

## Chapter VA 4

### PRIMARY MORTGAGE LOAN PROGRAM

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**Note:** Chapter VA 4 as it existed on October 31, 1974 was repealed and a new chapter VA 4 was created, Register, October, 1974, No. 226, effective November 1, 1974. Chapter VA 4 as it existed on May 31, 2000 was repealed and a new chapter VA 4 was created, Register, May, 2000, No. 533, effective June 1, 2000.

**Note:** 2005 Wis. Act 22 repealed and recreated Ch. 45, Stats. Cross-references to Ch. 45, Stats., were corrected by the revisor under s. 13.93 (2m) (b) 7., Stats.

**VA 4.01 Definitions.** In this chapter the terms defined in s. 45.31, Stats., have the meanings designated and the statutory definitions are incorporated by reference. The federal regulations and guidelines issued by the Fannie Mae Program may be applied in conjunction with the provisions of this chapter where there is no conflict. 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.

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

(3) "Applicant" means a person who applies for a loan certificate of eligibility or a veteran who applies for a housing loan under subch. III 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.

(4) "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 a survey must comply with sideyard, setback and other applicable requirements.

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

(6) "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.

(7) "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.

**Note:** Section 45.71 (16), Stats., no longer exists since the repeal and recreation of ch. 45, Stats., by 2005 Wis. Act 22.

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

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

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

(11) "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.

(12) "Primary loan" means a housing loan under s. 45.37, Stats.

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

(14) "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 must occupy or intend to occupy the residence.

(15) "Secondary loan" means a housing loan under s. 45.352, 1971 Stats., or s. 45.80, 1989 Stats.

(16) "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.

**Note:** Section 45.71 (16), Stats., no longer exists since the repeal and recreation of ch. 45, Stats., by 2005 Wis. Act 22.

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

**History:** Cr. Register, May, 2000, No. 533, eff. 6-1-00.

**VA 4.02 Manufactured home loans. (1) SECURITY.** No loan may be made under this section for the purchase of a manufactured home unless the loan is secured by both a first mortgage and a chattel security agreement on the manufactured home itself and the home is affixed to a permanent foundation.

(2) REPAYMENT OF LOANS. All loans on manufactured homes will be amortized on a monthly payment basis and may 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 manufactured home and skirting and tie-downs shall be considered a part of the total cost of the manufactured home for the purposes of ss. 45.33 and 45.35, 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.

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

(5) CONSENT TO REMOVAL. No manufactured home upon which a primary loan has been made may be moved from the site of original hookup without the consent of the authorized lender and the department and no manufactured home upon which a sec-

ondary loan has been made may be moved from the site of original hookup without the consent of the department.

**History:** Cr. Register, May, 2000, No. 533, eff. 6-1-00.

**VA 4.03 General loan policy. (1) LOAN REPAYMENT RECORD.** The department may not issue a certificate of eligibility to an applicant or approve a loan to an applicant 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, or if the renegotiated term of the loan does not exceed 24 months and terminates within 24 months of the closing date of the original loan.

(b) Applications for loans on residences where construction has not been completed shall be processed under sub. (4), except that the contract may have multiple payments to the contractor and escrows are not permitted.

**(3) CONSTRUCTION LOANS.** (a) Construction loans may 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 must be made monthly. The interest will be charged on principal actually disbursed during the previous month based on the number of days of usage and billed as of the first of the month.

(d) Construction contracts shall be written on a firm price basis. No cost adjustment clause is permitted. Change orders in construction contracts may be permitted only with the approval of the authorized lender and if the applicant deposits the full cost of the change order with the lender prior to the change taking place.

(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, shall 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 is 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 shall agree to sign the lender's warranty on the basis of the certificate.

(i) There must be a general contractor who shall warrant in writing against defects in materials and workmanship for a period of not less than one year from the date of completion.

(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 shall 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 shall 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 and mortgagor prior to disbursement of any additional funds. Lender or its agent shall inspect completed work prior to any draw and retain a copy of the inspection report on file.

(m) Lien waivers shall be obtained. If any question arises concerning the adequacy of the lien waivers, the 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 shall 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 may 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 guidelines approved by the department. Advances may take place at any of the following times:

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.
4. After final inspection. Minor items that do not affect livability or work prevented because of weather related circumstances may be incomplete provided the lender establishes an adequate escrow of at least one and one-half times the cost to complete the items.

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

(p) 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.

(q) In primary loan applications work credits and sweat equity may 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 waive firm price contracts for labor for required painting if all of the following occur:

1. The authorized lender obtains an agreement from the general contractor stating that should painting become necessary, the

contractor shall 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.

(r) Plans and specifications for any unusual type of construction shall 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 shall 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, with any of the following:

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.

(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 may be made only upon compliance with all of the foregoing requirements. Minor items that do not affect livability or work prevented because of weather related circumstances may be incomplete provided the lender establishes an adequate escrow of at least one and one-half times the cost to complete the items.

**(5) 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 shall 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 is 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.

**(6) 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 is required in connection with a primary loan, unless it is determined by the department that there is no dispute as to the location of the improvements within the perimeter. In these cases, a surveyor's or professional engineer's letter is required.

**(7) FLOODPLAIN.** Life of loan flood certifications are required for loan applications. If the property is in a 100 year floodplain, flood insurance shall be obtained on the property and shall be available at the time of closing. The property is deemed to be in a 100 year floodplain only if the buildings thereon are in the 100 year floodplain.

**(8) 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 private septic disposal system shall include any 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 may not be approved for the purchase or construction of housing accommodations on properties if the septic disposal systems are gas fired or chemical toilets are utilized.

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

**(10) TERM.** The amortization period of a housing loan may not exceed 30 years.

**(11) BUSINESS USE.** Except for a housing loan for a purpose designated in s. 45.34 (1) (c), Stats., the department may not approve a housing loan for a residence, other than a multi-family residence which may be financed under sub. (12), in which it is reasonably expected that more than 15% of the total area is to be used in a trade or business.

**(12) MULTI-FAMILY RESIDENCE.** Except for a housing loan for a purpose designated in s. 45.34 (1) (c), Stats., the department may 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.

**(13) PRIOR FINANCING.** Except for a housing loan for a purpose designated in s. 45.34 (1) (c), Stats., the department may 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.

**History:** Cr. Register, May, 2000, No. 533, eff. 6-1-00; CR 05-008: am. (2) Register May 2005 No. 593, eff. 6-1-05.

**VA 4.05 Financial requirements. (1) VETERAN'S CONTRIBUTION.** If the applicant's contribution required under s. 45.35, 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, other than from a government sponsored program, a program approved by the department or from the applicant's own assets, the application shall not be approved. The applicant must be

financially able with the aid of the housing loan applied for to complete the 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 s. 45.35, 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 establishes that a 5% down payment has been made from the applicant's own funds. Mortgage funds may 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.

(2) **OTHER OWNED REAL ESTATE.** 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).

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

(4) **EMPLOYMENT.** The applicant shall have stable employment and 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 shall result in the authorized lender canceling the loan commitment.

(5) **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 to be an indication of creditworthiness.

**History:** Cr. Register, May, 2000, No. 533, eff. 6–1–00.

**VA 4.06 Property qualifications. (1) GENERAL.** The department may approve a housing loan 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. If the property has any deficiencies, it may be considered adequate housing if the lender has established an adequate escrow of the sellers funds. The housing accommodation must be located in Wisconsin. The housing accommodation shall be occupied by the applicant as the applicant's and dependent's residence.

(2) **SUB-STANDARD HOUSING ACCOMMODATIONS.** The department may not approve applications 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.

(3) **LOTS.** The department may not approve an application to purchase a housing accommodation situated on a lot deemed to be of inadequate size.

(4) **PROPERTY ANALYSIS.** The department shall use federal regulations and guidelines issued by the Fannie Mae Program for evaluating properties. Loans may not be approved on properties that fail to meet the standards and the standards and guidelines

shall be used for determining the maximum number of years for which loans will be made on properties offered as security.

**History:** Cr. Register, May, 2000, No. 533, eff. 6–1–00.

**VA 4.07 Appraisals. (1) GENERAL.** Except in the case of applications for loans made for the purposes set forth in s. 45.34 (1) (c), Stats., appraisals shall be submitted with all housing loan applications.

(2) **USE OF APPRAISALS.** Appraisals shall be used to determine whether the properties so appraised adequately secure proposed housing loans, but the 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 deems practical.

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

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

(b) Construction loans in a floodplain may not be approved unless the plans and specifications comply with the requirements of ch. NR 116.

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

**History:** Cr. Register, May, 2000, No. 533, eff. 6–1–00.

**VA 4.08 Primary loan program. (1) CERTIFICATE OF ELIGIBILITY.** (a) Except in the cases of applications for loans made for the purposes set forth in s. 45.34 (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 the certificate. In the case of an application for a loan for the purposes set forth in s. 45.34 (1) (c), Stats., the department may not issue a separate certificate of eligibility but shall certify an applicant as eligible prior to approving the application.

(b) A certificate of eligibility may be issued only to an applicant whose previous transactions with the department would in no way bar approval of another loan by the department.

(c) If the applicant is a veteran who was a resident of the state of Wisconsin at time of entry into military service or has been a resident of this state for any consecutive 5–year period after entry or reentry into service on active duty, the certificate of eligibility shall be issued for an indefinite period. If the applicant qualifies as a veteran by virtue of being the unmarried 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.

(d) If the original certificate 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.** No lender may process a mortgage loan application until the lender has entered into a contract with the department. The contract shall delineate or include reference to the responsibilities of the authorized lenders and other matters set forth in s. 45.37 (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 the warranties and agreements shall be deemed to be incorporated into the contract.

**(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, if 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 this chapter and subch. III 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 Fannie Mae minimum property standards or because the applicant does not meet its credit standards, the authorized lender shall inform the applicant that the application will be submitted to the department with a recommendation that it be denied and provide the reasons for the recommendation. Incomplete applications denied by authorized lenders shall not be forwarded to the department but the department shall promptly be notified in writing of the denials. Completed applications shall not be denied by the lender but will be forwarded to the department and the department will approve or deny the application.

**(5) SUBMISSION TO THE DEPARTMENT.** All applications approved by authorized lenders shall be submitted to the department for review and approval or denial. A loan application which has been submitted but which is found to lack the necessary information or documentation for the department to approve a loan, shall be denied, unless the lender corrects the deficiency within 60 days after notice of the deficiency by the department to the lender. 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. 45.37 (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) and construction takeout loans (TO) 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).

**(7) WARRANTY.** As soon as practicable after the closing of a loan or after the first disbursement of funds in a construction loan the authorized lender shall 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.** 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 the lend-

ers 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. The agreements shall specify the items for which authorized lenders may incur reimbursable expenses and the terms and conditions under which the department may 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 shall 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 and supervise the disbursement of funds for improvements.

**(10) CONSUMER LAWS.** Notwithstanding any provisions of the department's lender's manual, subch. III of ch. 45, Stats., or this chapter 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 and shall be liable for any damages awarded for the noncompliance.

**History:** Cr. Register, May, 2000, No. 533, eff. 6-1-00.

**VA 4.09 Secondary loan program. (1) 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. Until the memorandum is received, the department shall insure its interest in the property with the state insurance fund.

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

**(3) REDUCTION IN MONTHLY PAYMENTS.** The terms of the contract between the mortgagor and the department shall 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 a change is justified by circumstances not in existence at the time the loan was made.

**(4) SUBORDINATION AGREEMENT AND PARTIAL RELEASE OF MORTGAGE.** The department may execute a subordination agreement or release a portion of the property providing security for its mortgage if the mortgagor's equity in the property secured by the mortgage is verified by the department to be greater than 10% after the execution of the subordination agreement or partial release, the applicant is current on the loan, the applicant meets current underwriting criteria, and the repayment history for the 6 months immediately preceding the request has been satisfactory on the loan.

**(5) RELEASE OF SATISFACTION.** The department's satisfaction of mortgage, the mortgage and mortgage note may 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, May, 2000, No. 533, eff. 6-1-00; CR 05-008: am. (4) Register May 2005 No. 593, eff. 6-1-05.

**VA 4.10 Acceleration. (1) FALSE STATEMENT BY APPLICANT.** Whenever it is determined that an applicant has obtained any department 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 shall provide for such acceleration.

**(3) SALE OF PROPERTY.** Subject to the provisions of s. 45.36 (2) (a) and (b), Stats., the department or authorized lender shall 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.** If 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, May, 2000, No. 533, eff. 6-1-00.

**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 from participation in the housing loan programs, the department shall do all of the following:

**(1) NOTICE OF SUSPENSION.** Notice of suspension signed by the secretary shall be sent by the department to the affected party by certified mail, return receipt requested. The notice of suspension shall outline the reasons for the act of suspension and the effective date of suspension and inform the affected party that the 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 requirements of s. 227.42 (1) (a) to (d), Stats., and if the 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., shall 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 designated by the secretary. The hearing examiner has 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, the decision shall be based solely on the evidence presented at the hearing and on matters officially noticed. The decision shall 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 within 20 days. The board of veterans affairs shall hear and act upon the appeal within 60 days after submission. If the affected party which is aggrieved by the final decision of the department does not appeal to the board of veterans affairs, the party is 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 of veterans affairs and the appeal is denied by the board of veterans affairs, the affected party is deemed to have exhausted all administrative remedies.

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

**History:** Cr. Register, May, 2000, No. 533, eff. 6-1-00.

**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 as to 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 the 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 shall be sent by certified mail, return receipt requested. The notice of temporary suspension is 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 shall also contain notice of a hearing on indefinite suspension from participation in the primary housing loan program. The hearing shall be treated as a "class 3 proceedings" 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 s. 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 the 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 finds that an application for reinstatement is made without sufficient cause to justify reinstatement, it shall deny reinstatement.

**History:** Cr. Register, May, 2000, No. 533, eff. 6-1-00.

**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. 45.32 (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 the disclosure is necessary to enable the department to make a determination on the mortgagor's request for forbearance. Failure of the mortgagor to provide the disclosure in a timely manner are grounds for denial of forbearance.

**(4) APPROVAL BY DEPARTMENT.** (a) The department may approve an agreement 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) The department may not approve an agreement 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) The department may not approve an agreement if 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 department 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.** If 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:** Cr. Register, May, 2000, No. 533, eff. 6-1-00.

**VA 4.14 Home improvement loan program.**

**(1) APPLICATION.** This section applies only to the program under s. 45.34 (1) (c), Stats. This section applies in conjunction with other provisions of this chapter, except that the provisions of s. VA 4.03 (3) do not apply to this section. This section supercedes any inconsistent provision of this chapter with respect to the program under s. 45.34 (1) (c), Stats.

**(2) DEFINITIONS.** In this subsection:

(a) "Date of application" means the date a complete loan application with supporting documents is received by the department.

(b) "Loan" means a home improvement loan as authorized by s. 45.34 (1) (c), Stats., for the purpose of this subchapter.

(c) "Total debt payments" means  $\frac{1}{12}$  of an applicant's monthly [annual] housing expense and monthly repayments required on debts with 13 or more remaining monthly payments due at the time of application for a home improvement loan program. "Total debt payments" includes 5% of the applicant's total indebtedness on which regular monthly payments are not required except when the applicant has sufficient verified assets to repay the indebtedness.

**Note:** It is the intent of the department to use  $\frac{1}{12}$  of the annual housing expense rather than monthly as sub. (2) (c) reads.

**(3) APPLICATION REQUIREMENTS.** (a) The applicant's eligibility to participate in the program shall be established prior to the approval of the loan by the department.

(b) An application for a loan shall be on a form approved by the department and shall include documentation of income, verifi-

cation of adequate security and other items as may be required by the department. An application shall be signed by the applicant or submitted electronically after obtaining a valid log-on ID and password. Applications for loans by applicants who are married and not separated or in the process of obtaining a divorce shall be completed and signed by the applicant's spouse. If the application is submitted electronically, the spouse does not need to sign the application. Applications may be prepared with the assistance of and submitted through the office of a county veterans service officer or other representative as approved by the department or may be submitted directly to the department. Loan applications that are not complete may not be accepted by the department. A loan application which has been accepted by the department, but which is determined to lack the necessary information or documentation for the department to approve a loan, shall be denied, unless the applicant corrects the deficiency within 30 days' notice of the deficiency by the department to the county veterans service office or to the applicant.

(c) An applicant's current monthly income shall be verified. Acceptable verification of current monthly income may be any of the following:

1. Copies of check stubs from the applicant's employment for a recent month within 3 months of the date of application.

2. A copy of the prior year's income tax returns except if the applicant's employer, type of employment or method of compensation has changed. Applicants verifying their income by the prior year's income tax returns shall submit a complete copy of the state and federal tax return including all schedules.

3. An award letter or copy of a check of unemployment compensation. Unemployment compensation may be considered income when it is received for regular or seasonal layoffs from the applicant's current employment.

4. A business plan and professionally prepared profit and loss statement of income to be derived by an applicant from a new business which the applicant is establishing or an existing business the applicant is purchasing.

5. A profit and loss statement for at least 6 of the 12 months immediately preceding the loan application date of the income of a self employed applicant.

6. Depreciation as listed on an applicant's federal tax return may be used as income at the request of the applicant.

(d) All loans shall be amortized on a monthly basis and the term of the loan shall be at least 1 year and may not exceed 15 years. The department may set loan amortization terms based upon the loan amount.

(e) If an applicant's total debt payments exceed 35% of the applicant's current monthly income, the application shall be denied unless the applicant has a history of excellent debt service combined with either a demonstrated ability to accumulate savings, at least 15% equity in real estate or such other factors as the department finds to be relevant to the applicant's ability and motivation to make higher debt service payments.

(f) The department shall consider the income, assets and debts of a co-applicant.

**(4) SECURITY REQUIRED.** (a) *Guarantors.* The department may accept as adequate security the guarantee of home improvement loan program loan promissory notes by creditworthy and financially acceptable guarantors who are not the spouse of the applicant and who are Wisconsin residents. Guarantors are subject to the same underwriting criteria as the applicant and the department may request verification of information submitted.

There must be at least 1 guarantor on guaranteed home improvement loan promissory notes. No employee of the department, no county veterans service officer and no other person in any way connected with the administrative duties of the department or serving in an advisory capacity thereto may be accepted as guarantor on any loan unless the applicant is a member of the guarantor's immediate family. Any other Wisconsin resident who is determined by the department to be financially responsible and whose joining in the obligation provides adequate security may be accepted as a guarantor.

(b) *Real estate security.* The department may accept the primary residence of the applicant as security if the applicant presents evidence of at least 10% equity therein after the home improvement loan program loan has been made. Possession of merchantable title to the primary residence by the applicant is required. If the title to the primary residence is held in more than one name, all parties with an interest in the real estate shall sign the mortgage.

(c) *Appraisals.* 1. If an appraisal is being used to determine the value an appraiser, selected by the applicant and licensed by the Wisconsin department of regulation and licensing, shall perform the appraisal and complete the appraisal form prescribed by the department. The appraisal may include the value added by the improvements or one half of the cost of the proposed improvements may be added to an appraisal that does not include the value for the improvements. The applicant is responsible for payment of the appraisal expenses.

2. If the applicant submits an appraisal the appraisal is advisory only. The department may consider age of the appraisal, equity established by the appraisal, condition of the property or market value established by the appraisal in evaluating the appraisal submitted. 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.

(d) *Alternate value establishment.* 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. In order to establish the value of the proposed improvement for the purpose of determining the increased equity value, the applicant shall submit a description of the project and estimates for the work or an appraisal that incorporates the proposed improvements.

(e) *Letter title report.* A letter title report completed by a licensed title company or a licensed attorney, or an individual authorized by the department and subject to restrictions imposed by the department, verifying the nature and amount of all mortgages, liens, and other claims outstanding against the applicant's primary residence where the applicant offers a residence as security for a home improvement loan program loan is required.

(f) *Subordination agreement and partial release of mortgage.* The department may execute a subordination agreement or release a portion of the property providing security for its mortgage if the department verifies that the mortgagor's equity in the property secured by the mortgage is greater than 10% after the execution of the subordination agreement or partial release, the applicant is current on the loan, the applicant meets current underwriting criteria, and the repayment history for the 6 months immediately preceding the request has been satisfactory on the loan.

**History:** Cr. Register, May, 2000, No. 533, eff. 6-1-00; CR 05-008; am. (1), (2) (a), (3) (b) and (d), (4) (a), (c) 1. and (d) to (f), r. (3) (g) Register May 2005 No. 593, eff. 6-1-05.