIAL RELEASE OF MORTGAGE** (s. 45.72 (5) (d), Stats.) The department may release a portion of the property providing security for its mortgage if the release of such property will not unduly diminish the value of the remainder of the property. The department may require that any funds received by a mortgagor from the sale of the property so released must be applied pro rata to all mortgages thereon in the ratio existing between such mortgages at the time the department's loan was made. If the primary mortgagee waives claim to these funds or if the department holds the primary mortgage, the department may require that they be applied as a principal reduction of the department's mortgage loan. If all or part of such funds are to be used to improve the property, the department may approve such use, provided that the expenditure of said funds will be supervised. Notwithstanding the provisions of this section, the department may, in cases where the mortgagor has had a satisfactory payment record with the department, release a portion of the property providing security for its mortgage without requiring either that funds received by the mortgagor from the sale of the property be applied to the mortgages thereon or that such funds be used for the improvement of the mortgagor's property if it is satisfied that the property remaining mortgaged to the department after execution of the partial release will adequately secure its mortgage balance.

**(13) RELEASE OF SATISFACTION.** The department's satisfaction of mortgage, the mortgage and mortgage note shall not be released for a period of 3 weeks following receipt of final payment, unless final payment is received in the form of cash, bank draft, bank money order, cashier's check, certified check, savings and loan or building and loan association check, credit union check, insurance check, finance company check, mortgage banker's check, or real estate broker's or attorney's trust account check.

**History:** Cr. Register, October, 1974, No. 226, eff. 11-1-74; am. (8) (c), Register, July, 1976, No. 247, eff. 8-1-76; am. (1), (2), (3), (4), (5), (7), (8) (intro) and (c), (10), (11) (intro) and (a) and (12), Register, September, 1978, No. 273, eff. 10-1-78; am. (3), Register, December, 1979, No. 288, eff. 1-1-80; am. (8) (a) and (c), (12) and (13), Register, April, 1986, No. 364, eff. 5-1-86; r. and recr. (3), r. (4) and (7), cr. (11) (c) and (d), Register, February, 1989, No. 398, eff. 3-1-89; am. (1), Register, January, 1990, No. 409, eff. 2-1-90; r. (1) to (6), (8) (a) and (b), renum. (8) (c) to be (8), am. (11) (d) 1., Register, June, 1992, No. 438, eff. 7-1-92; correction in (11) (a) made under s. 13.93 (2m) (b) 5., Stats., Register, August, 1993, No. 452.

**VA 4.10 Acceleration. (1) FALSE STATEMENT BY APPLICANT.** Whenever it is determined that an applicant has obtained a housing loan or an economic assistance loan through fraud, misrepresentation, or through concealment of a material fact, the mortgage note may be accelerated and full payment demanded.

**(2) TRANSFER OF POSSESSION.** The department or authorized lender may accelerate the mortgage note and require that the mortgage loan be paid in full when a mortgagor transfers physical possession of the mortgaged premises, without the lender's prior written consent. The mortgage will provide for such acceleration.

**(3) SALE OF PROPERTY.** Subject to the provisions of s. 45.78 (2) (a) and (b), Stats., the department or authorized lender will accelerate a mortgage note and require that the mortgage loan be paid in full when the mortgagor completes a sale of the housing accommodation mortgaged to the department.

**(4) DEFAULT.** Where a mortgagor is in default in loan repayments or has substantially breached mortgage covenants, the department may accelerate a secondary loan mortgage note and, with the department's consent, the authorized lender may accelerate a primary loan mortgage note.

**History:** Cr. Register, October, 1974, No. 226, eff. 11-1-74; am. (2), (3) and (4), Register, September, 1978, No. 273, eff. 10-1-78; am. (1), Register, April, 1986, No. 364, eff. 5-1-86; am. (2) to (4), Register, June, 1992, No. 438, eff. 7-1-92.

**VA 4.11 Procedure for suspension of builders, authorized lenders and appraisers.** Upon determination by the department that adequate cause exists for the suspension of a builder, authorized lender or appraiser (affected party) from participation in the housing loan programs, the procedures set forth below shall be followed by the department:

**(1) NOTICE OF SUSPENSION.** Notice of suspension signed by the secretary will be sent by the department to the affected party by certified mail, return receipt requested. The notice of suspension will outline the reasons for the act of suspension and the effective date of suspension and will inform the affected party that such party may file a written request with the department for a hearing.

**(2) NOTICE OF HEARING.** If a written request for a hearing filed with the department by the affected party meets the four-fold test of s. 227.42 (1) (a) to (d), Stats., and if such request is not denied by the department under s. 227.42 (2), Stats., the hearing granted by the department shall be treated as a "class 3 proceeding" as defined in s. 227.01 (3) (c), Stats., and written notice complying with s. 227.44 (2), Stats., will be sent to the affected party by certified mail, return receipt requested, at least 10 days prior to the date of hearing.

**(3) CONDUCT OF HEARING.** The hearing shall be held before a hearing examiner who shall be designated by the secretary. The hearing examiner will have the powers enumerated under s. 227.46, Stats. Every party to the hearing shall be afforded adequate opportunity to present evidence and to rebut evidence presented or offer countervailing evidence. A stenographic, electronic or other record shall be made of the hearing. The record shall be transcribed by the department, and free copies of the written transcript may be provided to any party in interest upon request.

**(4) FINAL DECISIONS.** Under s. 227.46 (3), Stats. the department may, by order, direct that the hearing examiner's decision be the final decision of the department. Alternatively, the decision of a majority of officials of the department appointed by the secretary shall be final. Whether the hearing examiner's decision, or the decision of the officials appointed by the secretary is final, such decision shall be based solely on the evidence presented at the hearing and on matters officially noticed. The decision will be based on the standard of substantial evidence. It shall be in writing and contain findings of fact and conclusions of law. The findings of fact shall treat each material issue of fact. The final decision shall be served by personal delivery or mailing to each party to the hearing or to the party's attorney of record.

**(5) PETITION FOR REHEARING.** Any party who deems itself aggrieved by a final decision may within 20 days after entry of the order set forth in such final decision, file with the department a written petition for rehearing specifying in detail the grounds for the relief sought and supporting authorities. The department may also order a rehearing on its own motion within 20 days after a final order. The filing of a petition for rehearing shall not delay or suspend the effective date of the final order. The final order shall continue in effect unless the petition for rehearing is granted or until the order is superseded, modified, or set aside as provided by law.

**(6) DISPOSITION OF PETITION.** A rehearing will be granted only on the basis of some material error of law, some material error of fact or discovery of new evidence sufficient to reverse or modify the final order which could not have been previously discovered by due diligence. The department may enter an order with reference to the petition for rehearing without a hearing, and shall take final action on the petition within 20 days after it is filed.

**(7) APPEAL TO BOARD.** (a) Upon the denial of a petition for rehearing by the department, an affected party may appeal to the board of veterans affairs (hereinafter referred to as the "board") within 20 days thereafter. The board shall hear and act upon the appeal within 30 days after submission. If the affected party which is aggrieved by the final decision of the department exercises the

option not to appeal to the board, such party shall be deemed to have exhausted all administrative remedies.

(b) If the affected party which is aggrieved by the final decision in the department exercises the option to appeal to the board and such appeal is denied by the board, the affected party shall be deemed to have exhausted all administrative remedies.

(c) In all cases in which the affected party which is aggrieved by the final decision of the department exercises the option to appeal to the board and such appeal is granted by the board, the board shall make the final decision. This decision may affirm, reverse, change, modify or suspend the proposed final decision of the department.

**History:** Cr. Register, September, 1978, No. 273, eff. 10-1-78; am. (3), Register, December, 1979, No. 288, eff. 1-1-80; am. (2) to (4), Register, February, 1989, No. 398, eff. 3-1-89.

**VA 4.12 Omissions and material errors as grounds for suspension of authorized lenders. (1) GROUNDS FOR SUSPENSION.** The department may suspend any authorized lender who makes excessive omissions or material errors on loan application packages the authorized lender submits to the department. An error is material if it prevents, or would prevent if the loan application package were not subsequently withdrawn, the correct processing to final determination of the loan application package as submitted. A loan application package is any loan application together with all supporting documents required by the department which is submitted to the department for processing, whether or not the loan application package is subsequently withdrawn before final determination by the department. For purposes of this section, an appeal of a loan denial is a new and separate loan application package.

**(2) NOTICE OF EXCESSIVE OMISSIONS AND MATERIAL ERRORS.** The department shall give notice to any authorized lender who has submitted loan application packages with excessive accumulated omissions and material errors that the authorized lender may be suspended if the lender fails to properly complete loan application packages submitted thereafter. At the request of any authorized lender, the department shall instruct the authorized lender in how to properly complete loan application packages.

**(3) PROCEDURE FOR SUSPENSION.** If the secretary determines that an authorized lender who has been given notice pursuant to sub. (2) has made excessive accumulated omissions and material errors on loan application packages it has submitted after receiving such notice, the secretary may give notice to the lender that the lender is temporarily suspended from originating primary housing loans. The notice of temporary suspension will be sent by certified mail, return receipt requested. The notice of temporary suspension will be effective 5 days after it is mailed, except for applications which the authorized lender commenced processing prior to the effective date of the temporary suspension. The notice of temporary suspension will also contain notice of a hearing on indefinite suspension from participation in the primary housing loan program, which hearing shall be treated as a "class 3 proceeding" as defined in s. 227.01 (3) (c), Stats. The hearing shall be conducted pursuant to s. VA 4.11 (3). The temporary suspension shall be effective until a final decision is reached following the hearing, pursuant to VA 4.11 (4). A party aggrieved by a final decision may petition for rehearing pursuant to s. VA 4.11 (5) and (6), and may appeal to the board of veterans affairs pursuant to s. VA 4.11 (7).

**(4) REINSTATEMENT.** An authorized lender permanently suspended for making excessive accumulated omissions and material errors on loan application packages it has submitted after receiving the notice set forth in sub. (3), may make application to the department for reinstatement to the department's list of authorized lenders at any time after 6 months from the effective date of such permanent suspension. The application shall include the lender's proposal for elimination of omissions and material errors on future loan application packages. The department, after investigation and evaluation of the lender's application, may reinstate the

lender to the department's list of authorized lenders. If the department should find that an application for reinstatement is made without sufficient cause to justify reinstatement, it shall deny reinstatement.

**History:** Cr. Register, August, 1981, No. 308, eff. 9-1-81; correction in (3) made under s. 13.93 (2m) (b) 7, Stats., Register, February, 1989, No. 398; am. (3), Register, January, 1990, No. 409, eff. 2-1-90; am. (1) and (2), Register, June, 1992, No. 438, eff. 7-1-92.

**VA 4.13 Primary loan forbearance. (1) DEFINITIONS.** In this section the following terms shall have the meanings designated:

(a) "Agreement" means an oral or written agreement to pay the delinquency owing on a primary housing loan over a period of time so that the loan may be brought current in accordance with the provisions of the mortgage and mortgage note.

(b) "Forbearance" means suspension of the acceleration of the balance due on a primary housing loan on the basis of the compliance of the mortgagor with the terms of an agreement.

**(2) EXCLUSIVE REMEDIES.** The forbearance provisions contained in this section are the exclusive remedies of primary loan mortgagors under s. 45.72 (9), Stats.

**(3) REQUEST FOR FORBEARANCE.** A written request for forbearance shall be submitted to the department by a primary loan mortgagor through the authorized lender servicing the loan. This request shall set forth the anticipated duration of the delinquency, the terms under which the delinquency will be repaid and the reasons for the delinquency. If the mortgagor receives rental income from the property mortgaged to the department, the mortgagor must agree in writing to assign this rental income to the department to be applied toward primary loan payments due until the loan is brought current. Full written financial disclosure may be required of a mortgagor in any case where the authorized lender or the department determines that such disclosure is necessary to enable the department to make a determination on the mortgagor's request for forbearance. Failure of the mortgagor to provide such disclosure in a timely manner shall be grounds for denial of forbearance.

**(4) APPROVAL BY DEPARTMENT. (a) Resolution of delinquency.** An agreement will be approved by the department only if the information contained in the written request for the agreement establishes to the department's satisfaction that the delinquency will be made up within a temporary period acceptable to the department and that the mortgagor will probably be able to comply with the terms and conditions of the proposed agreement.

(b) *Previous defaults.* An agreement will not be approved by the department if the mortgagor has been in default prior to the inception of the delinquency to which the agreement is to relate unless the mortgagor is able to establish to the satisfaction of the department that the previous default resulted from unusual and unforeseeable circumstances or is able to provide additional security for the primary loan either in the form of a guaranty of part or all of the balance due on the loan or in the form of a mortgage on other Wisconsin real property in which the owners have sufficient equity.

(c) *Financial mismanagement.* An agreement will not be approved where the delinquency to which the agreement is to relate was primarily the result of financial mismanagement by the mortgagor unless it is determined by the chief of the bureau of collections that the agreement will probably result in the loan being brought current in accordance with the terms of the agreement.

**(5) FORM OF AGREEMENT.** An agreement shall be in writing if the delinquency will not be fully repaid within 6 months from the date the agreement is entered into. The department may, however, enter into an oral agreement if the delinquency will be fully repaid under the terms of the agreement within 6 months from the date of the agreement.

**(6) MODIFICATION OF AGREEMENT.** Upon the request of the mortgagor or the mortgagor's representative, the department may modify or consent to the modification of the terms of an agreement. Any modification shall be in writing and shall be signed by the mortgagor. Not more than one modification to an agreement may be approved unless the department determines that extenuating circumstances necessitate a subsequent modification and that the current market value of the property mortgaged to the department is sufficient to warrant subsequent modification.

**(7) FAILURE TO KEEP AGREEMENT.** When the mortgagor fails to make payments required by the agreement and the department determines that modification of the agreement is not warranted, the department may notify the mortgagor that the agreement has been terminated and accelerate the primary loan balance.

**Note:** A special forbearance/repayment agreement form is required in connection with the creation of s. VA 4.13. A copy of this form is available at the department of veterans affairs.

**History:** Cf. Register, April, 1986, No. 364, eff. 5-1-86; am. (1) (a) and (b), (3) and (4) (b), Register, January, 1990, No. 409, eff. 2-1-90; am. (1), (2) and (7), Register, June, 1992, No. 438, eff. 7-1-92.