



Subpart B—Guaranty or Insurance of Loans to Veterans With Electronic Reporting

Source: 73 Fed. Reg. 6310, February 1, 2008, as redesignated at 75 Fed. Reg. 33705, June 15, 2010, and amended at 75 Fed. Reg. 65238, October 22, 2010, unless otherwise noted.

Supplement *Highlights* reference: 32(1), 34(1), unless otherwise noted.

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Subpart F—Guaranty or Insurance of Loans to Veterans With Electronic Reporting

§36.4300 Applicability and qualified mortgage status.

(a) *Applicability to guaranteed loans.* This subpart applies to loans serviced by a mortgage servicing industry segment on or after the date that VA issues a *Federal Register* notice making this subpart applicable to that segment. This includes loans entitled to an automatic guaranty, or otherwise guaranteed or insured, on or after the date assigned in the *Federal Register*, and loans that were previously guaranteed or insured to the extent that no legal rights vested under the regulations are impaired.

(b) *Safe harbor qualified mortgage.*

(1) *Defined.* A safe harbor qualified mortgage meets the Ability-to-Repay requirements of sections 129B and 129C of the Truth-in-Lending Act (TILA) regardless of whether the loan might be considered a high cost mortgage transaction as defined by section 103bb of TILA (15 U.S.C. 1602bb).

(2) *General.* Subject to paragraphs (c) and (d) of this section, any guaranteed or insured loan made in compliance with this subpart is a safe harbor qualified mortgage.

(3) *Exempted transactions.* The following loans are not subject to challenge under the ability-to-repay requirements of the Truth-in-Lending Act (15 U.S.C. 1639C).

(i) A temporary or “bridge” loan with a term of 12 months or less, such as a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling within 12 months or a loan to finance the initial construction of a dwelling;

(ii) A construction phase of 12 months or less of a construction-to-permanent loan;

(iii) An extension of credit made pursuant to a program administered by a Housing Finance Agency, as defined under 24 CFR 266.5;

(iv) An extension of credit made by:

(A) A creditor designated as a Community Development Financial Institution, as defined under 12 CFR 1805.104(h);

(B) A creditor designated as a Downpayment Assistance through Secondary Financing Provider, pursuant to 24 CFR 200.194(a), operating in accordance with regulations prescribed by the U.S. Department of Housing and Urban Development applicable to such persons;

(C) A creditor designated as a Community Housing Development Organization provided that the creditor has entered into a commitment with a participating

jurisdiction and is undertaking a project under the HOME program, pursuant to the provisions of 24 CFR 92.300(a), and as the terms community housing development organization, commitment, participating jurisdiction, and project are defined under 24 CFR 92.2; or

(D) A creditor with a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3); 26 CFR 1.501(c)(3)-(1), provided that:

(1) During the calendar year preceding receipt of the consumer's application, the creditor extended credit secured by a dwelling no more than 200 times;

(2) During the calendar year preceding receipt of the consumer's application, the creditor extended credit secured by a dwelling only to consumers with income that did not exceed the low- and moderate-income household limit as established pursuant to section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20)) and amended from time to time by the U.S. Department of Housing and Urban Development, pursuant to 24 CFR 570.3;

(3) The extension of credit is to a consumer with income that does not exceed the household limit specified in 12 CFR 1026.43(a)(3); and

(4) The creditor determines, in accordance with written procedures, that the consumer has a reasonable ability to repay the extension of credit.

(v) An extension of credit made pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211; 5219);

(c) *Interest rate reduction refinancing loans (IRRRLs).*

(1) *Safe harbor.* A streamlined refinance loan made pursuant to 38 U.S.C. 3710(a)(8) and (e) is a safe harbor qualified mortgage, as defined in paragraph (b) of this section, if all of the following conditions are met:

(i) The loan being refinanced was originated at least 6 months before the date of the new loan's closing date, and the veteran has not been more than 30 days past due during such 6-month period;

(ii) The recoupment period for all fees and charges financed as part of the loan or paid at closing does not exceed thirty-six (36) months;

(iii) The streamlined refinance loan is either exempt from income verification requirements pursuant to 38 CFR 36.4307 or the refinance loan complies with other income verification requirements pursuant to 38 CFR 36.4340, as well as the Truth-in-Lending Act (15 U.S.C. 1639C) and its implementing regulations; and

(iv) All other applicable requirements of this subpart are met. (Authority: 15 U.S.C. 1639C(b)(3)(B)(ii), 38 U.S.C. 3710)

(2) *Rebuttable presumption.* A streamlined refinance that does not meet all of the requirements of safe harbor in paragraph (c)(1), is a qualified mortgage for which there is a presumption that the borrower had the ability to repay the loan at the time of consummation, if such streamlined refinance, at the time of consummation, satisfies the requirements of (c)(1)(iii) and (iv) of this section.

(d) *Effect of indemnification on qualified mortgage status.* An indemnification demand or resolution of a demand that relates to whether the loan satisfied relevant eligibility and underwriting requirements at the time of consummation may result from facts that could allow a change to qualified mortgage status, but the existence of an indemnification does not per se remove qualified mortgage status. (Authority: 15 U.S.C. 1639C(b)(3)(B)(ii), 38 U.S.C. 3710, 3720)

(e) *Restatement.* Title 38 U.S.C., chapter 37, is a continuation and restatement of the provisions of Title III of the Servicemen's Readjustment Act of 1944, and may be considered an amendment to such Title III. References to the sections or chapters of title 38 U.S.C., shall, where applicable, be deemed to refer to the prior corresponding provisions of the law. (Authority: 38 U.S.C. 3703(c)(1))

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Supplement *Highlight* References: 40 (1).