

The below regulations pertain to the COVID-19 Veterans Assistance Partial Claim Payment program (COVID-VAPCP) and are effective July 27, 2021. They are also located at <https://www.ecfr.gov/cgi-bin/text-idx?SID=0a7fdc206023a08b0918c58d345287cd&mc=true&node=pt38.2.36&rgn=div5#sp38.2.36.f>. See also 86 FR 28708 (May 28, 2021); 86 FR 46983 (Aug. 23, 2021).

## **38 CFR—PART 36**

### **Subpart F—COVID-19 Recovery Measures**

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#### **§36.4800 Applicability.**

This subpart applies to all loans guaranteed by VA, to the extent such loans are affected by the COVID-19 national emergency.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

#### **§36.4801 Definitions.**

The following definitions of terms apply to this subpart:

*Alternative to foreclosure* means an alternative to foreclosure for which the Secretary may pay an incentive under §36.4319. These alternatives include compromise sale (sometimes called a short sale) and deed-in-lieu of foreclosure.

*COVID-19 forbearance* means any forbearance of scheduled monthly guaranteed loan payments, granted to a veteran under section 4022 of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136). It can also include any forbearance of scheduled monthly guaranteed loan payments, granted to a veteran for a financial hardship due, directly or indirectly, to the COVID-19 national emergency.

*COVID-19 indebtedness* means the dollar amount the veteran is obligated to pay under the guaranteed loan terms, but that is not collected during a COVID-19 forbearance.

*Guaranteed loan* means a loan guaranteed under chapter 37 of title 38, United States Code.

*Loss-mitigation option* means a loss-mitigation option for which the Secretary may pay an incentive under §36.4319. These options include a repayment plan, special forbearance, and loan modification.

*Secretary* means the Secretary of Veterans Affairs, or any employee of the Department of Veterans Affairs (VA) authorized to act in the Secretary's stead.

*Servicer* means, for the purposes of this subpart, the holder, servicer, or servicing agent, as defined in §36.4301. The terms can apply jointly or severally, or jointly and severally.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§36.4802 General purpose of the COVID-19 Veterans Assistance Partial Claim Payment program.**

The COVID-19 Veterans Assistance Partial Claim Payment program is a temporary program to help veterans who have suffered a COVID-19 financial hardship. Notwithstanding the requirements elsewhere in this part regarding payment of a guaranty claim or refunding a loan, VA may assist a veteran exiting a COVID-19 forbearance by purchasing from the servicer the veteran's COVID-19 indebtedness. Such a purchase is called a partial claim payment. In exchange for VA's partial claim payment on behalf of the veteran, the veteran must agree to repay the Secretary, in the amount of such partial claim payment, upon loan terms established by the Secretary.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§36.4803 General requirements of the COVID-19 Veterans Assistance Partial Claim Payment program.**

The following general requirements must be met before the Secretary will allow for participation in the COVID-19 Veterans Assistance Partial Claim Payment program:

- (a) The loan for which a partial claim payment is requested must be a guaranteed loan that was either—
  - (1) Current or less than 30 days past due on March 1, 2020; or
  - (2) Made on or after March 1, 2020;
- (b) The veteran on whose behalf VA will pay a partial claim payment both received a COVID-19 forbearance and missed at least one scheduled monthly payment;
- (c) There remains unpaid at least one scheduled monthly payment that the veteran did not make while under a COVID-19 forbearance;
- (d) The veteran indicates that the veteran can resume making scheduled monthly payments, on time and in full, and that the veteran occupies, as the veteran's residence, the property securing the guaranteed loan for which the partial claim payment is requested; and
- (e) The veteran executes, in a timely manner, all loan documents necessary to establish an obligation to repay the Secretary for the partial claim payment.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0889)

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§36.4804 Partial claim payment as a home retention option.**

- (a) The Veterans Assistance Partial Claim Payment program is designed to address the financial hardships due, directly or indirectly, to the COVID-19 national emergency. A servicer may therefore use the partial claim payment option, even in cases where other home retention options are feasible, provided the partial claim payment option is in the veteran's financial interest.

(b) If the veteran notifies the servicer that the veteran does not want to retain ownership of the property securing the guaranteed loan, the servicer may immediately proceed to offering an alternative to foreclosure.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§36.4805 Terms of the partial claim payment.**

(a) In order for a partial claim payment to be payable, the servicer must submit to the Secretary, not later than 120 days after the date the veteran exits the COVID-19 forbearance, a request for such payment, as prescribed in §36.4807.

(b) The amount of the partial claim payment that VA will pay to the servicer, as calculated under paragraph (e) of this section, shall not exceed 30 percent of the unpaid principal balance of the guaranteed loan. For the purposes of this paragraph (b), the unpaid principal balance of the guaranteed loan means such balance as of the date the veteran entered into a COVID-19 forbearance.

(c) VA will pay only one partial claim payment per guaranteed loan.

(d) VA will pay only one partial claim payment per veteran.

(e)(1) Because VA will pay only one partial claim payment per guaranteed loan, and only one partial claim payment per veteran, a servicer must, when calculating the amount of partial claim payment to be paid by VA to the servicer, include the full amount of indebtedness that is necessary to bring the guaranteed loan current.

(2) To bring the guaranteed loan current, servicers must include the full COVID-19 indebtedness, comprising—

(i) All scheduled but missed monthly payments of principal and interest; and

(ii) As applicable, all scheduled but missed monthly escrow payments for real estate taxes and insurance premiums, or where the guaranteed loan documents do not provide for monthly escrowing, all payments the servicer made to real estate tax authorities and insurance providers, on the veteran's behalf, during the COVID-19 forbearance.

(3) Also in bringing the guaranteed loan current, servicers must include—

(i) All scheduled monthly payments (comprising principal, interest, and escrow payments for real estate taxes and insurance premiums) due within 31 days of the date the servicer provides to the veteran the note and security instrument described in §36.4806;

(ii) If applicable, all scheduled monthly payments (comprising principal, interest, and escrow payments for real estate taxes and insurance premiums) that were missed on or after March 1, 2020, but before the veteran was granted the COVID-19 forbearance; and

(iii) The actual amount of recording fees, recording taxes, or other charges levied by the recording authority, that must be paid in order to record the security instrument described in §36.4806.

(4) Except for amounts identified in paragraphs (e)(2) and (3) of this section, servicers shall not include any amounts (*e.g.*, fees, penalties, or interest) beyond the amounts scheduled or calculated as if the veteran made all contractual payments on time and in full under the terms of the guaranteed loan.

(5) Nothing in this section shall preclude a veteran from making an optional payment or a servicer from waiving a veteran's indebtedness, such that the amount of partial claim payment would not exceed the 30 percent cap described in paragraph (b) of this section.

(6) If the servicer miscalculates the partial claim amount, resulting in an overpayment to the servicer, the amount of such overpayment shall constitute a liability of the servicer to the United States. The servicer must remit the overpaid amount immediately to VA.

(7) If the servicer miscalculates the partial claim amount, resulting in underpayment (*i.e.*, an amount insufficient to bring the guaranteed loan current), the servicer must waive the difference.

(8) Servicers shall not include any amounts for a monthly payment that is scheduled to be paid on a date that is more than 31 days after the servicer provides to the veteran the note and security instrument described in §36.4806.

(f) The servicer must prepare a note and security instrument in favor of the “Secretary of Veterans Affairs, an Officer of the United States”. The name of the incumbent Secretary should not be included unless State law requires naming a real person.

(1) The note must be consistent with the terms described in §36.4806 and include all borrowers who are obligated on the guaranteed loan; and

(2) The security instrument must include all persons (borrowers, as well as non-borrowers) who hold a title interest in the property securing the guaranteed loan.

(g) Subject to paragraph (a) of this section, all loan documents must be fully executed not later than 90 days after the veteran exits the COVID-19 forbearance.

(h) The servicer must record the security instrument timely, as prescribed in §36.4807.

(i) The servicer must not charge, or allow to be charged, to the veteran any fee in connection with the COVID-19 Veterans Assistance Partial Claim Payment program.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0889)

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

#### **§36.4806 Terms of the assistance to the veteran.**

(a) If a veteran chooses to accept VA's assistance (*i.e.*, a partial claim payment to the servicer, on the veteran's behalf), the veteran, and all co-borrowers on the guaranteed loan, must execute a note and security instrument in favor of the “Secretary of Veterans Affairs, an Officer of the United States”. The name of the incumbent Secretary should not be included unless State law requires naming a real person.

(b) Specific terms of the note and security instrument shall include the following:

(1) The amount to be repaid to the Secretary, by the veteran, is the amount calculated under §36.4805(e);

(2) Repayment in full is required immediately upon—

(i) The veteran's transfer of title to the property; or

(ii) The refinancing or payment in full otherwise of the guaranteed loan with which the partial claim payment is associated.

(3) A veteran may make payments for the subordinate loan, in whole or in part, without charge or penalty. If the veteran makes a partial prepayment, there will be no changes in the due date unless VA agrees in writing to those changes.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0889)

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§36.4807 Application for partial claim payment.**

(a) The servicer must provide VA with the original note required by §36.4805. Not later than 180 days following the date the security instrument, required by §36.4805, is fully executed, the servicer must provide VA with the original security instrument and evidence that the servicer recorded such instrument. If the recording authority causes a delay, the servicer may request an extension of time, in writing, from VA.

(b) Servicers must report a partial claim event to VA through VA's existing electronic loan servicing system within seven days of the date the veteran returns to the servicer the executed note required by §36.4805, but not later than 120 days after the date the veteran exits the COVID-19 forbearance.

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0021 and 2900-0889)

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§36.4808 No effect on the servicing of the guaranteed loan.**

(a) Servicers must continue to service the guaranteed loan in accordance with subpart B of this part.

(b) The liability of the United States for any guaranteed loan shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the guaranteed loan. A partial claim payment does not affect the guaranty percentage established at the time the guaranteed loan was made.

(c) Receipt of a partial claim payment shall not eliminate a servicer's option under 38 U.S.C. 3732 to convey to the Secretary the security for the guaranteed loan.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§36.4809 Expiration of the COVID-19 Veterans Assistance Partial Claim Payment program.**

(a) Subject to paragraph (b) of this section, the Secretary will not accept a request for a partial claim payment after the date that is 180 days after the date the COVID-19 national emergency ends under the National Emergencies Act, 50 U.S.C.161.

(b) If a veteran's COVID-19 forbearance does not end until after the date described in paragraph (a) of this section, the Secretary shall accept a request for a partial claim payment, provided that such request is submitted to the Secretary not later than 120 days after the date the veteran exits the COVID-19 forbearance.

(c) Notwithstanding paragraphs (a) and (b) of this section, the Secretary will not accept a request for a partial claim payment after October 28, 2022.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§36.4810 Oversight of the COVID-19 Veterans Assistance Partial Claim Payment program.**

(a) Subject to notice and opportunity for a hearing, whenever the Secretary finds with respect to a partial claim payment that any servicer has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately or to exercise

proper credit judgment or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government, the Secretary may refuse either temporarily or permanently to guarantee or insure any loans made by such servicer and may bar such servicer from servicing or acquiring guaranteed loans.

(b) Notwithstanding paragraph (a) of this section, but subject to §36.4328, the Secretary will not refuse to pay a guaranty or insurance claim on a guaranteed loan theretofore entered into in good faith between a veteran and such servicer.

(c) The Secretary may also refuse either temporarily or permanently to guarantee or insure any loans made by a lender or holder suspended, debarred, denied, or otherwise restricted from participation in FHA's insurance programs pursuant to a determination of the Secretary of Housing and Urban Development.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0515)

(Authority: 38 U.S.C. 3703, 3704(d), 3720)