## 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**History:** Chapter VA 4 as it existed on October 31, 1974 was repealed and a new chapter VA 4 was created, Register, October, 1974, No. 226, effective November 1, 1974.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** (Subch. II of ch. 45, Stats.) In this chapter the terms defined in s. 45.71, Stats., shall have the meanings designated therein and such statutory definitions are incorporated herein by reference and the following terms shall have the designated meanings:

(1) "Adequate housing" means a structurally sound dwelling ready for immediate occupancy and sufficient in size to accomodate the applicant and the applicant's dependents, with necessary electrical (above 30 amperes), heating and sanitary facilities in good condition of repair. In order to be considered adequate housing, the dwelling must have sufficient bedrooms to provide sleeping accommodations segregated by sex for the applicant's unmarried dependents, except that dependents less than 6 years old need not have segregated sleeping accommodations if the dwelling provides space for necessary expansion or if older dependents will be leaving the dwelling permanently in the near future in order for the dwelling to be considered adequate housing.

(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 accomodation to be mortgaged. On previously untaxed properties, estimated real estate taxes shall be based upon the current assessed 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) Unit owner's share of common expenses (applies only to condominiums and planned unit developments);

(e) Holding tank monthly pumping fees annualized when such systems are permissible under section VA 4.03 Wis. Adm. Code; and

(f) Monthly parking fees (applies only to mobile homes not located on land owned by the applicant).

(4) "Applicant" means a person who applies for a direct 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 only the applicant.

(5) "Basement survey" means the placement of stakes delineating the perimeter by survey of the proposed basement within the lot upon which an applicant's home will be constructed. A basement constructed pursuant to such a survey must be in compliance 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.

(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 construction or seasonal employee, or an applicant who must pay substantial job connected expenses where current monthly income shall be computed on the basis provided in section VA 4.05 (5) (a), Wis. Adm. Code, 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 thirteen 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.

(9) "Direct loan" means a housing loan under s. 45.79, Stats.

(10) "Dwelling" means the portion of a building used or to be used by an applicant and co-applicant as their principal place of residence, but not the land appertaining to such a building.

(11) "Farm" means an operating entity to include the applicant's home and such other improvements to the land, and land itself necessary to produce the applicant's primary source of income or when the applicant is otherwise gainfully employed, such supplemental income as may be necessary for the applicant's family needs.

(12) "Housing accomodation" means the building in which the applicant's home is located or to be located or, in the case of condominiums, the applicant's dwelling unit therein, but not the land appertaining thereto.

(13) "Housing loan" or "loan" means either a "direct loan" or a "secondary loan" or both.

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

(15) "Maximum annual income limitation" means that either the annual income of the applicant or the combined annual income of the applicant and co-appliant does not exceed the statutory maximum set forth in s. 45.74 (1), Stats.

(16) "Mortgagee" means in the case of a direct loan the department or the authority and in the case of a secondary loan means the department and the primary lender.

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

(18) "Primary lender" or "primary mortgagee" means the lender who will have the first mortgage against property on which a secondary loan application has been made at the time of the closing of the secondary loan or who has such a first mortgage at the time of submission of a secondary loan application to the department.

(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 and primary residence of an applicant which such applicant occupies or intends to occupy as such.

(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" in the case of a "secondary loan" means either veteran as defined in both ss. 45.35 (5) and 45.71 (16) (a), Stats., or such 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 "housing loan", and, in the case of a "direct loan" means either a veteran as defined in s. 45.71 (16) (a), Stats., or such 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 direct 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.

**VA 4.02 Mobile home loans.** (1) SECURITY. Notwithstanding the provisions of s. 45.80 (2) (c), Stats, no second chattel security agreements

or second mortgages will be accepted as security for secondary loans on mobile homes.

(2) REPAYMENT OF LOANS. All loans on mobile homes will be amortized on a monthly payment basis. If such loans are not secured by real estate mortgages, their repayment term shall be a maximum of 8 years and if such loans are secured by real estate mortgages their repayment term shall be a maximum of 12 years, but the department or authorized lender may require shorter repayment periods.

(3) ITEMS INCLUDED IN MOBILE HOME COST. (s. 45.76 (1) (a) 1., Stats.) 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 tiedowns will be considered a part of the total cost of the mobile home for the purposes of ss. 45.74 and 45.77, Stats. Such furniture and appliances shall be included in the chattel security agreement.

(4) SALES PRICE AS VALUE. Nothwithstanding the provisions of Wis. Adm. Code section VA 4.07 (1), the usual selling price of a new mobile home may be deemed to be its value and the appraisal may be waived in any case involving an application for a secondary loan.

(5) REGISTRATION. All mobile homes upon which either direct or secondary loans are made must be registered with the department of transportation.

(6) CONSENT TO REMOVAL. No mobile home upon which a direct 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.

(7) SHELTER PAYMENT. Where a mobile home is located or is to be located on land not owned by the applicant, anticipated annual parking fees shall be considered a part of the veteran's anticipated annual shelter payment.

History: Cr. Register, October, 1974, No. 226, eff. 11-1-74; am. (3) and (7), Register, September, 1978, No. 273, eff. 10-1-78.

**VA 4.03 General loan policy both programs.** (Subch. II of ch. 45, Stats.) (1) LOAN REPAYMENT RECORD. The department will not issue a certificate of eligibility to a veteran or approve a secondary loan to a veteran who is delinquent on an economic assistance loan. Unless approved by the secretary or approved pursuant to guidelines established by him, an application for an economic assistance loan, a secondary loan or for a certificate of eligibility from a person whose repayment record on a department loan has been unsatisfactory shall be summarily denied on the basis of such record.

(2) REFINANCE LOANS. Refinance loans may be made only if the applicant is in legal danger of losing the applicant's property, which legal danger could not have been avoided by prudent financial management, where the property will provide adequate security for the department home loan and where such a loan will place the applicant's shelter cost indebtedness on a manageable basis within department standards. The provisions of this paragraph and pars. (a), (b), (c) and (3), shall not apply to loans for the purpose of refinancing indebtedness incurred by applicants for the consummation of housing transactions where such applicants, after their applications for loans for purposes specified in s.

45.76 (1) (a) or (b), Stats., have been denied, appeal such denials to the board of veterans affairs, obtain financing to enable them to consummate the housing transactions set forth in their loan applications after the denial of such application and before their appeals are heard by the board, and where the board reverses such denials and determines both that the applications met statutory and policy requirements on the dates of denial and also that the loan applications should be approved, and such loans will be deemed to have been made for the purposes specified in s. 45.76 (1) (a) or (b), Stats., and not for the purpose of refinancing, provided, however, that such a loan may only be made where the balance owing on the indebtedness to be refinanced does not exceed the amount of the housing loan initially applied for by the applicant.

(a) Legal danger exists when the present mortgagee or security interest holder refuses to renew a contract or note whose term was not fully amortized, or when the present mortgagee or security interest holder refuses to accept payments and notice is given that foreclosure proceedings will be instituted or when foreclosure proceedings have been commenced. A copy of the foreclosure notice or threat thereof, expiring land contract, or expiring note and mortgage must be submitted to the department with the application for a housing loan.

(b) Equity in the case of a refinance loan may be based on either current appraised value or current equalized assessed value of the property less amounts required to pay off obligations to be refinanced, whichever the applicant elects. The value used for establishing an applicant's equity shall be the cost of the property for all purposes.

(c) No indebtedness may be refinanced through a department housing loan unless such indebtedness is a home related obligation, or the obligation is secured by a real estate security agreement, a chattel security agreement or land contract or a mortgage or encumbrance against the property.

(d) All money judgments must be cleared by the applicant before the department will approve the application, unless such money judgments represent exclusively home related obligations and can be included in the amount to be refinanced.

(e) The minimum term of a land contract or note and mortgage to be refinanced shall be one year and the department shall not accept an application more than 3 months prior to the expiration of such land contract or note or mortgage.

(f) The department shall not accept an application for a refinance loan from the lender threatening or instituting foreclosure proceedings.

(g) The applicant shall have unborrowed funds to pay all closing costs.

(3) CONSTRUCTION LOANS (a) Direct 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 cannot act as the applicant's own general contractor nor can the applicant perform any construction tasks other than painting unless the applicant's occupation is directly related to the task involved. The general contractor must warrant any work performed by the applicant.

(c) On direct 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. Such 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. On secondary construction loans the first monthly payment will be due 6 months after the date of approval.

(d) Construction contracts must be written on a firm price basis and no cost adjustment clause will be permitted. Change orders in construction contracts may be permitted only upon the approval of the authorized lenders in the case of direct loans or upon the approval of the department in the case of secondary loans. Such change orders may be approved only if the cost of such change orders when added to the previously determined total cost does not exceed the maximum cost of housing established in s. 45.74 (5), Stats., and does not exceed the maximum allowable cost based upon the applicant's income at time of application and, further, only where the applicant deposits the full cost of the change order with the lender.

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

(f) All building permits must be obtained prior to the advance of any direct loan funds by the authorized lender or the disbursement of any secondary loan funds by the primary lender and the lender shall retain copies of all building permits in the loan file. All percolation tests, when required, must be completed prior to the approval of the application.

(g) Signed cost breakdowns, with plans and specifications and construction contract, warranty deed or offer to purchase vacant land, shall be submitted to the department with every construction loan application.

(h) A basement survey shall be required in connection with every construction loan before closing except that the lender may waive a basement survey provided the lender obtains a certificate from the local building inspector or zoning authority that the proposed basement is located within the bounds of the decribed property in compliance with all applicable side yard and set back requirements and that the basement elevation is proper. If a direct loan is involved, the authorized lender must agree to sign the lenders 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 builders risk insurance. Such insurance will be on a standard form 17c or a comparable form and must 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 mortagagor 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) In cases involving direct loans, credit reports must be obtained by authorized lenders on the builder (s) and shall be reordered if the previous reports are more than 6 months old.

(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 completed 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 and such amounts as are necessary for closing shall be disbursed at closing. Such 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 will 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, but such disbursement shall not exceed 75% of the total committed direct loan funds, or in the case of secondary loans, committed primary lender and secondary loan funds, until after final inspection. Funds remaining after each and every draw shall be sufficient to complete the construction. Such advances shall be made on construction completed and 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.

(o) Payment for work which cannot be completed for acceptable reasons, but does not affect occupancy of the dwelling, shall not be made until completion of such work. At the discretion of the authorized lender, direct loan funds may be escrowed for uncompleted construction provided that:

1. Escrows will only be allowed when the uncompleted work was the result of unavoidable delays and such work does not affect occupancy;

2. The escrowed amount is not less than twice the cost of the completion of such work including all labor and materials;

3. The escrowed amount does not exceed $4,000 in any case. Upon inspection of the completed work by the authorized lender or agent the escrowed funds may be disbursed. Interest must be paid by the mortgagor from date of disbursement of direct funds by the department on funds placed in escrow under this paragraph.

(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, and 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, on all floors is required. Access walks and at least gravel driveways must be completed.

(r) In direct loan applications "work credits" and "sweat equity" shall only be allowed after the applicant evidences that the downpayment is unborrowed funds, and the applicant has adequate funds for closing and moving expenses. The direct loan shall be the total cost of the construction less the downpayment. 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 commmitment.

(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 owned by the builder or a third party; or

2. A copy of the recorded warranty 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 to the applicant or a reduced contract-to-construct price to the applicant, but the amount of the loan applied for shall not include the value of such work credit

agreed to so as to result in payment to the applicant for such work credit, and no part of the required downpayment can be made up of the value of such work credit and no payment shall be made to the applicant by either the lender or builder for work credit.

(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 and final inspection shall be made by an approved appraiser or architect prior to closing.

(j) A single disbursement by the department will be made only upon compliance with all of the foregoing requirements and, in the case of a secondary loan, upon assurance that the primary lender's funds have been fully disbursed.

(5) CONDOMINIUM LOANS. (a) No condominium project shall be approved by the department unless a copy of the recorded declaration and any amendments thereto and a copy of the by-laws and articles of incorporation are on file with the department and have been accepted as complying with the department's requirements.

(b) Professional management must be provided for any condominium having more than 16 units if the declaration was recorded after January 1, 1975. (Professional management means: a real estate management firm contracted for by the developer or the homeowner's association to manage the condominium project.)

(c) The condominium documents shall provide assurance that the unit holder's interest in common elements (as defined in s. 703.02 (2), Stats.) will not be diminished in any manner based upon the maximum number of units to be built without the consent of at least 75% of the unit owners and mortgagees.

(d) The declaration or by-laws must provide for the orderly transfer of the ownership and management of the condominium common elements after the sale of 75% of the units in the current phase but in no event more than 2 years from the date of the declaration.

(e) Payment of unit owner's share of the common expenses must be made monthly and will constitute part of the mortgagor's anticipated annual shelter cost. Evidence of such payment shall be be submitted to the lender on an annual basis.

(6) SECOND APPLICATIONS. (a) Favorable consideration may be given to an applicant's second application for a housing loan from the department or to an applicant's request for the issuance of a certificate of eligibility in cases were the applicant has previously had a housing loan from the department if the applicant invests sufficient net proceeds from the sale of such property in the new property which the applicant intends to

acquire as provided in par. (b) and if the applicant's previous property was sold because at the time of the sale of the previous property such property was:

1. Located more than a reasonable distance from the applicant's principal place of employment;

2. Unacceptable for occupancy by the applicant for medical reasons as substantiated by medical evidence;

3. Acquired from the applicant under eminent domain proceedings;

4. Sold as a result of the applicant's divorce;

5. Incapable of being occupied by the applicant as his residence because the applicant was required as a condition of employment to reside in a municipality other than the one in which such property was located;

6. Inadequate because it had an insufficient number of bedrooms for the applicant and applicant's family as a result of an increase in the size of the applicant's family since the housing loan was made thereon; or

7. Unacceptable for occupancy by the applicant and the applicant's family for exceptional reasons which are deemed adequate by the secretary.

(b) The applicant shall invest all net proceeds, except as provided below, from the sale of such property toward the downpayment on the new property which the applicant intends to acquire. The department may permit the applicant to retain funds in an amount not exceeding the asset maximum set forth in s. 45.74 (4), Stats., and, to pay from such net proceeds, obligations incurred for closing costs, including title insurance or abstract extension and moving expenses or obligations incurred during or after the life of the previous mortgage for medical, hospital or funeral expenses or approve a housing loan where the applicant has paid such expenses from the net proceeds prior to application.

(c) A sale of property on which the department had a housing loan which occurred more than a year prior to the date of application for a certificate of eligibility or a secondary loan will not be subject to the provisions of pars. (a) and (b).

(d) No applicant may have both a secondary loan and a direct loan or 2 direct loans from the department at the same time and no direct loan proceeds shall be utilized to repay any balances owing the department by applicants for direct loans on secondary loans or other department loans.

(e) Where an applicant applying for a certificate of eligibility is still obligated to the department on either a secondary loan or another direct loan and such applicant is otherwise qualified for such certificate, a conditional certificate of eligibility will be prepared authorizing application for a direct loan, subject to the requirement that the property on which such existing secondary loan or direct loan was made will be sold and such loan fully paid prior to or at the time of closing of the direct loan applied for and that funds, including funds to be realized from the net proceeds of the sale of the home on which the existing loan was made, will be applied as required by s. 45.74 (4), Stats., and par. (b).

(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, unless the cost of such a survey would be excessive (more than $750) and there is little question as to the location of the improvements within the perimeter. In such 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 flood plain, the offer to purchase shall contain a statement by the broker or seller to that effect. If it is in a flood plain, flood insurance shall be obtained on the property and available at the time of closing. The property shall be deemed to be in the flood plain only if the buildings thereon are in the flood plain.

(9) WELLS AND SEPTIC SYSTEMS. (a) If the property the applicant wishes to purchase, construct, improve or refinance involves a well, community water supply (not municipally operated) or a private septic disposal system, then a well agreement, safe water report (from a laboratory certified by the state of Wisconsin), percolation tests if a construction loan is involved or documentation evidencing an adequate sewage disposal system (not municipally operated) must be submitted to the department with the application.

(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, chemical toilets or mound type septic systems.

(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 paragraph (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, and such a loan for the purposes specified in s. 45.76 (1) (a) and (b), Stats., will only be permitted where the size of the holding tank equals or exceeds the size required under H 62.20 (9) (a) 2. a., 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 who must have demonstrated past satisfactory performance by having been relicensed at least once by the department of natural resources; 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 VA 4.05 (8), Wis. Adm. Code, 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 7½% and will be able to retain funds in the amount of at least $1,500 after making his contemplated down payment and paying closing costs in relation to the home purchase or construction.

(10) SEPARATE DWELLINGS. 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 accomodation as set forth in the appraisal, not to exceed 30 years.

**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.

**VA 4.04 Cost of housing accommodation and garage.** The following bases will be used to determine the cost of housing accommodation and garage for the purposes of s. 45.74 (5), Stats.

(1) CURRENT APPRAISAL. In construction loan applications where the cost of the land and improvements are integral parts of the total property cost and in purchase loan applications, the cost of the housing accomodation and garage shall be based upon a current appraisal thereof. If the appraised value of the entire property exceeds its cost, the percentage of the total appraised value attributable to the housing accommodation and garage multiplied by the total cost of the property will be the cost of the housing accommodation and garage.

(2) COST OF CONSTRUCTION. In construction loan applications where the lot is purchased separately, the cost of the housing accommodation and garage shall be the cost of construction thereof which shall not include the cost of laterals to the lot line, grading, backfilling, fill, landscaping, septic tank, dry well, well, driveway, street, sidewalk, curb and gutter, assessments for sewer and water mains or other ancillary improvements to the land.

(3) ORIGINAL COST OR VALUE. In improvement and refinance loan applications the original cost of the housing accommodation and garage shall be the cost of construction thereof if constructed by the veteran. If purchased by the veteran the original cost of the housing accommodation and garage shall be based upon either the assessed or appraised value thereof at the time of acquisition of the property by the veteran and shall be the product of the percentage of the total appraised or assessed value attributable to the housing accommodation and garage multiplied by the cost of the entire property.

**History:** Cr. Register, October, 1974, No. 226, eff. 11-1-74.

**VA 4.05 Financial requirements.** (Subch. II of ch. 45, Stats.) (1) FUNDS. (a) Includes cash on hand liquid investments, and except as provided in paragraph (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 and therefore no loss shall be considered upon sale. The funds of an applicant shall include all funds owned individually and jointly by the applicant and co-applicant. An applicant's vendor's interest in a land contract shall be considered funds unless the department determines that

the conversion of such interest to cash would result in substantial loss to the applicant.

(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 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 such closing costs and moving expenses as the applicant may be required to pay have been or are to be acquired by borrowing, the application will not be approved. The applicant must be financially able with the aid of the housing loan applied for to complete the contemplated purchase, construction, improvement or refinance and to pay all required closing and moving expenses. 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. 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 NON-RESIDENTIAL REAL ESTATE. (a) The applicant shall sell such real estate or provide the department with a copy of the warranty deed, previous year's tax bill and list of encumbrances against the other owned real estate. The legal description of the other owned real estate will then be included in the mortgage executed to the department as parcel II and prefaced by the following statement: "This mortgage encumbers only such interest as the mortgagor may have in the following described real estate." The value of other owned real estate so mortgaged as additional security shall not be considered funds. The mortgage must then be recorded in the county where such other owned real estate is located.

(b) If the applicant's real estate is to be sold, the net proceeds from the sale shall be invested in the property to the extent required by section VA 4.03(6)(b), Wis. Adm. Code and the department shall be provided with a preliminary closing statement on the sale of the applicant's real estate. This preliminary closing statement and an offer to purchase shall verify the net proceeds due the applicant upon sale. In any event, the sale of the existing real estate must close before the department housing loan is closed.

(c) In the event the applicant does not wish to sell non-residential real estate or to include such real estate in the mortgage, such real estate must be listed at the equalized assessed value until sold or for at least 90 days. The net proceeds of the sale, above the maximum retained assets, must then be applied to the proposed improvement, purchase, refinance or construction. If such real estate cannot be sold, it shall be mortgaged for at least ⅔ of equalized assessed valuation, and the proceeds of such mortgage shall be defined as funds. The monthly payment on this mort-

gage shall not be considered in shelter cost ratio, debt service payments, or total debt payments computations.

(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 and shall require the applicant to assign the applicants vendor's interest in land contract to the department if such interest is funds for the purpose of obtaining payment to the department or escrow for improvements to the principle residence of the net proceeds to be realized by the applicant at the time of the payment of the land contract balance.

(e) Release of all or any portion of other owned real estate included in direct loan mortgages may be made pursuant to section VA 4.08(9), Wis. Adm. Code and releases of such real estate from secondary loan mortgages may be made pursuant to section VA 4.09(12), Wis. Adm. Code.

(f) Any non-residential real estate owned by an applicant which the applicant proposes to retain and which borders on the property on which the applicant has applied for a housing loan shall be included as a part of such property, for all purposes, including the establishment of the cost of such property.

(g) Accepted offers to purchase for the sale of real estate shall not constitute the sale of such real estate for the purposes of this section and section VA 4.03(4), Wis. Adm. Code. Actual closing of the sale of such real estate must take place prior to the closing of the department housing loan mortgage.

(4) OTHER OWNED RESIDENTIAL REAL ESTATE. (a) If the applicant owns residential real estate on date of application, regardless of location, such real estate must be sold prior to closing. A land contract vendee's interest in residential real estate shall be deemed to be ownership of such real estate for the purposes of this paragraph. Residential real estate shall not include vacant lots or seasonal cottages.

(b) If the applicant owns residential real estate on the date of application, regardless of the location, such real estate must be sold prior to closing and the net proceeds from the sale of the applicant's real estate shall be invested in the property to the extent required by section VA 4.03(6)(b), Wis. Adm. Code and the department shall be provided with the accepted offer to purchase and a preliminary closing statement on the sale of the applicant's real estate. This preliminary closing statement and an offer to purchase shall verify the net proceeds due the applicant upon sale. In any event, the sale of the existing real estate must close before the housing loan is closed.

(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. Such profit and loss statements and balance sheets must be professionally prepared. Construction or seasonal employes 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) is the adjusted gross income. The IRA adjustment to income 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 ⅔ of gross rental income will be considered "income" if no services are furnished. Such income shall be applied in full in the case of a sole applicant and 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 home proposed for purchase, construction, improvement or refinance 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 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.

(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 may be considered as "income" to the extent that they are likely to be received consistently. Applicants must be advised that income from such sources need not be revealed if they do not desire to have such income considered in conjunction with their applications for housing loans.

(j) The income of an applicant who is required by court order to make alimony or child support payments may, upon the applicant's request, be reduced by the amount of such required payments for the purposes of computing the applicant's income for the purposes of s. 45.74 (5), Stats., and the applicant's shelter cost, debt servicing payments and total debt payments, and only the remaining income shall be considered in making such computations, but not for the purpose of qualifying an applicant whose income exceeds the maximum annual income limitation.

(k) The income of the co-applicant and part-time income shall be evaluated by the same standards as the income of an applicant and will be considered "income" only if verified.

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

(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 home proposed for purchase, construction or refinance. 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. Any personal property included of value in the offer to purchase a property to be financed with a housing loan must have a value placed upon it by the appraiser and the amount of such value shall be deducted from the sale price. The personal property must be paid for by the applicant from funds which must be in excess of the minimum down payment and closing costs. If there is no value to personal property included in the offer to purchase, the offer must so state. The cost of any personal property included in a construction or improvement contract shall be paid by the veteran borrower and such payment shall not constitute part of the applicant's equity in the property. (Carpeting, built-ins, fixtures, drapes or other items permanently affixed to the structure shall not be considered personal property.)

(8) DEBT SERVICING PAYMENTS, SHELTER COST RATIO, AND TOTAL DEBT PAYMENTS. Where an applicant's debt servicing payments exceed 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 7½% or such other factors as the department finds to be relevant to the applicant's ability and motivation to make higher than normal debt servicing or shelter cost 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 servicing 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 direct loan, income and employment that is not maintained at closing as stated on the application should result in the authorized lender cancelling 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 increase in income anticipated, 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. 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 in determining whether the level of indebtedness is excessive. 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 exenses, the loan application shall be denied. Accumulation of net worth may be considered an indication of creditworthiness.

(11) INCREASE IN HOUSING OBLIGATIONS. Where an applicant whose total housing obligations on a property which the applicant proposes to purchase, construct, improve or refinance 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 shall be denied unless such applications have strong offsetting characteristics or unless the financial difficulties responsible for the applicant's inability to pay their obligations in a timely manner could not have been avoided by prudent management.

(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 cap-

ital remaining to fulfill the applicant's obligations, the loan shall not be approved.

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.

**VA 4.06 Property qualifications.** (s. 45.76 (3), Stats.) (1) GENERAL. A housing loan will be approved only on a home which is determined to be adequate housing which is located or, in the case of a mobile home, which is to be located in Wisconsin, and the total cost of which does not exceed its market value. The home must be occupied by the applicant as the applicant's and dependent' residence and may not be more than 50 miles from the applicant's principal place of employment provided, however, that exceptions may be made by the department to the mileage limitation 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 where travel beyond the 50 mile limit is in conformity with local conditions and customs.

(2) EXCESSIVE LAND VALUE. The appraised value of a housing accommodation and garage located on land in a residential area, on land with water frontage, on land in a commercial area or on rural non-farm property must equal or exceed 40% of the total cost of the land, housing accommodation and garage and other improvements. In the case of an application for a housing loan for the construction or improvement of a housing accommodation or for the construction of a garage on a farm with farm land and farm buildings, the department or authorized lender shall determine that the value of the land and non-housing improvements thereon is not disproportionate to the value of the dwelling before the application can be approved.

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

(4) SPLIT LOTS. An applicaton to purchase 2 housing accommodations on one lot will be approved only if the applicant is able to establish that the housing accommodations in which the applicant desires to reside cannot be purchased separately. An application to purchase a house 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.

(6) PROPERTY INVOLVING BUSINESS PREMISES. (s. 45.70, Stats.) (a) Housing loans on property involving a business premises may be approved if the structure is designed principally for residential use and the applicant will reside in it. However 50% or more of the total square footage shall be used for resident purposes and occupied by the applicant and the appraisal should show the percentage.

(b) The property shall contain no more than one business unit and one residential dwelling unit.

(c) The applicant must use the business unit solely for the operation of the applicant's business.

**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.

**VA 4.07 Appraisals.** (1) GENERAL. Appraisals must be submitted with all housing loan applications and, in the case of applications for direct loans, must be completed on an appraisal form prescriibed by the department by an appraiser selected by the authorized lender from appraisers approved by the department. Appraisals submitted with applications for secondary loans may be submitted on either the department's appraisal form or on appraisal forms prescribed by the department by a department approved appraiser.

(2) USE OF APPRAISALS. Appraisals will be used in determining whether the properties so appraised will adequately secure proposed housing loans, but such appraisals are advisory only and the department may determine the value of properties for its purposes by means of property inspection by department representatives, by obtaning 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 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, the department and the authority, and in counties where such appraisers have been designated only their appraisals will be accepted. 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, constructed or refinanced, 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 copy of the appraisal must be given to the applicant.

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

(b) The appraisal shall contain a statement that the subject property is or is not in a flood plain. Construction loans in a flood plain shall not be approved unless the plans and specifications comply with the requirements of the Wis. Adm. Code, NR 116. 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) The appraisal shall state estimated fair market rental of rental units if the property has rental units.

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

**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.

**VA 4.08 Direct loan program regulations.** (1) CERTIFICATE OF ELIGIBILITY. (a) *Application.* An application for issuance of a certificate of eligibility for a direct loan 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.

(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 a secondary 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 10 years continuous residence in the state of Wisconsin, it shall expire 6 months from date of issuance.

(d) *Reissue.* A certificate of eligibility may be reissued in cases where the original certificate has expired or has been lost if the applicant is still an eligible veteran at time of application for reissue.

(2) CONTRACTS. The department shall enter into contracts with authorized lenders willing to participate in the direct loan program before such lenders may process direct loan applications. 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 required by the department of anticipated closing or first disbursement dates, and shall specifically require such lenders to execute warranties and servicing agreements in connection with direct loans closed by them, the provision of which warranties and agreements shall be deemed to be incorporated in such contracts.

(3) APPLICATION. Application for a direct 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 chapter VA 4, Wis. Adm. Code and subch. 2 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 or refinanced 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 such denial. Applications denied by authorized lenders shall not be forwarded to the department but the department shall be notified promptly of such 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 notify the authorized lender involved and, as soon as possible thereafter, shall send a commitment letter to the authorized lender, with which the department shall return the application 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. Purchase or refinance loan commitments will expire 6 months from date of issuance and construction loan commitments will expire 12 months from date of issuance, but 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 section VA 4.03 (3), Wis. Adm. Code and in compliance with all conditions set forth therein.

(7) WARRANTY. As soon as practicable after the closing of a purchase or refinance 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 and warranty to the department. The authorized lender will also transmit the executed mortgage and assignment of mortgage to the department for transmittal to the authority if the authority is providing the funds for the loan and so requires. The 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 which complies 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 and will contain such other information as the department requires.

(8) SERVICING AGREEMENTS. (a) *General.* Servicing agreements shall set forth in detail the servicing powers and responsibilities of authorized lenders, shall require such lenders to remit principal payments and interest payments, except for the portion thereof constituting the authorized lender's servicing fee, to the department or the authority at least twice monthly, or whenever payments received total $5,000, whichever is more frequent, and shall specify the manner in which the authorized lenders shall report on loan collections.

(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 direct 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 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 therefore.

(10) CONSUMER LAWS. Notwithstanding any contrary provisions of the Wisconsin Statutes, the Wisconsin Administrative Code, of contracts and servicing agreements entered into between the department and lenders or of the department's lenders manual, lenders shall take such actions as they deem necessary to comply with federal and state consumer laws and regulations and laws and regulations in the nature thereof including, but not limited to, Regulation B under the Equal Credit Opportunity Act, and shall be responsible for defending any suits brought for non-compliance therewith and liable for any damages awarded for such non-compliance.

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.

**VA 4.09 Secondary loan program regulations.** (1) IMPROVEMENT LOANS. A housing loan may be made for improvement to a mortgagor's present dwelling or for construction of a garage if the property will have sufficient value after completion of the garage or of the improvements to the dwelling to provide adequate security for the department's loan. An existing department housing loan made pursuant to s. 45.352, 1971 Stats., or s. 45.80, Stats., may be increased to finance improvements to the home mortgaged to the department.

(2) DEPARTMENT'S PRIORITY POSITION. The applicant will be required to submit a commitment from the proposed primary lender with the application. Such commitment will be directed to the department and will agree that only the amount of loan so committed will have priority of lien over the department's second mortgage, and that additional moneys advanced, except for the payment of taxes and insurance, will not have such priority without written consent by the department.

(3) PRELIMINARY EVIDENCE OF TITLE AND FINANCING. When the primary lender is a private individual or where the department cannot be assured that the disbursement of secondary loan funds will be adequately supervised, a copy of the proposed primary mortgage and mortgage note, and a preliminary attorney's opinion of title on the abstract extended to

date, or a current title report, must be submitted. A preliminary attorney's opinion of title on the abstract extended to date or a current title report must also be submitted when an existing primary mortgage loan is to be retained or assumed by the applicant or when the department is requested to make a first mortgage secondary loan.

(4) MAXIMUM PRIMARY FINANCING. Where a mortgagor who is required to obtain maximum primary financing under the provisions of s. 45.71 (11) (a), Stats., reports inability to obtain a mortgage equal to at least 60% of the cost of the property intended to be purchased, constructed, or refinanced, the mortgagor must verify that the financing which has been obtained constitutes maximum primary financing by submitting statements from local lending institutions which set forth:

(a) The amount of the primary loan applied for by the mortgagor.

(b) The maximum primary loan they would be willing to make to the veteran.

(c) The reasons for not approving a mortgage loan equal to at least 60% of the total cost of the property.

(5) DISBURSEMENT OF SECONDARY LOAN FUNDS. The department shall establish appropriate procedures to regulate and control the disbursement of secondary loan funds so as to assure proper application and to properly secure the department's investment, and for that purpose may designate local disbursing agents to act for and under the direction of the department.

(6) INCREASE IN PRIMARY MORTGAGE LOAN. That part of a loan which, at the time the loan is made, is in excess of the amount stated in the primary lender's commitment, or any subsequent increase or advance in the principal balance, except for the payment of taxes and insurance, shall not acquire priority of lien superior to the department's second mortgage unless approved in writing by the department. In such cases, the department may take whatever action it deems advisable to protect its second mortgage interest and may require immediate payment of its loan.

(7) INSTRUMENTS NECESSARY TO COMPLETE LOAN. The department shall withhold $100 of the secondary loan proceeds until the following instruments have been received:

(a) The note to the department properly executed and of even date with the mortgage and/or chattel security agreement.

(b) The mortgage to the department properly executed and recorded and, in cases involving mobile home loans, the properly executed chattel security agreement or both such mortgage and such chattel security agreement.

(c) In cases where the mortgagor owns the land on which such mortgagor's housing accommodations is located or is to be located, evidence that the mortgage to the department is a valid lien subject only to the primary mortgage, if any, described in the primary lender's commitment to the department. Such evidence shall consist of either an attorney's opinion of title directed to the department or a title insurance policy.

(d) A memorandum of fire and extended coverage insurance or homeowners insurance in an amount at least equal to the appraised value of the improvements at the time of application.

(e) A copy of the closing statement in all purchase transactions showing that all tax credits given a veteran on closing have been deposited in an escrow account to be applied as the taxes shall become due.

(f) In cases involving mobile home loans:

1. A remittance payable to the state of Wisconsin, department of transportation, in the amount of the fee required to perfect the department's security interest.

2. The certificate of title with the department's chattel security interest set forth thereon.

(8) TITLE EVIDENCE AND PROPERTY INSURANCE. (a) Where a mortgagor fails to provide evidence that the mortgage to the department is a valid lien subject only to the primary mortgage, if any, described in the primary lender's commitment, or fails to carry and pay for fire and extended coverage insurance or homeowners insurance in an amount at least equal to the appraised value of the improvements at the time of application on property mortgaged to the department, the department shall insure its mortgage interest in the property involved with the state insurance fund or shall procure the necessary title evidence and charge the cost to the mortgagor.

(b) After the department has received an initial memorandum of fire and extended coverage, fire and windstorm or homeowners insurance coverage which satisfies the requirements of subsection (7) (d), or Wis. Adm. Code section VA 3.04 (4), or if the department has a memorandum of such insurance coverage in its files, the department shall assume that the property involved is continuously covered by such insurance and neither attempt to obtain renewal policies nor make any other effort to assure that its mortgage interest in the property involved is continuously insured until it receives notice of the lapse, cancellation, or nonrenewal of such property insurance coverage.

(c) When the department is notified of the cancellation, lapse or nonrenewal of a fire and extended coverage, homeowners or fire and windstorm insurance policy insuring a property in which it has a mortgage interest, 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 and may charge the account of each mortgagor involved not to exceed $2.00 per month to offset the cost of state insurance and administrative expenses incurred in connection with the administration of this paragraph.

(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 mortage or to replace his 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 satisifed 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 paragraph (a).

(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 such funds or if the department holds the primary mortgage, then such funds shall 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 exceptional cases, 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 must be used for the improvement of the mortgagor's property if it is satisfied that the property remaining 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 or insurance 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.

**VA 4.10 Acceleration.** (1) FALSE STATEMENT BY APPLICANT. Whenever it is determined that an applicant has obtained a housing 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 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, and 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 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 homestead mortgaged to the department or authorized lender.

(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 the authorized lender may accelerate a primary loan mortgage note with the department's consent.

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.

**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. 227.075 (1) (a) - (d), Stats., and if such request is not denied by the department under s. 227.075 (2), Stats., the hearing granted by the department shall be treated as a "class 3 proceeding" as defined in s. 227.01 (2) (c), Stats., and written notice complying with s. 227.07 (1), (2) and (3), 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. 227.09, 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. 227.09 (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 superceded, 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 OF VETERANS AFFAIRS. (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.