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DIVISION 1

PROCEDURAL RULES

274-001-0000

Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of any rule, the Director of Veterans' Affairs shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date.

(2) By mailing a copy of the notice to the following persons, organizations, or publications at least 28 days before the effective date:

- (a) Associated Press;
 - (b) Advisory Committee to the director;
 - (c) Oregon Department of Veterans' Affairs' mailing list in accordance with ORS 183.335(8);
 - (d) Legislative Counsel; and
 - (e) Legislators designated in ORS 183.335(15).
- Stat. Auth.: Ch. 602, OL 1997, 183, 406.030, 407.115, 407.135, 407.145, 407.275, 407.305 & 407.375
 Stats. Implemented: Ch. 602, OL 1997, 183, 406.030, 406.040, 407.115, 407.177, 407.275, 407.315 & 407.375
 Hist.: DVA 44, f. & ef. 12-1-75; DVA 1-1982, f. 1-15-82, ef. 2-1-82; DVA 5-1993, f. 3-16-93, cert. ef. 3-21-93; DVA 11-1993, f. 12-20-93, cert. ef. 12-22-93; DVA 4-1996, f. & cert. ef. 7-22-96; DVA 4-1997, f. & cert. ef. 10-22-97; DVA 6-2004, f. & cert. ef. 4-16-04

274-001-0005

Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Department of Veterans' Affairs adopts the Uniform and Model Rules of Procedure as contained in Appendix G of the "Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure" dated January 2012. A copy of this manual is on file with the Department of Veterans' Affairs, 700 Summer Street NE, Salem, Oregon, and is available for public review Monday through Friday between the hours of 8 a.m. and 5 p.m.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Department of Veterans' Affairs.]

Stat. Auth.: ORS 183.341 & 406.030
 Stats. Implemented: ORS 183.341 & 406.030
 Hist.: DVA 41, f. 12-1-71, ef. 12-15-71; DVA 43, f. 10-22-73, ef. 11-11-73; DVA 46, f. & ef. 4-20-76; DVA 1-1978, f. & ef. 4-20-78; DVA 2-1980, f. & ef. 5-16-80; DVA 9-1981, f. & ef. 11-19-81; DVA 12-1983, f. & ef. 10-7-83; DVA 3-1986, f. & ef. 2-18-86; DVA 5-1988, f. & cert. ef. 10-27-88; DVA 4-1990, f. 7-13-90, cert. ef. 8-20-90; DVA 8-1991, f. & cert. ef. 12-3-91; DVA 4-1996, f. & cert. ef. 7-22-96; DVA 4-1998, f. & cert. ef. 3-26-98; DVA 11-2000, f. & cert. ef. 12-14-00; DVA 1-2002, f. & cert. ef. 1-18-02; DVA 6-2004, f. & cert. ef. 4-16-04; DVA 7-2006, f. & cert. ef. 6-27-06; DVA 5-2008, f. & cert. ef. 3-25-08; DVA 1-2013, f. & cert. ef. 5-15-13

DIVISION 5

PERSONAL SERVICE CONTRACTS

274-005-0020

Policy

The Oregon Department of Veterans' Affairs (ODVA) will contract for services only when the work cannot be done in a reasonable time with the ODVA's own work force; when it will be less expensive to contract for the work; when the required skills are not available within the ODVA; or when an impartial opinion is required. The selection of the most qualified contractor will be based on, but not limited to, cost, the contractor's demonstrated capabilities, experience, and project approach. Efforts will be made to encourage disadvantaged and emerging small businesses, minorities, and women to submit proposals.

Stat. Auth.: ORS 279.051, 291.021, 406.030 & 407.115
 Stats. Implemented: ORS 279.051, 279.712, 291.021, 406.030, 407.115, 407.169, 407.177, 407.179, 407.181, 407.275, 407.377, 407.465 & 408.360
 Hist.: DVA 19-1982, f. & ef. 8-16-82; DVA 4-1992(Temp), f. & cert. ef. 4-1-92; DVA 8-1992, f. & cert. ef. 8-3-92, Renumbered from 274-005-0005; DVA 5-1996, f. & cert. ef. 7-22-96

274-005-0030

Informal Process (\$75,000 and Under)

(1) When the amount of the contract will be equal to or less than \$75,000 the Oregon Department of Veterans' Affairs (ODVA) may use an informal selection process. Under this process the ODVA may solicit qualifications or proposals in writing or by telephone, from a minimum of three prospective contractors and immediately select the most qualified contractor.

(2) The ODVA may make immediate and direct appointments whenever conditions require prompt action to protect loss of life or property.

Stat. Auth.: ORS 279.051, 291.021, 406.030 & 407.115

Stats. Implemented: ORS 279.051, 279.712, 291.021, 406.030, 407.115, 407.169, 407.177, 407.179, 407.181, 407.275, 407.377, 407.465 & 408.360

Hist.: DVA 4-1992(Temp), f. & cert. ef. 4-1-92; DVA 8-1992, f. & cert. ef. 8-3-92; DVA 5-1996, f. & cert. ef. 7-22-96; DVA 5-2000, f. & cert. ef. 4-24-00

274-005-0040

Formal Process (Over \$75,000)

(1) Except as provided under subsection (3)(b) and section (4) of this rule or OAR 274-005-0045, the Director of Veterans' Affairs (director) shall make a public announcement to obtain a list of contractors interested in providing professional services to the director. The director will request statements of qualifications or proposals, or both, for either single projects or groups of projects. The announcement will be made in trade periodicals or newspapers of general circulation, and electronically through the Department of Administrative Services on-line Vendor Information Program (VIP) and may include the following:

- (a) Description of project type(s);
- (b) Typical project(s) scope;
- (c) Anticipated project start and completion dates;
- (d) Any special requirements;
- (e) Closing date by which statements of interest and qualifications must be received; and

(f) Evaluation criteria and selection procedure.

(2) Initial screening:

(a) The director shall establish an evaluation committee. The committee shall, for each proposed project, evaluate statements of qualifications and performance data. The committee shall evaluate each firm on areas including, but not limited to:

- (A) Approach to the project;
- (B) Capability;
- (C) Credentials;
- (D) Experience;
- (E) Performance data (when applicable); and
- (F) Proposed project cost.

(b) Based on the established evaluation criteria, the committee shall select, in order of preference, a list of at least three firms (short list) deemed to be most highly qualified to provide the required services;

(c) The evaluation committee will interview the short listed firms and make a recommendation to the director on which one should be hired. When a proposal is requested, the evaluation committee may elect to eliminate the interview step and recommend the most qualified firm to the director.

(3) Final Selection:

(a) The director or designee shall select the most qualified firm and negotiate a contract with that firm. In making the final selection, the director shall consider the estimated value of the services to be rendered, the project scope, and complexity:

(A) Should the director be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm will be formally terminated. The director will then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the director will terminate negotiations. The director will then undertake negotiations with the third most qualified firm.

(B) Should the director be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualifications and continue negotiations in accordance with this section until an agreement is reached or a decision not to contract for professional services is made.

(b) When the director determines that only one firm exists that is capable of performing the required services, within the required time frame, the director may negotiate a sole source contract with that firm. "Sole source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the

service. The justification shall be based on either the uniqueness of the service or sole availability at the location required. A sole source designation eliminates the necessity for a selection process.

(4) Special Services. In cases where the service needed is one performed only by a specialized group such as Certified Public Accountants and other similar specialties (and a list of qualified persons, companies, or firms interested in providing this service is maintained by a state or federal agency, a company specializing in maintaining such a list, or is available from another source) the director may obtain and use such a list in lieu of making a public announcement. The director may also include on any such list persons, companies, or firms known by the director to be interested or qualified to provide the needed services. The director will utilize the process set out in sections (2) and (3) of this rule to select the contractor.

Stat. Auth.: ORS 406.050 & 406.115

Stats. Implemented: ORS 279A.065 & 286A.130

Hist.: DVA 4-1992(Temp), f. & cert. ef. 4-1-92; DVA 8-1992, f. & cert. ef. 8-3-92; DVA 7-1993, f. 5-18-93, cert. ef. 5-21-93; DVA 5-1996, f. & cert. ef. 7-22-96; DVA 5-2000, f. & cert. ef. 4-24-00; DVA 2-2005, f. & cert. ef. 4-22-05; DVA 1-2015(Temp), f. & cert. ef. 3-26-15 thru 9-21-15; Administrative correction, 10-22-15; DVA 4-2015, f. & cert. ef. 12-28-15

274-005-0046

Bond Counsel and Financial Advisor Procurement and Contracting

(1) Pursuant to ORS 286A.130(7), the Public Contracting Code does not apply to procurement processes and contracts for bond counsel or financial advisor services of the Department of Veterans' Affairs.

(2) Subject to review and approval of the terms and conditions of bond counsel contracts by the State Treasurer and the Attorney General, the department is authorized to establish its own procedures for procurement of and contracting for the services of bond counsel so long as such contracts:

(a) Are for a period of not less than one year during any biennium in which there are bonds outstanding that were issued for the department or during any biennium in which the department expects the State Treasurer to issue bonds for a department program; and

(b) Do not authorize bond counsel to advise or represent the state on matters that are committed by statute to the Attorney General, except as allowed under ORS 286A.130(3).

(3) Subject to the approval of financial advisor contracts by the State Treasurer, the department is authorized to establish its own procedures for procurement of and contracting for the services of financial advisors.

(4) The department chooses to maintain maximum reasonable discretion in the procurement of services from bond counsel and financial advisors and the execution of contracts with same given the statutorily-recognized complex and often unique factors that may be relevant over time in such relationships. Neither the model rules of the Attorney General adopted pursuant to ORS 279A.065 nor OAR 274-005-0040 nor other rules of this division govern the department's procurement and contracting under this section. The department may act in such manner as is deemed by the department to best serve the purposes of the department and will consider the Attorney General's model rules and the processes and standards identified in OAR 274-005-0040 and other rules of this division for guidance in exercising its procurement and contracting discretion under this section. The department may consider other factors and employ other procedures as they may be deemed appropriate by the department in the procurement of or contracting for such services, including, but are not limited to factors and procedures such as:

(a) The value or importance of continuity of services;

(b) Unique or additive knowledge or experience of specific firms or persons;

(c) The subject matter of the proposed contract and appropriate means to ensure successful performance at competitive costs where practical;

(d) Specificity with respect to communication and reservation of rights in any procurement;

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(e) Clarity in the naming and description of parties as well as consideration of appropriate preferences;

(f) Ascertaining and obtaining appropriate representations and warranties as to the qualifications of parties;

(g) Specificity with respect to consideration and applicable time periods;

(h) Specificity with respect to terms and covenants, particularly as to standards applicable to the performance of all work or delivery of goods;

(i) Identification of remedies and their suitability to protect Department and program interests; and

(j) Use of appropriate terms with respect to standard provisions such as governing law, venue, waiver, exhibits, merger, etc.

(5) As a general standard, the department will seek to employ procedures as are practical to introduce competitive efficiencies and sound selections given the particular circumstances, complex regulations and governing law applicable to such legal and financial considerations.

Stat. Auth.: ORS 406.050 & 406.115

Stats. Implemented: ORS 279A.065 & 286A.130

Hist.: DVA 4-2015, f. & cert. ef. 12-28-15

274-005-0050

Contract File

(1) The Director of Veterans' Affairs (director) will maintain as a public record a list of those individuals who are authorized to sign personal service contracts on behalf of the director.

(2) The director will maintain a file and complete record of all personal service contracts and the administration and development of contract negotiations. The contract file will include:

(a) Statement of agency justification for the contract;

(b) Written justification for negotiation in lieu of competitive procurements when negotiation is used for personal service contracts in excess of \$75,000 per agreement per fiscal year.

(3) For contracts in excess of \$ 75,000 per fiscal year, the contract file will include the following:

(a) A copy of the request for proposal;

(b) List of prospective contractors who were requested to submit proposals;

(c) Method used to advertise/notify other possible prospective contractors;

(d) A copy of each proposal;

(e) Method of evaluating proposals;

(f) Record of negotiations and results;

(g) How the contractor was selected, including the basis for awarding the contract; and

(h) Resulting contact, if awarded; and

(i) A completed Form W-9, Payer's Request for Taxpayer Identification Number and Certification, as applicable.

(4) For contracts of \$75,000 or less, the contract file will include the following:

(a) The names of firms or individuals and cost estimates/quotations considered;

(b) The basis for selection of the contractor;

(c) How reasonableness of price was determined; and

(d) A completed Form W-9, Payer's Request for Taxpayer Identification Number and Certification, as applicable.

Stat. Auth.: Ch. 214, OL 1997, ORS 406.030, 407.115 & 407.125

Stats. Implemented: Ch. 214 OL 1997, ORS 407.115 & 407.125

Hist.: DVA 19-1982, f. & ef. 8-16-82; DVA 4-1992(Temp), f. & cert. ef. 4-1-92;

DVA 8-1992, f. & cert. ef. 8-3-92, Renumbered from 274-005-0010; DVA 7-

1993, f. 5-18-93, cert. ef. 5-21-93; DVA 5-1996, f. & cert. ef. 7-22-96; DVA 5-

2000, f. & cert. ef. 4-24-00

274-005-0060

Contract Amendment

(1) During the course of the contract project deviations, amendments, or needs of change may be encountered. Such deviations will be renegotiated by the Department of Veterans' Affairs.

(2) Any amendments must comply with the provisions of OAR 125-246-0560.

Stat. Auth.: ORS 279A, 291.021, 406.030 & 407.115

Stats. Implemented: ORS 406.410, 407.115, 407.225, 407.377, 407.465 & 408.360

Hist.: DVA 19-1982, f. & cert. ef. 8-16-82; DVA 4-1992(Temp), f. & cert. ef. 4-1-92; DVA 8-1992, f. & cert. ef. 8-3-92, Renumbered from 274-005-0015; DVA 5-1996, f. & cert. ef. 7-22-96; DVA 10-2006, f. & cert. ef. 7-27-06

DIVISION 6

CRIMINAL RECORDS CHECKS

274-006-0001

Purpose

These rules provide for the Department of Veterans' Affairs (Department) acquisition of information about a subject individual's criminal history through criminal records checks and its use of that information to determine whether the individual is fit to provide services to the Department as an employee, volunteer, contractor or vendor. The fact that the Department determines that an individual is fit does not guarantee the individual a position as a Department employee, volunteer, contractor or vendor or that the individual will be hired by the Department.

Stat. Auth: ORS 181.534 and 406.030

Stats. Implemented: ORS 181.534 and 406.030

Hist.: DVA 1-2009, f. 12-22-09 cert. ef. 1-1-10

274-006-0002

Definitions

(1) "**Criminal Offender Information**" means records and related data concerning physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police to identify criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release records.

(2) "**Criminal Records Check**" means one or more of the following three processes undertaken by the Department to check the criminal history of a subject individual:

(a) A name-based check of criminal offender information conducted through the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police;

(b) A check of Oregon criminal offender information, through fingerprint identification and other means, conducted by the Oregon Department of State Police at the Department's request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information, through fingerprint identification and other means, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the Department's request (Nationwide Criminal Records Check).

(3) "**Department**" means the Department of Veterans' Affairs as defined in ORS 406.005.

(4) "**Fitness Determination**" means a determination made by the Department, pursuant to the process established under OAR 274-006-0011, that a subject individual is fit or not fit to be a Department employee, volunteer, contractor or vendor in a position covered by OAR 274-006-0004(2).

(5) "**Subject Individual**" means an individual identified in OAR 274-006-0004 as someone from whom the Department may require a criminal records check.

Stat. Auth.: ORS 181.534, 406.030 & 2009 SB 94

Stats. Implemented: ORS 181.534, 406.030 & 2009 SB 94

Hist.: DVA 1-2009, f. 12-22-09 cert. ef. 1-1-10

274-006-0004

Subject Individual

The Department may require a subject individual to complete a criminal records check pursuant to these rules because the person:

(1)(a) Is applying for employment with the Department of Veterans' Affairs in a position described in subsection (2) of this rule or is employed by the Department but is being transferred, promoted or demoted to a position described in subsection (2) of this rule; or

(b) Provides goods or services or seeks to provide goods or services to or on behalf of the Department as a contractor, subcontractor, vendor or volunteer, or as an employee, member or agent of a contractor, subcontractor, vendor or volunteer; and

(2) Is or will be working or providing services in a position in which the subject individual has:

(a) Control over, or access to, information technology systems would allow the person to harm the information technology systems or the information contained in the systems;

(b) Access to information that state or federal laws, rules or regulations prohibit disclosing or define as confidential;

(c) Responsibility for payroll, billing, collections or other financial transactions or for purchasing or selling property;

(d) Access to money, negotiable instruments or financial information of the Department;

(e) Mailroom duties;

(f) Responsibility for auditing the Department or other business entities doing business with the Department;

(g) Personnel or human resources functions or access to personnel information;

(h) Access to Social Security numbers, dates of birth or criminal background information of other persons;

(i) Access to tax or financial information of the Department or persons employed by the Department; or

(j) Access to tax or financial information collected by the Department about individuals or business entities.

Stat. Auth.: ORS 181.534, 406.030 & 2009 SB 94

Stats. Implemented: ORS 181.534, 406.030 & 2009 SB 94

Hist.: DVA 1-2009, f. 12-22-09 cert. ef. 1-1-10

274-006-0005

Criminal Records Check Process

(1) When a Criminal Records Check is Required. The Department may conduct, or request the Oregon State Police to conduct, a criminal records check when:

(a) An individual meets the definition of a subject individual; or

(b) Required by federal law or regulation, by state or administrative rule, or by contract or written agreement with the Department.

(2) Which Criminal Records Check is Conducted. When the Department determines under section (1) Of this rule that a criminal records check is needed, the Department may request or conduct a LEDS Criminal Records Check, an Oregon Criminal Records Check, a Nationwide Criminal Records Check, or any combination thereof.

(3) Disclosure of Information by Subject Individual.

(a) Prior to a criminal records check, an individual shall complete and sign the Department's Criminal Records Request form and, if requested by the Department, a fingerprint card within three business days of receiving the forms. The Department may extend the deadline for good cause. The Department's criminal records request form will require the following information: name, birth date, social security number, physical characteristics, driver's license or identification card number and current address, prior residency in other states, military history, and any other identifying information deemed necessary by the Department.

(b) The Department may require additional information from the subject individual as necessary to complete the criminal records check and fitness determination, such as, but not limited to, proof of identity; or additional criminal, judicial, or other background information.

(c) The Department shall not request a fingerprint card from a subject individual under the age of 18 years unless the subject individual is emancipated pursuant to ORS 419B.550 et seq, or unless the Department also requests the written consent of a parent or guardian. In such case, such parent or guardian and youth must be informed that they are not required to consent. Notwithstanding, failure to consent may be construed as a refusal to consent under OAR 274-006-0011(3).

Stat. Auth.: ORS 181.534, 406.030 & 2009 SB 94

Stats. Implemented: ORS 181.534, 406.030 & 2009 SB 94

Hist.: DVA 1-2009, f. 12-22-09 cert. ef. 1-1-10

274-006-0010

Hiring or Appointing on a Preliminary Basis

(1) If the Department elects to conduct a criminal records check pursuant to these rules, the Department, in its sole discretion, may hire or appoint the subject individual on a preliminary basis pending completion of a criminal records check when:

(a) The subject individual has provided all information (including a fingerprint card, if requested) as required by the Department pursuant to OAR 274-006-0005; and

(b) The Department, in its sole discretion, determines that preliminary hiring is in the Department's best interests.

(2) A subject individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by the Department.

(3) A subject individual hired or appointed on a preliminary basis is deemed to be on trial service.

(4) Nothing in this rule shall be construed as requiring the Department to hire on a preliminary basis.

Stat. Auth.: ORS 181.534, 406.005, 406.030 & 2009 SB 94

Stats. Implemented: ORS 181.534, 406.005, 406.030 & 2009 SB 94

Hist.: DVA 1-2009, f. 12-22-09 cert. ef. 1-1-10

274-006-0011

Final Fitness Determination

(1) If the Department elects to conduct a criminal records check, the Department shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 274-006-0005, the criminal records check(s) conducted, and any false statements made by the subject individual.

(2) In making a fitness determination about a subject individual, the Department will also consider the factors in subsections (a) through (f) below in relation to information provided by the subject individual under OAR 274-006-0005, any LEDS report or criminal offender information obtained through a criminal records check, and other information known by the Department. To assist in considering these factors, the Department may obtain any other information deemed relevant from the subject individual or any other source, including law enforcement and criminal justice agencies or courts within or outside of Oregon. To acquire other criminal offender information from the subject individual, the Department may request to meet with the subject individual, and may request to receive written materials or authorization to obtain other relevant information, from him or her. The subject individual shall meet with the Department if requested and provide additional information or authorization within a reasonable period of time, as established by the Department. The Department will use all collected information in considering:

(a) Whether the subject individual has been convicted, found guilty except for insanity (or a comparable disposition), has a pending indictment, has been arrested, or has an outstanding warrant for arrest for a crime listed in OAR 274-006-0012;

(b) The nature of any crime identified under section (2)(a) of this rule;

(c) The facts that support the conviction, finding of guilty except for insanity, or pending indictment;

(d) Any facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under section (2)(a) of this rule or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) Intervening circumstances, including, but not limited to the following, and only to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made:

(A) The passage of time since the commission or alleged commission of a crime identified under section (2)(a) of this rule;

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(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under section (2)(a) of this rule;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 274-006-0012;

(E) Whether a conviction identified under section (2)(a) of this rule has been set aside, and the legal effect of setting aside the conviction;

(F) A recommendation of an employer;

(G) Whether the subject individual has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 274-006-0012 if committed by an adult.

(3) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the Department will deny the employment of the subject individual or deny any applicable position or authority to provide services. A person may not appeal any determination made based on a refusal to consent.

(4) If a subject individual is determined to be not fit, the subject individual may not be employed by or provide services as a volunteer, contractor or vendor to the Department in a position described in OAR 274-006-0004(2).

(5) Final Order. A completed final fitness determination is a final order of the Department unless the affected subject individual appeals the determination by requesting a contested case hearing as provided by OAR 274-006-0018(2) or an alternative appeals process as provided by OAR 274-006-0018(6).

Stat. Auth.: ORS 181.534 & 2009 SB 94
Stats. Implemented: ORS 181.534 & 2009 SB 94
Hist.: DVA 1-2009, f. 12-22-09 cert. ef. 1-1-10

274-006-0012

Potentially Disqualifying Crimes

(1) Crimes Relevant to a Fitness Determination:

- (a) All felonies;
- (b) All misdemeanors;
- (c) Any United States Military crime or international crime;

(2) Evaluation of Crimes. The Department shall evaluate a crime on the basis of the law of the jurisdiction in which the crime or offense occurred, as those laws are in effect at the time of the fitness determination.

(3) Expunged Juvenile Record. Under no circumstances shall a subject individual be determined to be not fit under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

Stat. Auth.: ORS 181.534 & 2009 SB 94
Stats. Implemented: ORS 181.534 & 2009 SB 94
Hist.: DVA 1-2009, f. 12-22-09 cert. ef. 1-1-10

274-006-0013

Incomplete Fitness Determination

(1) The Department will close a preliminary or final fitness determination as incomplete when:

(a) Circumstances change so that a person no longer meets the definition of a "subject individual" under OAR 274-006-0004.

(b) The subject individual does not submit materials or information within the time required under OAR 274-006-0005(3);

(c) The Department cannot locate or contact the subject individual;

(d) The subject individual fails or refuses to cooperate with the Department's attempts to acquire other criminal records information under OAR 274-006-0011(2); or

(e) The Department determines that the subject individual is not eligible or not qualified for the position (of employee, contractor, vendor or volunteer) for a reason unrelated to the fitness determination process.

(f) The position is no longer open.

(2) A subject individual does not have a right to a contested case hearing under OAR 274-006-0018(2) or a right to an

alternative appeals process as provided by OAR 274-006-0018(6) to challenge the closing of a fitness determination as incomplete.

Stat. Auth.: ORS 181.534 & 2009 SB 94
Stats. Implemented: ORS 181.534 & 2009 SB 94
Hist.: DVA 1-2009, f. 12-22-09 cert. ef. 1-1-10

274-006-0014

Notice to Subject Individual of Fitness Determination

The Department shall inform the subject individual who has been determined not to be fit on the basis of a criminal records check, via personal service, or registered or certified mail to the most current address provided by the subject individual, of such disqualification.

Stat. Auth.: ORS 181.534 & 2009 SB 94
Stats. Implemented: ORS 181.534 & 2009 SB 94
Hist.: DVA 1-2009, f. 12-22-09 cert. ef. 1-1-10

274-006-0015

Fees

(1) The Department may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Department by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

(2) The Department may charge the fee to the individual on whom criminal offender information is sought, or, if the individual is an employee of a Department contractor or vendor and is undergoing a fitness determination in that capacity, the Department may charge the fee to the individual's employer.

Stat. Auth.: ORS 181.534, 406.005, 406.030 & 2009 SB 94
Stats. Implemented: ORS 181.534, 406.005, 406.030 & 2009 SB 94
Hist.: DVA 1-2009, f. 12-22-09 cert. ef. 1-1-10

274-006-0018

Appealing a Fitness Determination

(1) Purpose. Sections (2) to (5) of this rule set forth the contested case hearing process a subject individual must use to appeal a completed fitness determination made under OAR 274-006-0010 that the individual is not fit to hold a position with, or provide services to the Department as an employee, volunteer, contractor, or vendor. Section (6) of this rule identifies an alternative appeal process available only to current Department employees.

(2) Appeal process.

(a) To request a contested case hearing, the subject individual or the subject individual's legal representative must submit a written request for a contested case hearing to the address specified in the notice provided under OAR 274-006-0014. To be timely, the request must be received by the Department at the specified address within 14 calendar days of the date stated on the notice. The Department shall address a request received after expiration of the deadline as provided under OAR 137-003-0528.

(b) When a timely request is received by the Department under subsection (a), a contested case hearing shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings, pursuant to the Attorney General's Uniform and Model Rules, "Procedural Rules, Office of Administrative Hearings" OAR 137-003-0501 to 137-003-0700, as supplemented by the provisions of this rule.

(3) Discovery. The Department or the administrative law judge may protect information made confidential by ORS 181.534(15) or other applicable law as provided under OAR 137-003-0570(7) or (8).

(4) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.

(5) Proposed and Final Order:

(a) Proposed Order. After a hearing, the administrative law judge will issue a proposed order.

(b) Exceptions. Exceptions, if any, shall be filed within 14 calendar days after service of the proposed order. The proposed order shall provide an address to which exceptions must be sent.

(c) Default. A completed final fitness determination made under OAR 274-006-0010 becomes final:

(A) Unless the subject individual makes a timely request for a hearing; or

(B) When a party withdraws a hearing request, notifies the Department or the ALJ that the party will not appear, or fails to appear at the hearing.

(6) Alternative Process. A subject individual currently employed by the Department may choose to appeal a fitness determination either under the process made available by this rule or through the process made available by applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process made available by this rule.

(7) Remedy. The only remedy that may be awarded is a determination that the subject individual is fit or not fit. Under no circumstances shall the Department be required to place a subject individual in any position, nor shall the Department be required to accept services or enter into a contractual agreement with a subject individual.

(8) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

(a) To challenge information identified in this section of the rule, a subject individual may use any process made available by the agency that provided the information.

(b) If the subject individual successfully challenges the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation, the subject individual may request that the Department conduct a new criminal records check and re-evaluate the original fitness determination made under OAR 274-006-0010 by submitting a new Department criminal records request. This provision only applies if the position for which the original criminal history check was conducted is vacant and available.

(9) Appealing a fitness determination under section (2) or section (6) of this rule, challenging criminal offender information with the Department that provided the information, or requesting a new criminal records check and re-evaluation of the original fitness determination under section (8)(b) of this rule, will not delay or postpone the Department's hiring process or employment decisions.

Stat. Auth.: ORS 181.534, 406.030 & 2009 SB 94

Stats. Implemented: ORS 181.534, 406.030 & 2009 SB 94

Hist.: DVA 1-2009, f. 12-22-09 cert. ef. 1-1-10

274-006-0020

Recordkeeping Confidentiality

Any information obtained in the criminal records check is confidential. The Department must restrict the dissemination of information obtained in the criminal records check. Only those persons, as identified by the Department, with a demonstrated and legitimate need to know the information, may have access to criminal records check records.

Stat. Auth.: ORS 181.534, 406.030 & 2009 SB 94

Stats. Implemented: ORS 181.534, 406.030 & 2009 SB 94

Hist.: DVA 1-2009, f. 12-22-09 cert. ef. 1-1-10

DIVISION 7

CONFIDENTIALITY AND INADMISSIBILITY OF MEDIATION COMMUNICATIONS

274-007-0001

Confidentiality and Inadmissibility of Mediation Communications.

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscorable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the

following form. This form may be used separately or incorporated into an "agreement to mediate."

AGREEMENT TO PARTICIPATE IN A CONFIDENTIAL MEDIATION

The Oregon Department of Veterans' Affairs and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 274-007-0001(7) and this agreement.

This agreement relates to the following mediation:

To the extent authorized by OAR 274-007-0001(7), mediation communications in this mediation are: (check one or more)

___ Confidential and may not be disclosed to any other person.

___ Not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding.

___ Not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding.

Name of Agency: Oregon Department of Veterans' Affairs

Signature of ODVA's authorized representative (if ODVA is a party)

Date _____

Signature of ODVA employee acting as the mediator (if ODVA is mediating the dispute)

Date _____

Name of party to the mediation

Signature of party's authorized representative

Date _____

Name of party to the mediation

Signature of party's authorized representative

Date _____

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication

with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Department of Veterans' Affairs Director or designee determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224 & 184.340

Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: DVA 1-2010(Temp), f. & cert. ef. 6-1-10 thru 11-2-10; DVA 2-2010, f. & cert. ef. 7-26-10

274-007-0002

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to Confidentiality and Inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential medi-

ation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.230(4)

Hist.: DVA 2-2010, f. & cert. ef. 7-26-10

DIVISION 10

EDUCATIONAL AID

274-010-0100

Definitions for 274-010-0100 to 274-010-0175

As used in these regulations or any amendments to them, or in any blank form, document, publication, or written instrument of any kind prescribed, provided, published, issued, or used by the Director or any of his duly authorized agents or employees in connection with the administration of the provisions of ORS 408.010 to 408.110, unless otherwise required by context:

(1) "Active Duty" or "Active Service" means that status in the Armed Forces in which the person on "active duty" is under the command of military or naval authorities, subject to military or naval discipline and on active duty pay status in the respective arm or branch of the Armed Forces in which the person is serving.

(a) Members of the reserve components of the Armed Forces, persons on a retired status in the military or naval forces of the United States, Cadets at West Point, Air Force Academy, and United States Coast Guard Academy and Midshipmen at the Naval Academy were on active duty only after reporting for active duty;

(b) Members of the National Guard were on active duty only after having been activated under Title 10 of the United States Code of Federal Regulations;

(2) "Armed Forces" means and includes:

- (a) Army;
- (b) Navy;
- (c) Marines;
- (d) Air Force;
- (e) Coast Guard;
- (f) Coast and Geodetic Survey (while serving with Army or Navy);

(g) Commissioned Officers of Public Health Service while serving with Army, Navy, Marine Corps, or Coast Guard.

(3) "Beneficiary" means any person eligible for educational aid as defined in ORS 408.010.

(4) "Veteran" means any person who served on active duty with the Armed Forces of the United States as defined in ORS 408.225.

(5) "Under Honorable Conditions" means that the official documents of discharge, service, or separation issued upon the termination of the veteran's active duty service with the Armed Forces are characterized as one of the following:

- (a) "Honorable"; or
- (b) "General" also known as "General Under Honorable Conditions".

(6) "Alien" means any person who is not a citizen of the United States.

(7) "Alien Enemy" means any person who is a citizen of any nation, country, or state, or ally thereof, with which the United States is at war.

(8) "Conscientious Objector" means any person who during his period of service refused on conscientious, political, or other grounds to subject himself to full military discipline and unqualified service.

(9) "Combat Zone" means any area designated by the President of the United States by executive order in which the Armed Forces of the United States or any subdivision thereof are or have engaged in combat.

(10) "Other Like Training Program" means college training while in service, which compares with the civilian professional training for which college credit was, or could be, obtained to apply toward graduation from an approved institution of higher learning.

(11) "Domicile" or "Residence" means that place which a person intends as their fixed place of abode or habitation; which they consider to be their permanent home; and to which, whenever away, they always intend to return:

(a) Temporary absence from the state does not destroy domicile;

(b) Temporary presence in the state without an intention to establish a permanent home does not support a contention of being domiciled within the state.

(12) "Accredited Institution" means any institution where training is offered that has been certified as meeting the minimum requirements prescribed by the accrediting agency having jurisdiction over standards of uniformity and accreditation (the State Department of Education).

(13) "Approved Course of Study or Vocational Training" means any course of training outlined in the material submitted to and approved by the State Department of Education.

(14) "Full Time College Course" means that the particular course has met the following standards:

(a) "Full time" — As defined by the approved institution where the course is being pursued;

(b) "College" — An institution fully accredited by the appropriate accrediting agency, as recognized by the State Approving Agency (the State Department of Education).

(15) "Current Term" means:

(a) Fall, winter, spring, or summer term in those institutions operating on a term or quarter basis;

(b) First or second semester or summer session in those institutions operating on a semester or half year basis; or

(c) Not later than six weeks following enrollment in a training institution where training is a continuous program, not divided into terms or semesters.

(16) "Executive Head of the Institution" means:

(a) The President of the University or College;

(b) The Principal of the School;

(c) The Director of the Training establishment; or

(d) The person or persons to whom the executive head of the institution has delegated authority to act in his stead.

Stat. Auth.: ORS 408, 2013 HB 2633

Stats. Implemented: ORS 408.010–408.090, 2013 HB 2633

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 32, f. 12-2-65, ef. 12-25-65;

DVA 9-1993, f. 9-13-93, cert. ef. 11-4-93; DVA 1-2006, f. & cert. ef. 1-27-06;

DVA 3-2007, f. & cert. ef. 9-25-07; DVA 2-2013, f. & cert. ef. 7-8-13

274-010-0105

Who May Apply for Educational Aid

Any person who qualifies as a beneficiary under the provisions of ORS 408.010 is eligible to apply for educational aid.

Stat. Auth.: ORS 408

Stats. Implemented: ORS 408.010 - 408.030

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 9-1993, f. 9-13-93, cert. ef. 11-4-93

274-010-0115

Evidence Required to Establish Eligibility

Eligibility Form 1004-M shall be submitted to the Department of Veterans' Affairs accompanied by:

(1) Certified copy of evidence of separation.

(2) Proof of current Oregon residence.

(3) Proof of change in name:

(a) Where veteran's name has been legally changed since discharge, a certified copy of the Court Order, marriage certificate, or divorce decree will be furnished to the Department of Veterans' Affairs;

(b) Where veteran's name has been changed, but not legally, an affidavit from the veteran and affidavits from at least two disinterested persons will be required to show such change.

Stat. Auth.: ORS 408

Stats. Implemented: ORS 408.010 - 408.040

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 9-1993, f. 9-13-93, cert. ef. 11-4-93; DVA 1-2006, f. & cert. ef. 1-27-06

274-010-0120

Applications

(1) All applications for educational aid shall be made upon Form ED-1 (Application Form), and shall be filed with the head of the training institution involved.

(2) Upon approval of training, the head of the institution shall forward the application to the Department of Veterans' Affairs.

(3) When an application is made for benefits to attend a course which may be considered an avocation or recreational in nature, or for a single subject course which is not directly related to the student's educational objective, the applicant shall include with the usual application a statement indicating how the desired courses will better prepare him to engage in a more gainful occupation.

Stat. Auth.: ORS 408

Stats. Implemented: ORS 408.010 - 408.040

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 9-1993, f. 9-13-93, cert. ef. 11-4-93; DVA 1-2006, f. & cert. ef. 1-27-06

274-010-0125

Evidence Required for Out-Of-State Attendance

Where the applicant requests educational aid for out-of-state attendance, the following information, in addition to that required by OAR 274-010-0120, shall accompany the usual application, in order to satisfactorily show the necessity for this attendance:

(1) A detailed statement of the required academic course, which shall include a resume of the student's educational background and experience as well as any additional information about the qualifications of the out-of-state school to provide the required training.

(2) When possible, the application should be accompanied by a statement from the Oregon institution where the applicant had previously attended or that would be most likely to offer the required training, certifying that the particular training required is not presently available.

(3) A statement from the out-of-state school confirming the enrollment of the applicant in the particular course as outlined.

(4) Evidence through school catalog or official certification, that the out-of-state school is fully accredited within its state to offer the required course.

Stat. Auth.: ORS 408

Stats. Implemented: ORS 408.010 - 408.070

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57

274-010-0130

Time for Filing Application

(1) Applications shall be submitted promptly following registration, or prior thereto for the courses or training for which aid is requested.

(2) Payments may be retroactive to the beginning of the school term only if the applicant provides justifiable reasons for the delay in making application. Being unaware of the educational aid program will not in itself be sufficient grounds for considering retroactive payments.

Stat. Auth.: ORS 408

Stats. Implemented: ORS 408.010 - 408.070

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57

274-010-0135

Additional Information and Evidence

The Department of Veterans' Affairs may, in addition to the information and evidence specified in the application, instructions,

or rules and regulations, require such additional information and evidence as he deems necessary to establish the applicant's eligibility.

Stat. Auth.: ORS 408

Stats. Implemented: ORS 408.010 - 408.070

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 1-2006, f. & cert. ef. 1-27-06

274-010-0145

Computation of Payments

The following factors shall be used in computing the amount payable to the beneficiary:

(1) Length of service shall be computed in full months.

(2) For each month of active military service, not exceeding 36 months, claimant shall be entitled to receive:

(a) Up to \$150 per month for each month of full-time study or professional training;

(b) Up to \$100 per month for each month of part-time study or professional training.

(3) One month of entitlement will be deducted for each monthly payment covering any part of a calendar month.

(4) Payment for attendance shall be at the discretion of the Director and based on enrolled curriculum.

Stat. Auth.: ORS 408

Stats. Implemented: ORS 408.020, 408.050, 408.060

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 32, f. 12-2-65, ef. 12-25-65; DVA 1-2006, f. & cert. ef. 1-27-06; DVA 2-2007, f. & cert. ef. 9-24-07

274-010-0155

Approval to Receive Benefits

(1) The Department of Veterans' Affairs shall determine the applicant's eligibility to receive benefits.

(2) The Department of Veterans' Affairs shall then determine:

(a) That the institution of learning is accredited and qualified to provide the training;

(b) That the tuition and other charges are reasonable;

(c) That the beneficiary has qualifications to pursue the course of training;

(d) That the course of training, is satisfactorily completed, is likely to enable the beneficiary to become a more useful citizen.

(3) If all the conditions provided in section (2) of this rule are met, the Department of Veterans' Affairs shall approve the application.

(4) Where a satisfactory showing is made that the required training is not available at an approved Oregon institution, the Department of Veterans' Affairs shall permit the applicant to attend an out-of-state school or college.

(5) Upon approval of the application by the Department of Veterans' Affairs, benefits are payable:

(a) Beginning with the first day of applicant's attendance, subject to conditions under OAR 274-010-0120(2); or

(b) Beginning on the date application is filed with executive head of the institution. If the applicant has failed to file promptly following registration and the delay is found to be caused by inexcusable oversight or neglect.

Stat. Auth.: ORS 408

Stats. Implemented: ORS 408.025 - 408.070

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 1-2006, f. & cert. ef. 1-27-06

274-010-0160

Reports by Executive Head of Educational Institution

On or before the tenth day of each calendar month, the executive head of each institution of learning shall submit certified copies of Form 1006-M (Statement of Educational Aid), containing the following information.

(1) Name of each beneficiary;

(2) Amount of training; and

(3) Progress.

Stat. Auth.: ORS 408

Stats. Implemented: ORS 408.050

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 9-1993, f. 9-13-93, cert. ef. 11-4-93; DVA 1-2006, f. & cert. ef. 1-27-06

274-010-0165

Lost, Stolen, or Destroyed Warrant

If educational aid warrant is lost, stolen, or destroyed before negotiation, beneficiary may obtain payment of by furnishing to the State Treasurer evidence that value has not been received and an acceptable indemnity bond.

Stat. Auth.: ORS 408

Stats. Implemented: ORS 408.060

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57

274-010-0170

Addition, Amendment, or Repeal of Rules or Regulations

These rules and regulations shall have the effect of law and shall be binding in all instances on persons making application for educational aid, under ORS 408.010 to 408.090, but if any part of these regulations are found to be void or illegal, such illegality shall not affect the remaining provisions of the rules and regulations.

Stat. Auth.: ORS 408

Stats. Implemented: ORS 408.010 - 408.090

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 32, f. 12-2-65, ef. 12-25-65;

DVA 1-2006, f. & cert. ef. 1-27-06; DVA 3-2007, f. & cert. ef. 9-25-07

274-010-0175

Procedure for Hearings

(1) Any interested person may petition the director requesting the promulgation, amendment, or repeal of any rule.

(a) Petition shall be in writing and shall set forth the requested change in detail;

(b) Director shall set time for hearing and shall notify petitioner of same;

(c) Petitioner may present any evidence he deems necessary in support of his request; and

(d) The final determination shall be made by the director.

(2) Any applicant making application for educational aid may request a review of the Department of Veterans' Affairs' decisions pertaining to educational benefits by filing a petition with the director.

(a) Petition shall be in writing and signed by or on behalf of the applicant. Petition shall contain a statement of facts requesting specific relief and sufficient information to indicate that the applicant is entitled to relief;

(b) Director shall set the time and place for a hearing and shall notify the applicant of same;

(c) Applicant may present any evidence he deems necessary in support of his request at the hearing; and

(d) The final determination shall be made by the director.

Stat. Auth.: ORS 183 & 408

Stats. Implemented: ORS 408.040, 408.050 & 408.060

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 32, f. 12-2-65, ef. 12-25-65;

DVA 6-1996, f. & cert. ef. 7-22-96; DVA 1-2006, f. & cert. ef. 1-27-06

DIVISION 12

**OREGON VETERANS' EMERGENCY
FINANCIAL ASSISTANCE PROGRAM**

274-012-0001

Definitions for OAR 274-012-0001 through 274-012-0131

As used in Sections 0001 through 0131 of division 012, unless otherwise required by context:

(1) "Department" or "ODVA" means the State of Oregon Department of Veterans' Affairs.

(2) "Program" or "OVEFAP" means the Oregon Veterans' Emergency Financial Assistance Program as established in ORS 408.500.

(3) "Under Honorable Conditions" means that the official documents of discharge, service, or separation issued upon the termination of the veteran's active duty service with the Armed Forces are characterized by the relevant branch of the Armed Forces as one of the following:

(a) "Honorable"; or

(b) "General" also known as "General Under Honorable Conditions".

(4) "Veteran" means a veteran as defined in ORS 408.500.

(5) "Immediate family" means a spouse, child or stepchild.

Stat. Auth.: ORS 406.030, 406.050, 406.130, 408.010, 408.225, 408.500, 2013 HB 2633

Stats. Implemented: 2013 HB 2633

Hist.: DVA 2-2006(Temp), f. & cert. ef. 2-23-06 thru 8-18-06; DVA 4-2006, f. &

cert. ef. 4-25-06; DVA 1-2008(Temp), f. & cert. ef. 1-7-08 thru 6-30-08; DVA 3-

2008, f. & cert. ef. 2-22-08; DVA 2-2013, f. & cert. ef. 7-8-13

274-012-0100

Purpose and Objective

(1) It is the expressed policy of the Department to provide appropriate emergency financial assistance to veterans and their immediate families by means of the Department's Emergency Financial Assistance Program.

(2) Within the funds established by the Department, pursuant to ORS 408.500, an account is designated to be used by the Department consistent with this program. Funds held within this account will be used by the Department consistent with this division 012 and applicable law exclusively for the purpose of one-time assistance to veterans and their immediate family, as determined by the Department, who have insufficient funds to meet their financial needs or responsibilities. Such needs may include, but are not limited to:

(a) Emergency or temporary housing and related housing expenses, such as expenses for utilities, insurance, house repairs, rent assistance or food;

(b) Emergency medical or dental expenses;

(c) Emergency transportation;

(d) Expenses related to starting a business, such as business licenses or occupational licenses;

(e) Temporary income after military discharge; and

(f) Legal assistance.

Stat. Auth.: ORS 406.030, 406.050, 406.130, 408.010 & 408.500

Stats. Implemented: ORS 406.030, 406.050, 406.130, 408.010 & 408.500

Hist.: DVA 2-2006(Temp), f. & cert. ef. 2-23-06 thru 8-18-06; DVA 4-2006, f. &

cert. ef. 4-25-06; DVA 3-2007, f. & cert. ef. 9-25-07; DVA 1-2008(Temp), f. &

cert. ef. 1-7-08 thru 6-30-08; DVA 3-2008, f. & cert. ef. 2-22-08

274-012-0105

Evidence Required to Establish Eligibility

The following documentation shall be submitted to the Department when applying for program funds:

(1) A copy of evidence of separation of military service under honorable conditions.

(2) Proof of current Oregon residence.

(3) Proof of any change in name:

(a) Where a veteran's name has been legally changed since discharge, a certified copy of the Court Order, marriage certificate, or divorce decree must be furnished to the Department;

(b) Where a veteran's name has been changed, but not legally, an affidavit from the veteran and affidavits from at least two disinterested persons must be furnished to the Department to show such change.

Stat. Auth.: ORS 406.030, 406.050, 406.130, 408.010 & 408.500

Stats. Implemented: ORS 406.030, 406.050, 406.130, 408.010 & 408.500

Hist.: DVA 2-2006(Temp), f. & cert. ef. 2-23-06 thru 8-18-06; DVA 4-2006, f. &

cert. ef. 4-25-06

274-012-0110

Applications

(1) Applications for assistance from the Program shall be made in such manner and detail, and on such forms, as the Department, in its reasonable discretion, shall determine.

(2) Applications generally will be prioritized by the Department for consideration based on the date of completed receipt by the Department. The Department may, however, consider applications in such other order and at such other times as it deems reasonable.

Stat. Auth.: ORS 406.030, 406.050, 406.130, 408.010 & 408.500
Stats. Implemented: ORS 406.030, 406.050, 406.130, 408.010 & 408.500
Hist.: DVA 2-2006(Temp), f. & cert. ef. 2-23-06 thru 8-18-06; DVA 4-2006, f. & cert. ef. 4-25-06

274-012-0115

Evidence of Need

When an application is made for emergency financial assistance, the applicant shall provide the Department with the documentation required under Subsection 0105, together with statement(s) and other documentation satisfactory to the Department indicating how the desired financial assistance will benefit the veteran and his/her immediate family. The Department may require additional documentation or information from the applicant as it deems necessary or appropriate.

Stat. Auth.: ORS 406.030, 406.050, 406.130, 408.010 & 408.500
Stats. Implemented: ORS 406.030, 406.050, 406.130, 408.010 & 408.500
Hist.: DVA 2-2006(Temp), f. & cert. ef. 2-23-06 thru 8-18-06; DVA 4-2006, f. & cert. ef. 4-25-06

274-012-0120

Criteria for Determination of Emergency Financial Assistance

(1) When determining to whom and in what amount Program funds will be made available to applicants, the Department may take into consideration various factors, including but not limited to:

- (a) The amount of available funds in the Program account;
- (b) Anticipated future deposits into the Program account;
- (c) The amount of present commitments from the Program account;
- (d) Anticipated future commitments from the Program account;
- (e) Comparative critical need by applicants as determined by the Department;
- (f) The appropriateness of the requested assistance;
- (g) The ability and established willingness of the applicant and the applicant's immediate family to appropriately use program assistance and to take steps for permanent improvement of their financial circumstances;

- (h) The eligibility of the applicant;
- (i) The number of persons and ages of such persons in the immediate family of the applicant;
- (j) The health and medical needs of the applicant and of immediate family members;

(k) Any disability, particularly a disability that limits gainful employment, by an applicant or of an immediate family member of the applicant; and

(l) Other available assistance or support to the applicant and the applicant's immediate family, including but not limited to:

- (A) United States Department of Veterans Affairs (USDVA) benefits;
- (B) Social Security benefits;
- (C) Other pensions;
- (D) Millennium Bill benefits;
- (E) Medicare benefits;
- (F) Medicaid benefits;
- (G) Annuities;
- (H) Savings;
- (I) Investments; and
- (J) Income from other available resources.

(2) The payment of Program assistance is subject to the discretion of the Department in consideration of factors described above in Paragraph (1), together with any other factors, as deemed relevant by the Department. The Department may refuse, terminate, or suspend Program assistance to any veteran and the veteran's immediate family at any time without notice. The Department shall

be under no obligation to provide Program assistance to any applicant or to the immediate family of any applicant.

Stat. Auth.: ORS 406.030, 406.050, 406.130, 408.010 & 408.500
Stats. Implemented: ORS 406.030, 406.050, 406.130, 408.010 & 408.500
Hist.: DVA 2-2006(Temp), f. & cert. ef. 2-23-06 thru 8-18-06; DVA 4-2006, f. & cert. ef. 4-25-06; DVA 1-2008(Temp), f. & cert. ef. 1-7-08 thru 6-30-08; DVA 3-2008, f. & cert. ef. 2-22-08

274-012-0125

Misrepresentation of Emergency Financial Assistance

The Department may require immediate reimbursement of funds, either in total or in part, if it is determined that applicant intentionally submitted invalid, incomplete, or fraudulent information when applying for funds from this Program, or if it is discovered that the funds were not used for the approved purpose(s).

Stat. Auth.: ORS 406.030, 406.050, 406.130, 408.010 & 408.500
Stats. Implemented: ORS 406.030, 406.050, 406.130, 408.010 & 408.500
Hist.: DVA 2-2006(Temp), f. & cert. ef. 2-23-06 thru 8-18-06; DVA 4-2006, f. & cert. ef. 4-25-06

274-012-0130

Review of Decisions

Any person adversely affected by a decision of the Department with respect to program assistance may write a letter of complaint to the Department's Director. The Director, or the Director's designee, will undertake such review of the complaint as deemed appropriate. The Director, or the Director's designee, will endeavor to provide a written response within 30 days of receipt of the written complaint and shall direct the Department to take such corrective action as is determined to be appropriate.

Stat. Auth.: Ch. 831, OL 2005, ORS 406.030, 406.050, 406.130 & 408.010
Stats. Implemented: Ch. 831, OL 2005, ORS 406.030, 406.050, 406.130 & 408.010
Hist.: DVA 2-2006(Temp), f. & cert. ef. 2-23-06 thru 8-18-06; DVA 4-2006, f. & cert. ef. 4-25-06

274-012-0131

Waiver of Rules

Subject to the limitations of the law, and at its sole discretion, the Department of Veterans' Affairs may waive all or part of these administrative rules.

Stat. Auth.: ORS 406.030, 406.050, 406.130, 408.010 & 408.500
Stats. Implemented: ORS 406.030, 406.050, 406.130, 408.010 & 408.500
Hist.: DVA 2-2006(Temp), f. & cert. ef. 2-23-06 thru 8-18-06; DVA 4-2006, f. & cert. ef. 4-25-06

DIVISION 13

**VETERANS' SMALL BUSINESS REPAIR
LOAN PROGRAM**

274-013-0000

Purpose and Objective

(1) OAR chapter 274, division 013 is promulgated to carry out the provisions of 2008 Oregon Laws chapter 18 as enacted by the Oregon Legislative Assembly through House Bill 3626 §§19 and 20, effective February 11, 2008 (the "Act"). These rules, related documents and relevant determinations by the Department constitute the Department's Veterans' Small Business Repair Loan Program (the "Program"). The Program is intended, inter alia, to facilitate the delivery of appropriate financial assistance to eligible veterans and to the unremarried surviving spouses of veterans who are deceased as a result of their mobilization or deployment as provided herein.

(2) Funds appropriated for the Program by the Oregon Legislative Assembly through 2008 Oregon Laws chapter 16 (Senate Bill 5556 §48) or otherwise are, consistent with House Bill 3626 §20, deposited in the Veterans' Small Business Repair Loan Fund (the "Fund") established in the State Treasury, separate and distinct from the General Fund. The Department will use Fund moneys consistent with this division for the purpose of providing interest-free loans to qualified applicants whose small businesses incur setbacks during the relevant veteran's mobilization or deployment.

Stat. Auth.: 2008 OL Ch. 18 & ORS 406.005
Stats. Implemented: 2008 OL Ch. 18

274-013-0010

Definitions

For the purposes of OAR chapter 274, division 013, the following terms have the following meanings, unless the context clearly indicates otherwise:

(1) "Act" means 2008 Oregon Laws, chapter 18 as enacted by the Oregon Legislative Assembly through House Bill 3626 §19 and 20, effective February 11, 2008.

(2) "Applicant" means any Veteran (individually or with his or her spouse) or Surviving Spouse applying for a Program loan from the Department on behalf of a Small Business in which the Applicant owns a Controlling Interest.

(3) "Borrower" means any successful Applicant, and/or the Small Business in which such successful Applicant owns a Controlling Interest, approved for and provided a Program loan from the Fund by the Department.

(4) "Collateral" means property subject to a security interest, security agreement, or otherwise pledged to the Department's satisfaction for the repayment of a Program loan.

(5) "Controlling Interest" means more than 50 percent ownership (whether individually by a Veteran or a Surviving Spouse or jointly by a Veteran and his or her spouse) of a Small Business for which a Program loan is sought.

(6) "Department" means the Department of Veterans' Affairs created under ORS 406.005.

(7) "Deployment" means an act in which an individual was ordered to active military duty on behalf of the United States of America and was deployed outside the United States as defined in the Act.

(8) "Director" means the Director of the Department of Veterans' Affairs.

(9) "Equity" means unencumbered and unpledged cash, real property or personal property owned or controlled to the Department's satisfaction by an Applicant or the Small Business in which the Applicant owns a Controlling Interest and committed to the Department's satisfaction for use in the Project for which a Program loan is being sought by the Applicant. The valuation of such Equity shall be subject to determination by the Department in its reasonably conservative discretion.

(10) "Funds" means moneys available to the Veterans' Small Business Repair Loan Program from the Fund.

(11) "Mobilization" means an act which an individual left his or her home station and was transferred to a mobilization site for federal service as defined in the Act.

(12) "Person" means any individual, association of individuals, joint venture, partnership, corporation, limited liability company, sole proprietorship or other legal entity.

(13) "Project" means the repair, rehabilitation, operation or maintenance of a Small Business.

(14) "Setback" means a material business disruption incurred by a Small Business due to the Veteran's Mobilization or Deployment as determined by the Department.

(15) "Small Business" means a business that:

(a) Is a corporation, partnership, sole proprietorship or other legal entity licensed and located in Oregon and formed for the purpose of making a profit, and that is independently owned and operated from all other businesses; and

(b) Employs 50 or fewer persons.

(16) "Surviving Spouse" means the unremarried surviving spouse of a Veteran deceased as a result of the Veteran's Mobilization or Deployment.

(17) "Veteran" means an individual who (by himself or herself, or jointly with a spouse) owns a Controlling Interest in a Small Business and who, at the time of the individual's Mobilization or Deployment, is:

(a) A member of the Oregon National Guard; or

(b) A member of the reserves of the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States and a resident of Oregon.

(18) "Veterans' Small Business Repair Loan Program" means these rules, related documents and relevant determinations by the Department, which are designed to assist any Veterans in addressing Setbacks to their Small Businesses due to the Veteran's Mobilization or Deployment.

Stat. Auth.: 2008 OL Ch. 18 & ORS 406.005

Stats. Implemented: 2008 OL Ch. 18

Hist.: DVA 6-2008, f. 9-30-08, cert. ef. 10-1-08

274-013-0020

Eligibility

(1) To be eligible for a Program loan, an Applicant must satisfy the definition of Applicant given in OAR 274-013-0010 and meet the following criteria:

(a) The Applicant must own a Controlling Interest in a Small Business;

(b) The Small Business must have incurred a Setback due to the relevant Veteran's Mobilization or Deployment. The Department may consider factors including, but not limited to the following in determining whether or not a Small Business has incurred a Setback:

(A) Whether or not the Small Business has experienced a material diminution or loss of income, customers, suppliers, operational integrity, relative competitive position or good will;

(B) Whether or not the Small Business has experienced an extraordinary depreciation in or loss of goods or capital; and

(C) Whether or not any factor identified in Subparagraphs (A) or (B) occurred during the relevant Veteran's Mobilization or Deployment or as a demonstrable consequence of such Mobilization or Deployment.

(c) The Applicant must apply to the Department for a Program loan within 12 months after the relevant Veteran's Demobilization or the date upon which the relevant Veteran would have been Demobilized but for his or her demise while on active duty.

(d) The relevant Veteran must have been discharged under honorable conditions or been eligible for honorable discharge at the time of his or her demise while on active duty.

(2) To be eligible for a Program loan, an Applicant also must complete and deliver to the Department an application, including other information and documents as required by the Department, in a manner consistent with Program requirements.

Stat. Auth.: 2008 OL Ch. 18 & ORS 406.005

Stats. Implemented: 2008 OL Ch. 18

Hist.: DVA 6-2008, f. 9-30-08, cert. ef. 10-1-08

274-013-0030

Application Procedure

(1) The Department may, from time to time, identify forms to be completed by Applicants and require such additional information or performance with respect to any application as it deems appropriate.

(a) The Department may require an Applicant to pay an application fee of not more than \$250 to recompense the Department for its reasonable expenses in processing the application.

(b) The Department may require an Applicant to enroll in and successfully complete a business management program.

(c) The Department may require an Applicant to complete a business plan, including identification of the Applicant's proposed use of the requested Program Loan and demonstration of the ability to repay the Program loan.

(2) Each Applicant must certify in a manner acceptable to the Department that they satisfy the eligibility requirements provided in OAR 274-013-0020(1).

(3) The Department may deny applications that are incomplete or otherwise inconsistent with Program requirements, including those where an Applicant has failed to satisfy any requirements to completion of a business management program or to complete a business plan. The Department will provide notice of such a denial to an Applicant at the address listed in the application.

(4) The Department may suspend consideration of an application during such periods when it has requested and is awaiting additional information or performance from the Applicant.

(5) The Department may limit or refuse to accept applications depending upon Funds availability.

(6) The Department may consider applications in such order as it deems appropriate. The Department may consider factors including, but not limited to the following in prioritizing its consideration of applications:

- (a) When the application was made;
- (b) The apparent need for a Program Loan;
- (c) The amount of the requested Program Loan;
- (d) The potential for ongoing business disruption;
- (e) Compliance by the Applicant with requests for information or performance; and

- (f) The accuracy and completeness of the application.

(7) In determining whether or not to approve or deny a requested Program loan (in whole or in part), the Department may consider factors including, but not limited to the following:

- (a) The eligibility of the Applicant;
- (b) Factors identified above in Subparagraph (6);
- (c) The feasibility of the proposed Project;
- (d) The likelihood and timeliness of loan repayment;
- (e) Cooperation with and the results of any loan due diligence, including credit checks and appraisals;
- (f) The willingness to provide, and the value of, any loan Collateral; and
- (g) The availability of Funds.

(8) Upon completion of its review the Department may, in whole or in part, approve or deny the application. The Department will provide the Applicant notice of its determination at the address identified in the application. Notwithstanding anything stated in an application approval, any application approval is subject to the Applicant or Small Business successfully passing, to the Department's satisfaction, such credit checks and other due diligence as the Department may require or perform. Furthermore, and notwithstanding anything stated in an application approval, any application approval also is subject to the Applicant and Small Business (together with such guarantors as may be required by the Department) executing, recording and delivering such documents and instruments as the Department may require.

Stat. Auth.: 2008 OL Ch. 18 & ORS 406.005

Stats. Implemented: 2008 OL Ch. 18

Hist.: DVA 6-2008, f. 9-30-08, cert. ef. 10-1-08

274-013-0040

Loan Conditions

(1) Before providing a Program loan, the Department may require or perform such further credit checks and other due diligence as it deems appropriate. The Applicant and proposed Borrower must cooperate to the Department's satisfaction with respect to such credit checks and other due diligence.

(2) The Department may require that the Borrower and others execute, record and deliver such documents, including such representations, covenants and warranties, as the Department deems appropriate. The Borrower must cooperate fully with such document requirements.

(3) The Department may require such Collateral requirements as it deems appropriate. The Borrower and others shall provide such assurances of Collateral as the Department may require.

(4) The Department may require the payment of a loan fee of not more than one and one-half percent of the amount of the loan to recompense the Department for its costs of loan administration.

(5) Notwithstanding any Program loan commitments by the Department, all Program loans are subject to the availability of Funds as reasonably determined by the Department.

(6) The initial amount of any Program loan shall not exceed \$20,000. The total amount of Funds loaned to any Applicant or Borrower shall not exceed \$40,000.

(7) The Department may, in its reasonable discretion, disburse the proceeds of an approved loan in such amounts and at such times as the Department deems appropriate to ensure that loan proceeds are used for Project purposes and to preserve the integrity of the Fund. If the Department determines that the financial condition of the Borrower has deteriorated, the Department may suspend or

terminate further Program loan disbursements. The Department also may exercise any other remedy available to it in law, contract or otherwise.

(8) The Borrower must abide by all laws and regulations applicable to the Project and provide evidence satisfactory to the Department of its receipt of all applicable federal, state and local permits and licenses before the Department will make any disbursement of Program loan Funds. The Borrower also shall fully and timely perform all Program loan obligations, including as provided in any Program loan documents. The Department may suspend, terminate or exercise any other remedy with respect to its Program loan upon a determination by the Department of any default or other failure of performance by the Borrower, including but not limited to any failure of timely completion of the Project, misallocation of Program loan funds or failure to make timely Program loan repayments.

(9) The Department may take such action as it deems appropriate in the review and enforcement of a Project or of a Program loan, including but not limited to entry onto Project property, inspection of a Project and review and copying of any Borrower documents with respect to a Project. The Borrower shall cooperate fully with the Department in such review and enforcement efforts and agrees to allow Project inspection and review and copying of Project documents as the Department deems appropriate.

(10) At the request of the Department, the Borrower will provide to the Department annual financial statements; copies of tax returns and other requested documents. The Department may require additional financial information or more frequent financial statements.

Stat. Auth.: 2008 OL Ch. 18 & ORS 406.005

Stats. Implemented: 2008 OL Ch. 18

Hist.: DVA 6-2008, f. 9-30-08, cert. ef. 10-1-08

274-013-0050

Loan Documents

(1) Program loan documents may contain such provisions as the Department deems appropriate, including but not limited to terms with respect to Program loan disbursements, Collateral, repayment, remedies, late fees and interest, collection charges, attorneys fees and costs and post-judgment interest.

(2) The Department may charge Borrowers for appropriate administrative costs, collection fees, late fees and attorney fees, as well as interest charges on the foregoing, and post-judgment interest.

Stat. Auth.: 2008 OL Ch. 18 & ORS 406.005

Stats. Implemented: 2008 OL Ch. 18

Hist.: DVA 6-2008, f. 9-30-08, cert. ef. 10-1-08

274-013-0060

Administrative Review

(1) Any Person adversely affected by a Department determination with respect to this Program, unless controlled by relevant loan documents, may request review of such determination by the Department's Director. The Director, or the Director's designee, will undertake such review as he or she deems appropriate. The Director, or the Director's designee will endeavor to provide a written response within 30 days of receipt of the requested review.

(2) Any request for modification of any provision with respect to a Program loan must be made in writing to the Department. No Program loan modification or waiver of any term shall be effective unless in a signed writing by the Director.

(3) If the Director consents to any requested modification, the Department may require the Borrower to pay for related costs, including but not limited to all costs of modifying or amending any loan documents, filings, recordings or financing statements.

Stat. Auth.: 2008 OL Ch. 18 & ORS 406.005

Stats. Implemented: 2008 OL Ch. 18

Hist.: DVA 6-2008, f. 9-30-08, cert. ef. 10-1-08

274-013-0070

Waiver of Rules

The Department may waive or modify any requirements of OAR 274, division 013, in order to achieve substantial justice and

the purposes of the Program unless such waiver or modification would violate applicable federal or state law.

Stat. Auth.: 2008 OL Ch. 18 & ORS 406.005

Stats. Implemented: 2008 OL Ch. 18

Hist.: DVA 6-2008, f. 9-30-08, cert. ef. 10-1-08

DIVISION 15

CONSERVATORSHIP SERVICES

274-015-0010

Conservatorship Fees

(1) As used in this rule:

(a) "Department" means the Department of Veterans' Affairs.

(b) "Protected person" means a person for whom a protective order has been entered by a court that appoints the Department as the conservator.

(c) "Ordinary services" means ordinary and routine conservatorship services performed by the Department on behalf of a protected person.

(d) "Unusual services" means conservatorship services performed by the Department on behalf of a protected person that are uncommon or unusual.

(e) "USDVA" means the United States Department of Veterans' Affairs.

(2) The Department will charge the following fees when acting as the conservator of the estate of a protected person:

(a) For ordinary services, 7% of the income to the estate.

(b) For unusual services, \$40 per hour except for real property inspections. The fee for real property inspections is \$50 per inspection.

(3) The Department will impose a fee on the following sources of income to the estate of a protected person:

(a) USDVA compensation.

(b) USDVA pension.

(c) USDVA accumulated benefits.

(d) USDVA death indemnity compensation (DIC).

(e) USDVA death pension for a surviving spouse or child.

(f) USDVA education.

(g) USDVA rehabilitation.

(h) Social Security.

(i) State retirement.

(j) Federal Civil Service Retirement.

(k) Worker's compensation.

(l) Railroad retirement.

(m) Union pension.

(n) Life insurance annuity.

(o) Private disability insurance.

(p) Military retirement.

(q) Wages.

(r) Interest income on the funds in the estate earned through investments made by the Oregon State Treasurer.

(4) The Director of Veterans' Affairs may waive all or any portion of the fees charged under section (2) of this rule if the director finds that payment of a claim, or a portion thereof, would pose a hardship to the protected person or would deplete the protected person's estate.

(5) The director may retract a waiver made under subsection (4) of this rule if the director finds that payment of the claim, or a portion thereof, would no longer pose a hardship to the person from whose estate the claim is payable, or would no longer deplete the estate.

Stat. Auth.: ORS 406.005, 406.050 & 406.100

Stats. Implemented: ORS 406.100, 406.110 & 406.120, 2013 OL Ch. 258 & 190

Hist.: DVA 9-1987, f. 11-25-87, ef. 12-1-87; DVA 4-1991, f. & cert. ef. 7-1-91; DVA 1-2012, f. & cert. ef. 2-22-12; DVA 3-2013(Temp), f. & cert. ef. 7-9-13 thru 1-3-14; DVA 7-2013(Temp), f. 8-29-13, cert. ef. 8-30-13 thru 1-3-14; DVA 12-2013, f. 12-20-13, cert. ef. 1-1-14

274-015-0020

Representative Payee

(1) The Director of Veterans' Affairs (DVA) may act as Representative Payee on behalf of a person deemed to be financially incapable at the request of any of the following:

(a) The United States Department of Veterans' Affairs (VA);

(b) The Social Security Administration;

(c) The United States Department of Defense;

(d) Defense Finance and Accounting Service;

(e) Public Employees Retirement System;

(f) Any other payor of benefits.

(2) The Director of Veterans' Affairs (DVA) may charge fees when acting as the Representative Payee of a person deemed to be financially incapable. The fees DVA may charge are as follows:

(a) Up to four (4) percent of highest income source; or

(b) As stated in applicable law governing the payor.

(3) The sources of income upon which DVA may impose a fee are as outlined in OAR 274-015-0010(2).

(4) In deciding whether all or a portion of the fees will be waived, the Director shall consider the following:

(a) Whether the protected person has at least \$2,000 in cash and investment assets;

(b) Whether, after payment of a fee, the protected person would have sufficient funds to pay all outstanding bills, and have money remaining to pay for such basic needs as food, shelter, clothing, and medical care;

(c) Whether the protected person receives public assistance;

(d) Whether all foreseeable expenses have been taken into account in deciding what the needs of the protected person will be; and

(e) Whether fees have been authorized by the payer of benefits.

Stat. Auth.: ORS 406.030, 406.040, 406.050, 406.100, 113.085

Stats. Implemented: ORS 406.030, 406.050, 406.100, 406.110

Hist.: DVA 1-2012, f. & cert. ef. 2-22-12

DIVISION 20

VETERANS' LOANS

274-020-0200

Definitions for OAR 274-020-0200–274-020-0450

As used in these regulations or any amendments to them, or any blank form, document, publication, or written instrument of any kind prescribed, provided, published, issued, or used by the director or any of his duly authorized agents or employees in connection with the administration of the provisions of Article XI A of the Oregon Constitution and ORS Chapter 407, providing for the loaning of money to qualified persons who served in the Armed Forces of the United States, unless otherwise required by context:

(1) "Armed Forces" means and includes:

(a) Army;

(b) Navy;

(c) Marines;

(d) Air Force;

(e) Coast Guard;

(f) WAC (Since July 1, 1943);

(g) Waves;

(h) Women Marines;

(i) WAFS;

(j) Spars;

(k) Women's Air Force Service Pilots (WASP);

(l) Commissioned Officers of the Public Health Service. Service with Coast Guard between December 23, 1941, and November 10, 1943, inclusive. Service with the Army, Navy, Marine Corps, or Coast Guard between November 11, 1943, and July 28, 1945, inclusive. Eligible by executive order between July 29, 1945, and July 3, 1952, inclusive. Since July 3, 1952, when serving with the Armed Forces;

(m) Active service of commissioned officers of the National Oceanic and Atmospheric Administration or its predecessor orga-

nization, the Coast and Geodetic Survey, after July 29, 1945. Coast and Geodetic Survey officers while serving with the Army or Navy before July 29, 1945.

(2) "Active Duty" means that status in the Armed Forces in which the person on "active duty" is under the command of and subject to discipline and on active duty pay status in the respective branch of the Armed Forces in which the person is serving:

(a) Members of the reserve components; persons on a retired status from the Armed Forces; cadets at West Point, the United States Coast Guard Academy, the United States Air Force Academy, and Midshipmen at Annapolis, were on active duty only after reporting for active duty;

(b) Members of the National Guard were on active duty only after having entered active Federal Service for duty other than training.

(3) "Honorably Discharged" means that the official documents of discharge, service, or separation issued upon the termination of the veteran's service with the Armed Forces are characterized as:

(a) "Honorable"; or

(b) "General" also known as "General Under Honorable Conditions".

(4) "Separated" means the termination of active duty with the Armed Forces.

(5) "Resident" or "Bona Fide Resident" means one who has domiciled within the state.

(6) "Domicile" means the legal residence of a veteran and consists of actual or inchoate residence in conjunction with the intention to maintain that residence, or the home of the veteran, where, when temporarily away, he has the intention of returning:

(a) Temporary absence from the state, such as vacation, military leave, or reasons of health, will not destroy the domicile;

(b) Temporary presence in the state without an intention to establish a permanent home will not support a domicile in the state;

(c) Domicile of an unemancipated minor shall be governed by his legal parent, (if the parents are divorced, the one having custody controls);

(d) Domicile of an emancipated minor shall be determined by choice.

(7) "Acquisition" means:

(a) The purchase and improvement of a home or farm; or

(b) The payment of the balance of a purchase price and interest on purchase contract of a home or farm and its improvements; or

(c) The refinancing of an existing purchase money security instrument on a home or farm or an instrument in the nature thereof, and the improvement of the property purchased; or

(d) Improvements of a home or farm.

(8) "Improvements" means any new construction, or any necessary or beneficial additions, alterations, or changes appurtenant to the house which add to the appraised value of the premises.

(9) "Security" means all of the real property, mobile home, or floating home that is to be acquired for a home and for which purpose the loan is requested.

(10) "Home" means any residential type structure, including outbuildings and the real property in connection with it, if any, including long term leaseholds, which is established, maintained, and used primarily as a principal residence by the veteran.

(11) "Farm" includes:

(a) "Home"; and

(b) A parcel of land being used to obtain a profit in money by utilizing accepted farming practices to raise crops or livestock or poultry or dairying or combinations thereof.

(12) "Security Instrument" means a mortgage, deed of trust, or similar document used to perfect the lien on the security by the Director of Veterans' Affairs (ODVA). The lien will be a first lien on the home, except:

(a) As otherwise required by Oregon law, or allowed by Oregon law and approved in writing by ODVA; or

(b) When an ALTA mortgagee's title insurance policy is in force insuring the state against the usual losses covered by an

ALTA policy as well as any loss from any prior encumbrance, and the encumbrance is acceptable to both the veteran and ODVA.

(13) "Minor" means any single person under the age of 18 years, but any person shall be deemed to have arrived at the age of majority upon their marriage.

(14) "Transfer" means a change of ownership, either by operation of law, act of the parties, or both, such as deed, contract, certificate, court decree, property settlement, foreclosure, easement, condemnation, or adverse possession of the premises.

(15) "Lease" means the giving of possession and use of profits of secured property for a period of time in return for compensation.

(16) "Possession" means exclusive dominion and physical control of the secured property but occupancy is not necessary.

(17) "Lease Option" means a lease of real property with an option to purchase the property within a stipulated period of time.

(18) "Rent" means the giving of possession of secured property for occupancy for a specific period of time in return for a stipulated amount of compensation.

(19) "Underwriter/Designated Loan Officers" means those employees of the Department whose paramount responsibility shall be the approval or rejection of all applications for loans.

(20) "Department" means the Oregon Department of Veterans' Affairs (ODVA).

(21) "Net Appraised Value" is also known as loan value," and both terms mean the lesser of the appraised value or the Purchase Price. The "appraised value" is the value established by an appraisal obtained by or at the direction of ODVA, or an appraisal approved by ODVA.

(22) "Loan to Value Ratio" is the loan amount or balance divided by the net appraised value.

(23) "Original Loan" means:

(a) The first loan the veteran receives; or

(b) The first loan based on a restored loan right.

(24) "Subsequent Loan" means any loan or loans granted after the original loan and are in these categories:

(a) Additional loan;

(b) Second loan; and

(c) Veterans' Home Improvement loan.

(25) "Veteran" means any person eligible to receive a loan under the provisions of Article XI A of the Oregon Constitution and sections (1) through (6) of this rule.

Stat. Auth.: ORS 406.030 & 407.115

Stats. Implemented: ORS 40

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 26, f. 12-13-60; DVA 29, f. 7-3-63, ef. 9-2-63; DVA 32, f. 12-2-65, ef. 10-25-65; DVA 33, f. 12-7-66, ef. 1-11-67; DVA 35, f. 12-19-68, ef. 1-11-69; DVA 38, f. 5-10-71, ef. 6-11-71; DVA 43, f. 3-2-73, ef. 3-29-73; DVA 45, f. & ef. 12-1-75; DVA 47, f. & ef. 4-20-76; DVA 48, f. & ef. 1-3-77; DVA 50, f. 11-16-77, ef. 12-1-77; DVA 1-1980, f. & ef. 1-15-80; DVA 4-1980, f. & ef. 12-1-80; DVA 3-1990, f. & cert. ef. 5-1-90; DVA 10-1995, f. 9-11-95, cert. ef. 9-22-95; DVA 12-1995, f. & cert. ef. 9-22-95; DVA 5-1997, f. & cert. ef. 10-22-97; DVA 2-2005, f. & cert. ef. 4-22-05; DVA 2-2013, f. & cert. ef. 7-8-13; DVA 4-2013(Temp), f. & cert. ef. 7-23-13 thru 1-19-14; Administrative correction, 2-24-14

274-020-0241

Authority to Protect the Security

At the discretion of the Director, funds can be disbursed to make repairs to correct a serious structural, safety, or sanitary deficiency discovered in a property that is security for a loan when it is determined such a disbursement is necessary to protect the interest of the state. This would occur when the following conditions exist:

(1) The present and probable future value of the property, without benefit of the needed repairs, is sufficiently low when compared to the existing loan balance that the state's investment would be threatened; and

(2) The current owner is the original veteran borrower who lacks the financial means to make the needed repairs or corrections in a timely manner; and the funds required, when added to the existing loan balance, would exceed the maximum loan right or percentage of loan limitations; or

(3) The current owner is a transferee who lacks the financial means to make repairs or corrections in a timely manner.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407.115, 407.131, 407.135 & 407.145

Hist.: DVA 5-1980, f. & ef. 12-1-80

274-020-0260

Who May Apply for Loan

- (1) A loan shall be made only to an individual veteran as

defined in OAR 274-020-0200.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 407.115 & 407.125

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 32, f. 12-2-65, ef. 10-15-65;

274-020-0265

Evidence Required to Establish Eligibility

The applicant shall submit to the Director the following evidence to establish eligibility:

- (1) Evidence of separation such as a photostat of Discharge or a Certificate of Satisfactory Service and a photostat of Notice or Report of Separation, Transfer, or Discharge.
- (2) Certificate of Service and Casualty Report when applicant is the unremarried spouse of a person who died on active duty.
- (3) Proof of Oregon residence.
- (4) Proof of any change in name since discharge:
 - (a) Where legally changed, proof shall be by a certified copy of the Court Order, or a marriage certificate, or a divorce decree;
 - (b) Where not legally changed, proof shall be by an affidavit from the veteran and affidavits from at least two disinterested persons.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 407.075, 407.115 & 407.125

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 1-1980, f. & ef. 1-15-80; DVA 4-2013(Temp), f. & cert. ef. 7-23-13 thru 1-19-14; Administrative correction, 2-24-14

274-020-0266

Eligibility to Apply

Eligibility to apply for a loan under this division is subject to the eligibility criteria of Article XI-A of the Oregon Constitution and qualification under the Internal Revenue Code as a qualified veteran. The acceptance of an application and granting of a loan is further subject to the provisions of ORS Chapter 407, OAR division 020, 025, 045, other applicable law, and the policies and procedures of the Oregon Department of Veterans' Affairs (ODVA), and at the discretion of the director of ODVA.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-020-0270

Forms and Signature

- (2) Joint loans or loans to a cooperative shall not be valid.

(1) Application for a loan from the state shall be made to the Director on forms provided by the Director.

(2) Applicants shall complete the appropriate department form to establish eligibility and shall sign their name as it appears on the discharge, unless their name has changed since discharge, in which case they shall use their present name.

Stat. Auth.: ORS 406 & 407

Stats. Implemented: ORS 406.030, 407.075, 407.115 & 407.125

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 48, f. & ef. 1-3-77; DVA 2-1985, f. 2-26-85, ef. 3-1-85

274-020-0280

Number of Applications Permitted

(1) A veteran may have only one application for a loan pending at any time.

(2) A veteran may make application for another loan if conditions exist which entitle him to another loan.

(3) A veteran may make an application for an additional loan if he presently has a state loan.

(4) A veteran may make application for an advance for improvements provided the security for the loan is the primary residence.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407.205

Hist.: DVA 29, f. 7-3-63, ef. 9-2-63; DVA 32, f. 12-2-65, ef. 10-25-65; DVA 1-1980, f. & ef. 1-15-80; DVA 4-2013(Temp), f. & cert. ef. 7-23-13 thru 1-19-14; Suspended by DVA 11-2013(Temp), f. & cert. ef. 11-15-13 thru 1-19-14

274-020-0285

Additional Loans

A veteran may receive this type of subsequent loan to replace an existing home unit on the existing ODVA security with a new home unit when the total funds do not exceed statutory limits.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407.205 & 407.265

DVA 42, f. 3-2-73, ef. 3-20-73; DVA 7-2001, f. & cert. ef. 10-29-01

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 29, f. 7-3-63, ef. 9-2-63; DVA 42, f. 3-2-73, ef. 3-20-73; DVA 5-1997, f. & cert. ef. 10-22-97; DVA 4-2013(Temp), f. & cert. ef. 7-23-13 thru 1-19-14; Administrative correction, 2-24-14

274-020-0290

Second Loans

Before a second loan may be granted:

- (1) The repayment shall have been satisfactory; and
- (2) The amount shall be limited to the balance of the original or restored loan right.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407.205 & 407.265

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 29, f. 7-3-63, ef. 9-2-63; DVA 36, f. 7-25-69, ef. 8-25-69; DVA 42, f. 3-2-73, ef. 3-20-73; DVA 45, f. & ef. 12-1-75; DVA 4-2013(Temp), f. & cert. ef. 7-23-13 thru 1-19-14; Suspended by DVA 11-2013(Temp), f. & cert. ef. 11-15-13 thru 1-19-14; Administrative correction, 2-24-14

274-020-0295

Modification of Application

An application may be modified such as to the amount of the loan requested, legal description, amount of security or plans and specifications, but the modification must be requested in writing by the veteran and shall be subject to the approval of the Director.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407.205, 407.225 & 407.265

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57

274-020-0300

Cancellation of Application

(1) An applicant may cancel his application for a state veterans' loan at any time prior to receipt of the loan proceeds.

(2) The Director may cancel any application if the applicant fails to comply with any of the conditions pertaining to the loan.

(3) The Director may destroy any application 25 months after the veteran applicant is notified of action taken on an application (whether credit was approved or adverse action was taken).

Stat. Auth.: ORS 183, 406.030, 407.115, 407.135, 407.145, 407.275, 407.305 & 407.375

Stats. Implemented: ORS 406.030, 407.115, 407.265 & 407.385

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 21-1982, f. & ef. 9-15-82; DVA 5-1993, f. 3-16-93, cert. ef. 3-21-93; DVA 7-2001, f. & cert. ef. 10-29-01

274-020-0305

Filing Period

An applicant may file to secure a veterans' loan at any time after separation from the service, even though he has re-enlisted and is not separated at the time of application.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407.115, 407.125 & 407.205

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 26, f. 12-13-60; DVA 35, f. 12-19-68, ef. 1-11-69

274-020-0310

Evidence of Acquisition

An applicant shall be required to furnish any of the following items applicable:

(1) A copy of the earnest money receipt or sales agreement, signed by all the parties if acquisition is by purchase.

(2) A copy of the contract of sale signed by all parties.

(3) A copy of the mortgage showing the recording data.

(4) Evidence of debt from F.H.A. Title 1 loan.

(5) Evidence of personal obligation incurred in acquiring the home.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407.115, 407.155 & 407.205

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57

274-020-0315

Evidence of Construction

An applicant shall submit complete plans, specifications, and cost estimates in applications for construction or improvements.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407.115, 407.225 & 407.265

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57

274-020-0322

Requirements for Farm Applicants

(1) Must complete the Department's farm income, experience, and expense form.

(2) Must have capital or an equivalent line of credit to cover development costs and one year's operating cost.

(3) Must show, to the satisfaction of the Director, that the farm portion of the loan security is capable of producing an annual income that will repay the loan allocated to the farm land and farm buildings.

Stat. Auth.: ORS 406 & 407

Stats. Implemented: ORS 407.205, 407.265 & 407.385

Hist.: DVA 20-1982, f. & ef. 9-15-82

274-020-0325

Security for the Loan

(1) The home or farm offered as security shall be owned in fee simple by the veteran at the time the loan is closed.

(2) The state shall have the first lien at the time of making the loan except in those cases noted in OAR 274-020-0200(12).

(3) The security shall consist of real or personal property and the security instrument shall include all property to be acquired as a home but more than one parcel of real property may be included in the security.

(4) All security must be improved to supply a home for the applicant, and it must be in existence at the time the loan is closed.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407.155 & 407.225

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 45, f. & ef. 12-1-75; DVA 7-2001, f. & cert. ef. 10-29-01

274-020-0330

Legal Description of Property Offered as Security

(1) Property offered as security must have an adequate legal description from which the boundaries of the property may be located.

(2) The Director may require a survey to ascertain the boundary lines and location of all permanent improvements on the property.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407.225

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57

274-020-0335

Appraisal of Property

(1) An appraisal shall be made to assist in establishing the loan value only after a complete application has been received.

(2) On farms, the loan value allowable on the principal home unit portion of the property shall not exceed the amount needed for a maximum home loan.

Stat. Auth.: ORS 406.030, 407.115 & 407.225(3)

Stats. Implemented: ORS 407.115 & 407.225

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 3-1980, f. & ef. 7-1-80; DVA 3-1990, f. & cert. ef. 5-1-90

274-020-0340

Terms of Loan

(1) The loan value (net appraised value) shall be used as the basis for determining the maximum loan, subject to statutory limitations. Under the provisions of ORS 407.225(3), the maximum loan on a home which is real property may not exceed 100 percent of the loan value (net appraised value), but may be a lesser amount as determined from time-to-time by the Director of Veterans' Affairs, (Director):

(a) On farms, the maximum original loan allowable for acquisition of the principal home unit portion of the property shall not exceed the maximum home loan, whether it be for purchase, refinancing, construction, improvements, or a combination of these; and the maximum additional loan or advance for improvements to the principal home shall not exceed the difference between the maximum home loan and that portion of the original loan granted on the principal home unit, except advances for protection of security improvements, taxes, and insurance premiums;

(b) Loans shall be made in multiples of \$1.

(2) The Director shall determine the period and amount of repayment based on the age, condition, location, and useful life of the security, but the maximum period of repayment shall not exceed statutory limits.

(3) The borrower shall timely pay all property taxes and other assessments that may or do become a lien against the loan security.

(4) The borrower shall carry fire and extended coverage insurance on the security. The Director also may require that hazards other than fire be covered. All premiums and charges for said coverage shall be paid timely by the borrower:

(a) The Director may determine the form and amount of insurance coverage for the security;

(b) All insurance money shall be payable to the State of Oregon, Director of Veterans' Affairs, by endorsement of the Director-approved mortgagee clause;

(c) The Director may enter into agreements with companies engaged in the business of providing insurance management programs which, among other things, assure the Director that the required insurance is kept in force. Where the borrower fails or refuses to keep the property adequately insured, the Director may pay the premium charged by the company providing the insurance management service, and any payment of premium so made shall be added to the amount due from the borrower and shall bear interest at the same rate as the principal indebtedness. The loan payment may be increased to repay the money advanced to pay the insurance premium and accrued interest, over a period of 12 months;

(d) In case of loss, the Director shall determine the disposition of any and all funds received under the insurance policies.

(5) On all loans made on or after June 1, 1990, or as otherwise agreed to by the borrower and the Director, the Director may collect in advance from said borrowers together with their payments required under section (2) of this rule, sufficient amounts to pay property taxes, insurance premiums, and other charges related to the security. Such additional amounts collected by the Director shall be held in escrow pending payment of the obligations for which they are collected and interest on said amounts shall be paid to the borrower in the manner and at the rate of interest described in ORS 86.245(1).

(6) Property taxes, insurance premiums, and other charges may be paid by the Director from funds collected from the borrower for those purposes. The Director, in the absence of funds collected from the borrower (or if such funds are insufficient in amount), may, at his option, elect to pay property taxes, insurance premiums, and other charges from the Oregon War Veteran's Bond Sinking Account. Any amount paid by the Director from the Oregon War Veteran's Bond Sinking Account may be added to and become part of the loan principal and shall bear interest at the same rate as the balance of the principal indebtedness. On loans made after June 1, 1991, excluding qualified loan assumptions, the Director will not add amounts advanced for payment of property taxes or insurance premiums to the principal balance of the loan. On these loans, any amount advanced will be entered as a negative balance in the escrow account.

(7) The borrower's loan payment may be increased to repay the money advanced from the Oregon War Veteran's Bond Sinking Account to pay the property taxes, insurance premiums, and other charges against the security, together with interest thereon, within a maximum period of 12 months or such shorter time as established by the Director.

Stat. Auth.: ORS 291.021, 406.030, 407.115, 407.169, 407.179, 407.181, 407.225(3) & 407.275

Stats. Implemented: ORS 407

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 29, f. 7-3-63, ef. 9-2-63; DVA 32, f. 12-2-65, ef. 10-25-65; DVA 42, f. 3-2-73, ef. 3-20-73; DVA 45, f. & ef. 12-1-75; DVA 1-1980, f. & ef. 1-15-80; DVA 3-1980, f. & ef. 7-1-80; DVA 6-1983, f. & ef. 5-3-83; DVA 3-1985, f. 2-26-85, ef. 3-1-85; DVA 3-1987, f. & ef. 5-1-87; DVA 3-1990, f. & cert. ef. 5-1-90; DVA 1-1992, f. & cert. ef. 1-2-92; DVA 7-1993, f. 5-18-93, cert. ef. 5-21-93; DVA 3-2003(Temp), f. & cert. ef. 4-7-03 thru 10-3-03; DVA 11-2003, f. & cert. ef. 9-23-03; DVA 8-2005, f. & cert. ef. 12-27-05; DVA 3-2007, f. & cert. ef. 9-25-07

274-020-0341

Interest

(1) The Director, with the advice of the Advisory Committee, will prescribe interest rates for loans to be funded by the Oregon Department of Veterans' Affairs pursuant to this division. In prescribing interest rates, the Department will consider the following factors:

- (a) The current value of funds;
- (b) The solvency of the Department's Loan Program; and
- (c) The rates' effect on Veterans.

(2) In prescribing interest rates, the Department also may consider factors including, but not limited to the following:

- (a) The projected value of funds;
- (b) Any Federal tax law restrictions;
- (c) Actual or projected conventional mortgage rates;
- (d) The availability of funds;
- (e) Actual or projected loan demand;
- (f) The loan purpose; and
- (g) The source(s) of funds.

(3) The Director may prescribe rates of interest of up to two percent per annum more than the applicable basic rate determined under Subsections (1) and (2) above for loans used to acquire mobile homes and houseboats if, upon consideration of the factors described in Subsection (1) above, the Director determines that there is an economic need for such higher rate of interest.

(4) The Director periodically may change the prescribed rate of interest on a funded loan consistent with ORS 407.325(2) and applicable loan documents. In changing a prescribed rate of interest, the Director may exceed the limits in ORS 407.325(2) if the Director determines, in the Director's sole discretion, that such a change reduces the probability that invoking the provisions of section 4, Article XI-A of the Oregon Constitution will become necessary.

(5) The Director periodically may change the prescribed rate of interest on a loan to be funded by the Oregon Department of Veterans' Affairs to reflect reconsideration of, or changes in, factors considered under Subsections (1) and (2) above, or in consideration of additional factors.

(6) The Director may apply different rates of interest to different loans, depending upon factors including, but not limited to the following:

- (a) The time of an initial loan or commitment to fund a loan;
- (b) The initial rate of interest on a loan;
- (c) The type of loan;
- (d) The status of the borrower;
- (e) The status of the loan security;
- (f) The perceived risk associated with the loan;
- (g) Whether or not the department agreed to maintain an interest rate commitment within a certain range or for a certain time; and

(h) Whether or not the applicant abandoned a previous loan application or loan commitment.

(7) The Department will endeavor to record prescribed interest rates as reasonably as it is practical for the Department to do so, in its Tables and Codes Manual. This manual will generally be available for viewing at the Oregon Department of Veterans' Affairs, 700 Summer Street NE, Salem, Oregon, during regular business hours.

Stat. Auth.: ORS 406.030, 407.115, 407.325 & 407.327

Stats. Implemented: ORS 407.325 & 407.327

Hist.: DVA 40, f. 5-27-71, ef. 5-27-71; DVA 45, f. & ef. 12-1-75; DVA 49, f. & ef. 6-1-77; DVA 50, f. 11-16-77, ef. 12-1-77; DVA 2-1978, f. & ef. 12-1-78; DVA 1-1979, f. & ef. 12-5-79; DVA 4-1980, f. & ef. 12-1-80; DVA 6-1980(Temp), f. 12-19-80, ef. 1-1-81; DVA 1-1981, f. 3-1-81, ef. 4-1-81; DVA 2-1981(Temp), f. 3-11-81, ef. 4-1-81; DVA 4-1981, f. & ef. 4-16-81; DVA 5-1981(Temp), f. & ef. 8-10-81; DVA 7-1981, f. 10-30-81, ef. 11-1-81; DVA 8-1981, f. 10-30-81, ef. 12-1-81; DVA 10-1981(Temp), f. & ef. 12-22-81; DVA 3-1982(Temp), f. & ef. 2-3-82; DVA 11-1982, f. 4-23-82, ef. 1-1-83; DVA 15-1982, f. & ef. 6-1-82; DVA 27-1982(Temp), f. & ef. 10-15-82; DVA 5-1983, f. & ef. 2-15-83; DVA 10-1985, f. 8-23-85, ef. 1-1-86; DVA 6-1992(Temp), f. & cert. ef. 4-15-92; DVA 9-1992, f. & cert. ef. 8-3-92; DVA 10-1992(Temp), f. & cert. ef. 8-17-92; DVA 1-1993, f. & cert. ef. 1-4-93; DVA 6-1993(Temp), f. 3-30-93, cert. ef. 4-1-93; DVA 8-1993, f. 7-30-93, cert. ef. 9-27-93; DVA 10-1993(Temp), f. 10-18-93, cert. ef. 11-1-93; DVA 1-1994, f. 1-10-94, cert. ef. 2-

1-94; DVA 2-1994(Temp), f. & cert. ef. 4-15-94; DVA 4-1994, f. & cert. ef. 6-22-94; DVA 5-1994(Temp), f. 9-15-94, cert. ef. 9-20-94; DVA 6-1994(Temp), f. 11-15-94, cert. ef. 11-18-94; DVA 2-1995, f. & cert. ef. 3-23-95; DVA 3-1995(Temp), f. & cert. ef. 5-11-95; DVA 4-1995(Temp), f. & cert. 5-18-95; DVA 6-1995(Temp), f. 6-23-95, cert. ef. 6-26-96; DVA 13-1995, f. & cert. ef. 10-23-95; DVA 14-1995(Temp), f. 10-30-95, cert. ef. 11-1-95; DVA 1-1996, f. & cert. ef. 3-22-96; DVA 1-1997(Temp), f. 2-4-97, cert. ef. 2-7-97; DVA 3-1997, f. & cert. ef. 6-25-97; DVA 5-1997, f. & cert. ef. 10-22-97; DVA 2-1998(Temp), f. 1-26-98, cert. ef. 2-2-98 thru 7-31-98; DVA 6-1998, f. & cert. ef. 6-23-98; DVA 8-1998(Temp), f. 7-28-98, cert. ef. 8-1-98 thru 1-27-99; DVA 1-1999, f. & cert. ef. 1-22-99; DVA 2-1999, f. & cert. ef. 9-22-99; DVA 4-1999(Temp), f. 12-14-99, cert. ef. 12-16-99 thru 6-12-00; DVA 2-2000(Temp), f. 3-30-00, f. 3-31-00 thru 6-12-00; DVA 6-2000, f. & cert. ef. 5-23-00; DVA 7-2000(Temp), 6-12-00 thru 12-9-00; DVA 8-2000(Temp), f. 7-14-00, cert. ef. 7-17-00 thru 12-9-00; DVA 9-2000(Temp), f. 9-8-00, cert. ef. 9-11-00 thru 12-9-00; DVA 10-2000, f. 12-5-00, cert. ef. 12-10-00; DVA 6-2001(Temp), f. 9-7-01, cert. ef. 9-10-01 thru 3-8-02; DVA 2-2002, f. & cert. ef. 2-22-02; DVA 3-2002(Temp), f. 3-29-02, cert. ef. 4-1-02 thru 9-27-02; DVA 5-2002(Temp), f. 6-26-02, cert. ef. 6-27-02 thru 9-27-02; DVA 6-2002, f. & cert. ef. 9-24-02; DVA 8-2002(Temp), f. 9-25-02, cert. ef. 9-26-02 thru 3-24-03; DVA 1-2003(Temp), f. 1-17-03, cert. ef. 1-21-03 thru 3-24-03; DVA 2-2003, f. & cert. ef. 3-24-03; DVA 4-2003(Temp), f. 4-18-03, cert. ef. 4-21-03 thru 10-17-03; DVA 6-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 10-17-03; DVA 7-2003(Temp), f. 7-31-03, cert. ef. 8-1-03 thru 10-17-03; DVA 8-2003(Temp), f. 8-14-03, cert. ef. 8-15-03 thru 10-17-03; DVA 10-2003, f. & cert. ef. 9-23-03; DVA 13-2003(Temp), f. & cert. ef. 10-8-03 thru 4-5-04; DVA 2-2004(Temp), f. 1-21-04, cert. ef. 1-22-04 thru 4-5-04; DVA 4-2004, f. 3-25-04, cert. ef. 3-26-04; DVA 5-2004(Temp), f. 4-6-04, cert. ef. 4-8-04 thru 10-4-04; DVA 7-2004(Temp), f. 4-28-04, cert. ef. 4-29-04 thru 10-4-04; DVA 8-2004(Temp), f. 5-10-04, cert. ef. 5-11-04 thru 10-4-04; DVA 9-2004(Temp), f. 8-5-04 cert. ef. 8-6-04 thru 10-4-04; DVA 10-2004(Temp), f. 8-18-04 cert. ef. 8-19-04 thru 10-4-04; DVA 12-2004, f. & cert. ef. 9-22-04; DVA 1-2005(Temp), f. 4-7-05, cert. ef. 4-8-05 thru 10-3-05; DVA 3-2005, f. & cert. ef. 4-22-05

274-020-0342

Interest Rate on Assumptions by Eligible Veterans

(1) Effective February 3, 1982, a veteran eligible for a loan under ORS 407.075 to 407.595 and Article XI-A of the Oregon Constitution who assumes a loan, previously made by the Director, assumes at one of the following rates:

(a) If the previous loan was a fixed interest rate loan made to a veteran before May 27, 1971, the assumption will be at the fixed rate;

(b) If the previous loan was a variable rate loan made to a veteran on or after May 27, 1971, the assumption will be at the rate of the previous loan, and will remain variable, with the limitation that the rate will not decrease and will not increase more than an additional one percent or exceed the current veteran's rate at the time of transfer;

(c) If the previous loan had been transferred to one other than the original borrower, the surviving spouse, unmarried former spouse, surviving child or stepchild of the original borrower, or other eligible veteran assuming pursuant to ORS 407.305, the assumption rate to the veteran will be at the rate of the transferred loan, and will not become variable until a subsequent transfer.

(2) Effective September 28, 1987, a veteran eligible for a loan under ORS 407.075 to 407.595 and Article XI-A of the Oregon Constitution who assumes a loan, previously made by the Director, assumes at 10.5 percent variable or at the existing rate on the loan, whichever is higher.

Stat. Auth.: ORS 406 & 407

Stats. Implemented: ORS 407.285 - 407.335

Hist.: DVA 6-1982(Temp), f. & ef. 3-11-82; DVA 10-1982, f. & ef. 4-15-82; DVA 24-1982, f. & ef. 10-1-82; DVA 6-1987, f. 9-24-87, ef. 9-28-87

274-020-0343

Interest Rates on Loans Secured by Property Transferred to Non-Veterans

(1) Effective February 3, 1982, the interest rate on all loans secured by property transferred before February 3, 1982 will not change on the first transfer on or after February 3, 1982, but on any subsequent transfer the interest rate will be as provided by this rule and will be variable, with the limitation that the rate will not decrease and will not increase more than an additional one percent, except as provided under ORS 407.335(4).

(2) Subject to the conditions and limitations of section (1) of this rule, the interest rate on real property loans, when the property

securing the loan is transferred to someone other than those entitled to the veteran's interest rate, shall be:

- (a) Through August 21, 1969, 5 percent;
- (b) Effective August 22, 1969, 6.2 percent;
- (c) Effective September 4, 1969, 7.9 percent;
- (d) Effective December 10, 1969, 8.1 percent;
- (e) Effective April 8, 1970, 7.8 percent;
- (f) Effective August 19, 1970, 7.4 percent;
- (g) Effective January 6, 1971, 6.4 percent;
- (h) Effective May 27, 1971, 7 percent;
- (i) Effective June 1, 1977, 8 percent;
- (j) Effective December 1, 1977, 8.8 percent;
- (k) Effective December 1, 1978, 9.8 percent;
- (l) Effective December 1, 1979, 11 percent;
- (m) Effective December 1, 1980, 13 percent;
- (n) Effective December 1, 1981, 17 percent;
- (o) Effective February 3, 1982, 12 percent;
- (p) Effective October 15, 1982, 11.5 percent;
- (q) Effective January 1, 1985, 11.52 percent;
- (r) Effective January 1, 1986, 9.86 percent, or one percent

higher than the rate on the original note, whichever is higher. "The rate on the original note" shall be the rate stated as such on the note;

(s) Effective January 1, 1987, 8.59 percent, or one percent higher than the rate on the original note, whichever is higher;

(t) Effective September 1, 1987, 10.75 percent, or the rate existing on the loan immediately prior to the transfer, whichever is higher.

(3) Subject to the conditions and limitations of section (1) of this rule, the interest rate on personal property loans, when the property securing the loan is transferred to someone other than those entitled to the veteran's interest rate, shall be:

(a) Effective May 30, 1975, 9 percent. Personal property included leaseholds until leaseholds were defined as real property on October 4, 1977. On or after October 4, 1977, the interest rate on leaseholds is the real property interest rate;

- (b) Effective December 1, 1977, 9.8 percent;
- (c) Effective December 1, 1978, 10.8 percent;
- (d) Effective December 1, 1979, 12 percent;
- (e) Effective December 1, 1980, 14 percent;
- (f) Effective December 1, 1981, 18 percent;
- (g) Effective February 3, 1982, 12 percent;
- (h) Effective December 1, 1982, 12.5 percent;
- (i) Effective January 1, 1985, 11.52 percent;
- (j) Effective January 1, 1986, 9.86 percent, or one percent

higher than the rate on the original note, whichever is higher. "The rate on the original note" shall be the rate stated as such on the note;

(k) Effective January 1, 1987, 8.59 percent, or one percent higher than the rate on the original note, whichever is higher;

(l) Effective September 1, 1987, 10.75 percent, or the rate existing on the loan immediately prior to the transfer, whichever is higher.

(4) This rule does not apply to transfers to the surviving spouse, unmarried former spouse, surviving child, or stepchild of the original borrower, who are entitled to the veteran's interest rate.

Stat. Auth.: ORS 406 & 407

Stats. Implemented: ORS 407.275 & 407.335

Hist.: DVA 6-1982(Temp), f. & ef. 3-11-82; DVA 10-1982, f. & ef. 4-15-82; DVA 27-1982(Temp), f. & ef. 10-15-82; DVA 24-1982, f. & ef. 10-1-82; DVA 5-1983, f. & ef. 2-15-83; DVA 12-1984, f. 12-17-84, ef. 1-1-85; DVA 13-1985(Temp), f. 12-16-85, ef. 1-1-86; DVA 14-1985(Temp), f. 12-30-85, ef. 1-1-86; DVA 5-1986, f. 3-10-86, ef. 4-1-86; DVA 10-1986(Temp), f. 12-8-86, ef. 1-1-87; DVA 2-1987, f. & ef. 4-15-87; DVA 5-1987, f. & ef. 9-1-87

274-020-0344

Fixed Interest Rate

(1) Subject to the provisions of this rule, effective June 1, 1989, borrowers with ODVA loans being charged 7.2 percent variable interest may convert the loan to a fixed interest rate.

(2) Subject to the provisions of this rule, effective February 1, 1990, borrowers with ODVA loans being charged 7.7 percent variable interest may convert the loan to a fixed interest rate.

(3) The following loans do not qualify for the interest rate conversion:

- (a) Accounts with 12 or less monthly payments, or one annual payment remaining before the loan will be paid in full;
- (b) Accounts of borrowers in bankruptcy;
- (c) Accounts in foreclosure;
- (d) Accounts two or more months delinquent;
- (e) Accounts coded as questionable loans (propriety of loan being investigated);
- (f) Loans, any portion of which is being charged an interest rate other than 7.2 percent or 7.7 percent (composite interest rate).

(4) Accounts on semi-annual or annual payment schedules can convert to a fixed interest rate. If the holder of a loan with semi-annual or annual payments would like a fixed interest rate loan, all provisions of this rule will apply, except sections (7) and (8) of this rule. Matters covered by sections (7) and (8) of this rule will be negotiated with the borrower.

(5) The remaining term on loans converted to a fixed interest rate will be shortened. The shorter term will be arrived at by using the current retirement date, or the remaining term on loans paying off earlier than the retirement date (larger than required payments were made), and deducting ten percent:

(a) The maximum term on loans converting to a fixed interest rate shall be 40 years;

(b) The fixed interest rate available will be based upon the remaining term of the loan (after shortening the term as provided above) and shall be as follows: Remaining Term On Loans Being Charged 7.2% Interest — Fixed Interest Rate:

- (A) 5 years or less — 7.3%;
- (B) 5 years 1 month to 9 years 11 months — 7.4%;
- (C) 10 years to 14 years 11 months — 7.5%;
- (D) 15 years to 19 years 11 months — 7.6%;
- (E) 20 years to 24 years 11 months — 7.7%;
- (F) 25 years or more — 7.8%.

(c) Loans Being Charged 7.7% Interest — Fixed Interest Rate: All Loans — 7.8%.

(6) In order to convert a 7.2 or a 7.7 percent variable interest rate loan to a fixed interest rate loan, the borrower must agree to the following:

(a) Each year ODVA may adjust the payment on principal and interest to an amount that will cause the loan to pay in full by its retirement date. The payments on principal and interest will not be reduced to an amount lower than the amount established at the time of conversion to a fixed interest rate;

(b) If ownership of the property securing the ODVA loan is transferred, or ownership of any portion of the property securing the loan is transferred, the interest rate on the loan will be as provided by ORS 407.275(2), the due date on the loan will be the due date on the latest Note and Mortgage, Trust Deed, or Security Agreement, and the agreement allowing ODVA to annually adjust the payment on the loan to assure proper amortization will terminate.

(7) The procedure for implementing the interest rate conversion on loans being charged 7.2 percent variable interest rate shall be as follows:

(a) Whether the account qualifies for interest rate conversion will be determined by the status of the account on June 1, 1989, if payments are due on the first day of the month or June 15, 1989, if payments are due on the 15th day of the month;

(b) Borrowers desiring to make the interest rate conversion must notify ODVA in writing, by either mailing a post card furnished by ODVA, or by other written notification:

(A) By June 30, 1989, if payments are due on the 1st day of the month;

(B) By July 14, 1989, if payments are due on the 15th day of the month.

(c) Interest owing on June 1, 1989, or June 15, 1989 (as applicable) shall be added to the balance of the loan on August 1, 1989, or August 15, 1989 (as applicable);

(d) Any "paid ahead" or "delinquency" existing on the loan on June 1, 1989, or June 15, 1989, (as applicable), will be eliminated;

(e) The new terms of the loan shall be effective August 1, 1989, or August 15, 1989, (as applicable) and the new payments will begin September 1, 1989, or September 15, 1989 (as applicable).

(8) The procedure for implementing the interest rate conversion on loans being charged 7.7 percent variable interest shall be as follows:

(a) Whether the account qualifies for interest rate conversion will be determined by the status of the account on February 1, 1990, if payments are due on the 1st day of the month or March 15, 1990, if payments are due on the 15th day of the month;

(b) Borrowers desiring to make the interest rate conversion must notify ODVA in writing, by either mailing a postcard furnished by ODVA, or by other written notification:

(A) By February 23, 1990, if payments are due on the 1st day of the month;

(B) By April 9, 1990, if payments are due on the 15th day of the month.

(c) Any "paid ahead" or "delinquency" existing on the loan on February 1, 1990, or March 15, 1990 (as applicable), will be eliminated;

(d) The new terms of the loan shall be effective April 1, 1990, or May 15, 1990 (as applicable) and the new payments will begin May 1, 1990, or June 15, 1990 (as applicable).

(9) This rule does not apply to contracts for the purchase of State-owned property.

Stat. Auth.: ORS 406.030, 407.115 & 407.327

Stats. Implemented: ORS 407.327

Hist.: DVA 1-1989, f. & cert. ef. 6-1-89; DVA 1-1990, f. & cert. ef. 1-2-90

274-020-0345

Approval of the Loan

The approval of any loan shall be dependent upon the following:

(1) The veteran applicant must meet current industry standards determined by the Department to be applicable to the proposed loan. Applicable industry standards may include, but are not limited to:

- (a) Local lending practices;
- (b) FannieMae and other lending organization standards; and
- (c) Federal and state legal requirements.

(2) The veteran applicant may be required to have an equity in the property.

(3) Secondary financing may be permitted.

(4) Construction shall meet the minimum standards set by federal, state and local laws.

(5) A performance bond may be required for new construction.

(6) Inspections to prove the premises safe, sanitary, and structurally sound may be required, and the loan may be refused if the construction is inferior.

(7) The security shall be served by adequate means of legal and physical access and shall have an acceptable potable water supply.

Stat. Auth.: ORS 183, 406.030, 407.115, 407.135, 407.145, 407.275, 407.305 & 407.375

Stats. Implemented: ORS 407.115, 407.125 & 407.225

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 32, f. 12-2-65, ef. 10-25-65; DVA 50, f. 11-16-77, ef. 12-1-77; DVA 2-1978, f. & ef. 12-1-78; DVA 7-1982, f. & ef. 3-15-82; DVA 3-1991, f. 5-30-91, cert. ef. 6-3-91; DVA 5-1993, f. 3-16-93, cert. ef. 3-21-93; DVA 7-1995, f. & cert. ef. 7-21-95; DVA 4-2005(Temp), f. & cert. ef. 6-3-05 thru 11-30-05; DVA 5-2005, f. & cert. ef. 7-22-05; DVA 6-2005, f. & cert. ef. 10-24-05

274-020-0348

Grounds for Refusing to Make a Loan

The Director may refuse to make a loan to any applicant if he finds any of the following:

(1) Prior loan experience with an applicant was unsatisfactory, including, but not limited to, late payment or nonpayment on loan and impairment of security.

(2) The applicant did not disclose all debts or obligations as required under the terms of the loan credit application.

(3) The applicant has a negative cash flow.

(4) The applicant has declared bankruptcy within the last three years unless:

(a) The applicant or the applicant's spouse has been regularly employed, other than self-employed, since the discharge; and

(b) The applicant has established credit since the bankruptcy and made timely and satisfactory payments on obligations; and

(c) The bankruptcy was caused by circumstances beyond the applicant's control, such as uninsured medical expense, layoff, strike, or divorce.

(5) The applicant has declared bankruptcy between three and five years prior to application for a loan, unless: The applicant has reestablished credit since the bankruptcy.

(6) Business bankruptcies will not be grounds for refusing to make a loan if:

(a) The applicant was self-employed and the bankruptcy was not due to misconduct; and

(b) There is no evidence of derogatory credit information prior to the self-employment or after the bankruptcy; and

(c) The applicant has subsequently obtained a permanent position with reliable income.

(7) Chapter 13 bankruptcies will not be grounds for refusing to make a loan if: The applicant has made satisfactory payment of at least three-fourths of the total payments due the trustee.

(8) The applicant's ability to repay the loan is insufficient, as determined by the Department of Veterans' Affairs (Department) by applying relevant industry standards.

(9) The applicant is an unsatisfactory credit risk, as determined by the underwriting analysis of the credit rating agency selected by the Director. In that case, the Director shall advise the applicant of his refusal on this basis and supply to the applicant the name and address of any consumer reporting agency which provided the Director with information on the applicant. If the applicant requests in writing within 60 days after being notified of the refusal, the Director shall provide the applicant with the name of any person other than a consumer reporting agency who provided information which was, wholly or in part, a basis of such refusal.

(10) The applicant is involved in the following type of transactions:

(a) The purchase of property from a spouse where the amount which the applicant seeks to borrow from the Department exceeds the unpaid balance on loans used to acquire or improve the property;

(b) The purchase from a corporation wholly or substantially owned by the applicant;

(c) The purchase of property indirectly owned by the applicant.

(11) The applicant has or has had any interest, within the past three years, either title or contractual, in the property being purchased, except it will not be grounds for refusing to make a loan:

(a) If the applicant is purchasing a one-half interest from a divorced spouse. The sum shall be stated in the divorce decree;

(b) If the applicant acquired an interest in property by inheritance and is purchasing the interest which co-heirs have in the same property;

(c) If the application is for an improvement or additional loan;

(d) If the application is for a rehabilitation loan or a loan to pay off a bridge loan. A "bridge loan" is temporary financing obtained for the purpose of financing the purchase of a home pending the sale of a home owned by the borrower and listed with a real estate broker or advertised for sale;

(e) If the application is for a loan to pay off an interim loan whose term does not exceed 24 months (not renewable);

(f) If the application is for a loan to pay off a construction period loan obtained not more than 24 months, and the construction was completed not more than 18 months, before submitting an application to the Director;

(g) If the application is for amount spent on the purchase of, or the value of, land only (whichever is less) and construction commences within 24 months of land acquisition and the loan is funded within 18 months of the start of construction.

(12) The applicant does not meet the applicable underwriting or industry property standards as determined by the Department.

(13) Effective with applications received after May 15, 1984, except for farm loans and loans for multi-family dwellings, if the applicant will use the property offered as security for the loan for a purpose that would jeopardize the tax-exempt status of interest to holders of Bonds issued by the Director of Veterans' Affairs:

(a) Specifically excluded uses are:

(A) As an investment;

(B) As a recreational home;

(C) As a principal place of business for any trade or business of the applicant.

(b) Examples of excluded uses (if a portion of the property is used regularly and exclusively in connection with a trade or business) are:

(A) Using any portion of the residence as a place to meet patients, clients, or customers in the normal course of business;

(B) Storage of inventory in a separate and identifiable fixed location and kept for the wholesale or retail selling of products as a part of the applicant's trade or business which would entitle the applicant to a "Business Use of the Home" income tax deduction;

(C) Providing care for children, for the elderly, or for handicapped persons, if the nature and character of the care entitles the property owner to a "Business Use of the Home" income tax deduction.

(c) Any use of a residence which does not qualify for a "Business Use of the Home" income tax deduction shall not be considered as a use in a trade or business. Examples of such permitted uses are:

(A) Storage of inventory for the benefit of an employer or in conduct of a direct selling business, if the use is not exclusive of any personal use of that part of the residence;

(B) Babysitting, if the nature and character of the babysitting does not entitle the property owner to a "Business Use of the Home" income tax deduction;

(C) Engaging in person-to-person sales of consumer products to customers in the home, such as Tupperware, Amway, Avon, wicker, crystal, or similar products;

(D) Foster home established by Court Order, or designated by a Government Agency with jurisdiction to make such a designation;

(E) Using part of the residence to write legal briefs, prepare tax returns, read financial periodicals and reports, clip bond coupons, or engage in similar work, if the use is not exclusive of any personal use of that part of the residence.

Stat. Auth.: ORS 183, 286, 406.030, 407.115, 407.135, 407.145, 407.275, 407.305 & 407.375

Stats. Implemented: ORS 407.115, 407.125, 407.179 & 407.225

Hist.: DVA 7-1982, f. & ef. 3-15-82; DVA 8-1983, f. & ef. 6-1-83; DVA 3-1984, f. 5-2-84, ef. 5-15-84; DVA 6-1984, f. 7-25-84, ef. 8-1-84; DVA 3-1991, f. 5-30-91, cert. ef. 6-3-91; DVA 5-1993, f. 3-16-93, cert. ef. 3-21-93; DVA 7-1995, f. & cert. ef. 7-21-95; DVA 8-2001, f. & cert. ef. 11-23-01; DVA 6-2005, f. & cert. ef. 10-24-05; DVA 4-2013(Temp), f. & cert. ef. 7-23-13 thru 1-19-14; Administrative correction, 2-24-14

274-020-0349

Loan Funding

(1) Funding by Oregon Department of Veterans' Affairs (ODVA) of any loan is subject to the discretion of the Director of Veterans' Affairs. In determining whether or not to fund any loan, the director may consider factors, including, but not limited to the following:

(a) Actual or projected cost of funds;

(b) Any applicable federal tax or other law;

(c) Availability and source of lendable funds;

(d) Actual or projected conventional mortgage rates;

(e) Actual or projected loan demand;

(f) Loan purpose;

(g) Eligibility of applicant;

(h) Credit worthiness of applicant;

(i) Adequacy of security for the loan.

(2) The director may from time to time establish priorities and other requirements with respect to the granting of loans under this Division.

Stat. Auth.: ORS 406
Stats. Implemented: ORS 407
Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-020-0350

Evidence of Title

(1) The veteran shall furnish at his expense a mortgagee's title policy for the amount of the loan, a title company lien search, or a certificate of title.

(2) The title policy, or other reports, shall show that the state has a first lien except in the case of:

- (a) Property taxes not payable;
- (b) A lien of a bonded irrigation or drainage district, in which case all due assessments must be paid;
- (c) A public improvement lien, bonded or being collected by the County Tax Collector in which case all due assessments must be paid;
- (d) A lien for Reclamation Service of the United States Government, in which case all due assessments must be paid;
- (e) A Mortgagee's Title Insurance policy insuring the state against loss from any prior encumbrance, but the encumbrance must be acceptable to the veteran mortgagor.

(3) All water stock shall be endorsed to, and deposited with, the Director to be held by the state until its interest terminates.

Stat. Auth.: ORS 406
Stats. Implemented: ORS 406.030, 407.115 & 407.225
Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 45, f. & ef. 12-1-75

274-020-0355

Escrow Closing of Loans

(1) All loans made by the Director of Veterans' Affairs (except for protection of security loans) shall be closed by persons or firms licensed to engage in the escrow business under the Oregon Escrow Law (ORS 696.505 to 696.590), or an attorney at law rendering services in the performance of duties as attorney at law. This rule shall be effective on all loan applications received after May 31, 1984:

- (a) The types of loans requiring escrow closing are:
 - (A) Original;
 - (B) Additional;
 - (C) Dual (Loans having notes with different due dates);
 - (D) Improvement;
 - (E) Assumption of existing.
- (b) A loan for protection of security does not require escrow closing;
- (c) (For contract sales of State-owned property, see OAR 274-21-010.)

(2) The escrow agent or attorney for closing the loan will be selected by the borrower and the borrower shall pay all escrow fees.

(3) Escrow closing shall not be waived except when in the Director's opinion, requiring escrow closing would cause an undue hardship.

Stat. Auth.: ORS 406 & 407
Stats. Implemented: ORS 407
Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 29, f. 7-3-63, ef. 9-2-63; DVA 34, f. 8-18-67, ef. 9-11-67; DVA 37, f. 4-6-70, ef. 4-25-70; DVA 42, f. 3-2-73, ef. 3-20-73; DVA 1-1984, f. & ef. 5-3-84; DVA 3-2007, f. & cert. ef. 9-25-07

274-020-0360

Disbursement of Loan Funds

(1) When a veteran is purchasing or refinancing, the loan funds may be disbursed when the loan is closed.

(2) When construction or improvement is involved and the property complies with the definition of a home, the loan funds may be disbursed after the loan is closed, but disbursement is limited to the maximum percentage permitted by statute of the net appraised value.

Stat. Auth.: ORS 406
Stats. Implemented: ORS 407.125 & 407.165

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 39, f. 5-27-71, ef. 6-25-71; DVA 2-1978, f. & ef. 12-1-78

274-020-0375

Lost, Stolen, or Destroyed Warrants or Checks

If loan proceeds in the form of a warrant or check issued by the Director are lost, stolen, or destroyed before negotiation, the payee may obtain payment by filing with the Director evidence that value has not been received.

Stat. Auth.: ORS 406
Stats. Implemented: ORS 407.115 & 407.495
Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 21-1982, f. & ef. 9-15-82

274-020-0380

Transfer of Ownership

(1) The director shall be notified in writing of any transfer of ownership or the right to possess property that is used as security for a loan with the Oregon Department of Veterans' Affairs (ODVA).

(2) The interest rate on any outstanding obligation will be adjusted at the time of the transfer as provided by ORS 407.335.

(3) The following are conditions which constitute a transfer of an ownership interest or the right to possess the loan security:

- (a) A borrower takes title to the property with a person other than his or her legal spouse;
- (b) Contract of sale;
- (c) Any deed transfer;
- (d) Any other indenture that purports to convey or transfer any portion of equitable title except for the following:

(A) Deed to create a life estate retained by the eligible veteran mortgagor; or

(B) Deed to a government entity for public use as noted in ORS 407.275(2).

(4) Other types of transactions that may provide for an automatic adjustment in interest rate include:

(a) A purchase option that extends for a period of 12 months and 32 days, or more;

(b) A lease that extends for more than the following periods:

(A) 60 months for farms of 20 acres or more;

(B) 12 months and 32 days for all properties other than farms of 20 acres or more.

(c) A purchase option with a consideration of three percent or more of the stated purchase price.

(5) An assumption by an eligible veteran may be approved at the rate set under ORS 407.305 under the following conditions:

- (a) The applicant uses his or her entitlement to make application to the Department for the assumption; and
- (b) Meets the requirements for a new loan; and
- (c) Executes an assumption agreement which will release the original veteran borrower from personal liability.

(6) The director will not enter into an assumption agreement with a person (or persons) acquiring an ownership interest in ODVA security whereby the existing debtor is relieved of further liability on the debt, unless the new owner (or owners) meets current industry standards determined by the Department to be applicable to the proposed assumption. Applicable industry standards may include, but are not limited to, local lending practices, FannieMae and other lending organization standards, and Federal and state legal requirements. The director may on an individual case and with good and sufficient reason documented in the loan file enter into an assumption agreement which does not meet applicable underwriting requirements or industry property standards, if the director decides it is in the best interest of the Department to do so.

(7) The director will not consent to the assignment of a Land Sale Contract whereby the present purchaser is relieved of further liability on the contract, unless the assignee meets current industry standards determined by the Department to be applicable to the proposed assignment. Applicable industry standards may include, but are not limited to, local lending practices, FannieMae and other lending organization standards, and Federal and state legal requirements. The director may on an individual case and with good and

sufficient reason documented in the file consent to an assignment which does not meet applicable underwriting requirements or industry property standards, if the director decides it is in the best interest of the Department to do so.

Stat. Auth.: ORS 406.030, 407.115, 407.275, 407.305 & 407.335
 Stats. Implemented: 407.275, 407.335
 Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 32, f. 12-2-65, ef. 10-25-65; DVA 36, f. 7-25-69, ef. 8-25-69; DVA 39, f. 5-27-71, ef. 6-25-71; DVA 45, f. & ef. 12-1-75; DVA 2-1982(Temp), f. & ef. 1-21-82; DVA 17-1982, f. & ef. 7-1-82; DVA 25-1982, f. & ef. 10-1-82; DVA 28-1982, f. 12-30-82, ef. 1-1-83; DVA 5-1989, f. & cert. ef. 11-15-89; DVA 3-1991, f. 5-30-91, cert. ef. 6-3-91; DVA 5-1993, f. 3-16-93, cert. ef. 3-21-93; DVA 7-1995, f. & cert. ef. 7-21-95; DVA 10-1995, f. 9-11-95, cert. ef. 9-22-95; DVA 12-1995, f. & cert. ef. 9-22-95; DVA 6-2005, f. & cert. ef. 10-24-05; DVA 3-2007, f. & cert. ef. 9-25-07

274-020-0381

Rental

The Director may approve the rental of a security, defined as a first lien interest of a home or farm, that has been occupied by the veteran as long as the rental shall not affect the tax exempt status of bonds issued by the Department. The Director, when determining whether to approve the rental of a home or farm that serves as security for a Department Loan, may consider the following factors including but not limited to the following:

- (1) The effect on the tax-exempt status of bonds issued under Article XI-A of the Oregon Constitution.
- (2) Whether the home or farm was and is appropriately used as the principal residence of the borrower(s).
- (3) The financial integrity of the loan program.
- (4) Any potential decrease in the value of the security.
- (5) The impact on remedies available under the loan documents.
- (6) Whether or not there has been or will be any material change in the borrower's/spouse's employment.
- (7) The dissolution or annulment of the borrower's marriage.
- (8) A significant geographical relocation by the borrower.
- (9) Any unusual hardship for the borrower(s).
- (10) The borrower(s) ability to maintain the home or farm as his or her principal residence.

Stat. Auth.: ORS 406.030, 407.115 & 407.385
 Stats. Implemented: ORS 407.385
 Hist.: DVA 1-2000, f. & cert. ef. 1-24-00

274-020-0382

Interest Rate Payable When Property Transferred Back to Original Borrower

The interest rate on a loan secured by property transferred back to the original borrower depends upon whether the original borrower has an outstanding loan, with the interest rate under ORS 407.325 (Rate of Interest Payable by Applicant) at the time of the transfer, and whether the home will be used as the original borrower's principal residence:

(1) If the original borrower does not have an outstanding loan with the interest rate under ORS 407.325 at the time of the transfer, and the home will be used as the original borrower's principal residence, the interest rate will be the rate charged on the loan when made and as periodically adjusted under the "variable" provision of ORS 407.325.

(2) If the original borrower has an outstanding loan with the interest rate under ORS 407.325 at the time of the transfer, or said borrower will not use the home as the borrower's principal residence, the interest rate will be the rate under ORS 407.335 (Rate of Interest Payable by Transferee).

Stat. Auth.: ORS 406 & 407
 Stats. Implemented: ORS 407.275, 407.325 & 407.335
 Hist.: DVA 5-1985, f. 2-26-85, ef. 3-1-85

274-020-0385

Modification of Mortgage

(1) A request for modification of a mortgage must be made in writing by the borrower.

(2) The borrower and the Director shall agree in writing to the terms of the modification, and it shall be recorded in the mortgage records in the county where the security is located.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407.115 & 407.155
 Hist.: DVA 22, f. 11-15-57, ef. 11-14-57

274-020-0386

Temporary Reduction of Payments

(1) In the event a veteran is unable to make required loan payments due to loss of income because of illness, injury, death, involuntary job loss, or economic stress due to factors beyond the veteran's control, the veteran may apply for a temporary reduction of payments, provided that:

(a) The veteran is the original borrower or one who assumed the loan pursuant to ORS 407.305 (formerly 407.063);

(b) The veteran is residing in the property used as security for the loan at the time he or she requests the payment reduction;

(c) The veteran must request the loan reduction by writing to the Director of Veterans' Affairs, c/o Collection Unit, 700 Summer Street, N.E., Salem, OR 97310. The written request must contain a statement describing the reason for the request, current income, source of income, and must be accompanied by a copy of the veteran's previous two years' federal income tax returns;

(d) The veteran must furnish any other documentation requested by the director relating to the reason for request.

(2) In determining the amount and term for reducing loan payments, the director shall consider the value of the security, the balance owing on the loan, the total assets of the borrower, past payment record of the borrower, and any other matters related to financial hardship to the borrower and the financial position of the loan program:

(a) Monthly loan payments may not be reduced to an amount less than the monthly loan cancellation life insurance premiums;

(b) The director may recapture the reduced portion of the monthly payment and any other accrued delinquency by whatever repayment methods are appropriate to individual circumstances;

(c) The terms and conditions of the payment reduction and repayment must be agreed upon, in writing, and approved by both the veteran and the director;

(d) The veteran may be required to submit information periodically regarding his income and financial affairs in order to reevaluate the necessity of continuing the reduction in payments. Following such reevaluation, the loan payment reduction may be modified by the director;

(e) The veteran must continue to reside in the loan security.

(3) A veteran whose loan is in foreclosure is not eligible under this program.

(4) Temporary reduction of loan payments is a benefit to be extended only in an extreme emergency and is not to be abused.

(5) Because of the effect of these reductions on the solvency of the loan program as a whole, on the probable financial position of the program in the future, on the condition of the tax-exempt bond market, and on other borrowers in the program, the director has determined that the maximum number of borrowers that can be accommodated under this program is approximately one percent of the total outstanding borrowers. Therefore, at any time, the director will enter into agreements as provided in subsection (2)(c) of this rule with no more than one percent of the total loan portfolio, the number to be specified by the director.

Stat. Auth.: ORS 406.030, 407.095 & 407.115
 Stats. Implemented: ORS 406.030, 407.095 & 407.115
 Hist.: DVA 4-1982(Temp), f. & ef. 2-9-82; DVA 18-1982, f. & ef. 8-2-82; DVA 7-1996, f. & cert. ef. 7-22-96

274-020-0387

Reamortization of Loans

The Director of Veterans' Affairs may adjust payments and other terms of the loan under the following conditions:

(1) Tax adjustments.

(2) A change in the interest rate.

(3) A change in the insurance premiums.

(4) Errors or omissions on the operative loan documents.

(5) When the balance of the loan will not amortize within the terms of the security document.

(6) Any expenditure or advance of funds as provided under ORS 407.135 (formerly 407.080), 407.145(2) (formerly 407.090(2)), and the security document.

Stat. Auth.: ORS 406 & 407

Stats. Implemented: ORS 407.095, 407.135 & 407.145

Hist.: DVA 9-1982(Temp), f & ef. 4-9-82; DVA 12-1982, f. & ef. 5-17-82; DVA 7-1996, f. & cert. ef. 7-22-96; DVA 2-2005, f. & cert. ef. 4-22-05

274-020-0388

Property Tax Amortization and Escrow Accounting

(1) Except as otherwise provided herein, payments required on all loans shall include an amount, which represents advances, for taxes paid by the Director of Veterans' Affairs (director) on the security:

(a) The amounts shall be determined each year by dividing the amount advanced by the number of loan payments due during the year, increased to the next whole dollar;

(b) The amounts so determined shall be added to and become part of the loan payment unless full payment of the advance is made pursuant to subsection (c) or (d) of this section;

(c) As soon as possible after taxes are paid on November 15th of each year, the director may notify each borrower by mail of the amount of the tax advance. If full payment of the tax advance is made to the director, the amount determined in subsection (a) of this section shall be deleted from the loan payments. Upon such payment the borrower shall be credited with prior loan payments made to the extent of the amounts contained therein that represent repayment of the tax advance;

(d) If for any reason the taxes cannot be paid on November 15th, the director will send the notice as provided in subsection (c) of this section as soon as possible after the taxes are paid;

(e) Effective with taxes paid in November of 1990 (1990–91 taxes) through November of 2003 (2003–2004 taxes), the director generally did not advance funds for the payment of taxes on property that was security for a loan being charged less than seven percent interest unless an escrow account had been established on the loan for the payment of taxes. The interest rate charged was the “loan rate” or “composite rate” where more than one loan (with different interest rates) is secured by the property;

(f) Effective with taxes (including delinquent taxes) to be paid in November of 2004 (2004–2005 taxes), the director may approve a borrower's request to advance funds for the payment of taxes on property that is security for a loan unless an escrow account had been established on the loan for the payment of taxes. The interest rate being charged is the “loan rate” or “composite rate” where more than one loan (with different interest rates) is secured by the property;

(g) Notwithstanding the provisions of subsection (1)(e) and (1)(f) of this rule, the director may advance funds for the payment of taxes on property that is security for a loan under the provisions of the Servicemembers Civil Relief Act. In addition, the director may advance funds to pay property taxes if sufficient funds are not available in the escrow account, by overdrawing the escrow account balance.

(2) The director may allow owners of the security to directly pay the taxes and hazard insurance due on the security, subject to the following conditions:

(a) For existing accounts or qualified assumptions of existing accounts, the owner of the property must make written application to the director on a form prescribed by the director. Said application also must conform with the following:

(A) The application must be submitted by September 1st of the year application is made;

(B) At the time of application, payments on the loan must be current and the applicant's credit history must be satisfactory as determined by the director at his sole discretion; and

(C) The loan balance, including any accruals, at the time of application must not be more than 80 percent of the “real market value” of the security as shown by the county tax assessor.

(D) If a request is approved, any funds the director holds in an applicable escrow account, which are not scheduled for disbursement

will be returned to the borrower and the borrower will be responsible for any future disbursements.

(b) For new loan applications, the applicant must make written request to the director. Said application also must conform with the following:

(A) The loan-to-value ratio must be 80 percent or less of the net appraised value;

(B) The loan must have no restrictions by virtue of mortgage insurance that the lender pay taxes and insurance.

(3) All applications, for permission to pay taxes and hazard insurance directly, will receive a written approval or disapproval from the director. If the application is approved, the applicant will be advised of the date when the director will discontinue making disbursements, if applicable and the date the loan payment will be adjusted, if necessary.

(4) The director may revoke any permission granted concerning the payment of taxes and hazard insurance on the security by giving the owner of the security 30 days written notice of the revocation, except as otherwise provided herein. If the director advances funds to pay unpaid taxes or hazard insurance, any advance by the director for such a shortage or deficiency also will constitute immediate revocation by the director of permission for the owner to pay directly any taxes and hazard insurance due on the security, and the account will revert to the last signed agreement between the director and borrower for the payment of taxes, hazard insurance and other obligations. Any advances by the director, including any interest and fee, shall be paid back within the remaining payment/escrow year. The borrower may not change this obligation without prior written approval from the director.

(5) Sections (1), (2), (3) and (4) of this rule are not applicable to payments made under contracts for the purchase of state-owned property. Contract purchaser(s) may prepay the current year's property taxes in a lump sum and have the tax portion removed from the following year's payment(s).

(6) Monthly simple interest home improvement loans are handled as follows:

(a) If the borrower has an existing account with ODVA the taxes will continue to be paid per the terms of that account;

(b) When an existing account is paid in full and the loan-to-value ratio (LTV) is 80 percent or less of the net appraised value, the borrower may at the director's discretion pay their own taxes directly to the county and the borrower may at the director's discretion pay their own hazard insurance;

(c) If the borrower does not have an existing account and the LTV is greater than 80 percent, the borrower must pay their taxes and hazard into an escrow account as part of their standard payment.

(7) Pursuant to the provisions of ORS 407.169, beginning November 1, 1990, escrow accounts are available for the prepayment of estimated property taxes and insurance. All borrowers with loans, and all purchasers buying property from the director on a land sale contract, based on a daily simple interest calculation, may make prepayments of estimated property taxes into an escrow account, subject to the following conditions:

(a) The owner of the property must make written application to the director on a form prescribed by the director;

(b) Applicants will have the option of either repaying the previous year's tax advance as provided by section (1) of this rule, or of permitting said tax advance to remain part of the principal balance on the loan with the payments of said loan adjusted to repay the tax advance with interest over the remaining life of the loan.

(8) On monthly simple interest loans with escrow accounts, the required escrow payment may be based, inter alia, on the preceding year's disbursements for such items as property taxes, fire and extended coverage premiums, other required insurance premiums, condominium/homeowners dues, and bankrofted amounts. In cases of un-assessed new construction, the estimate may be based, inter alia, on the assessment of comparable residential property in the market area.

(9) The director will pay interest on the escrow account as provided by ORS 86.245(1).

(10) Effective May 24, 1995, all escrow accounts on monthly simple interest loans and tax escrows on daily simple interest loans will be administered in the following manner:

(a) The director may require a cushion that shall be no greater than 1/6 of the estimated total annual disbursements from the escrow account. Estimated disbursements may be modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items);

(b) At the end of an escrow account computation year, an aggregate analysis will be completed on each escrow account to determine the borrower's escrow account payment(s) for the new payment year. The borrower will be notified of any shortage, deficiency, or surplus in the escrow account and the amount of escrow account payment to be included in the loan payment;

(c) If the loan is two months or more delinquent in payments an analyzes will not be done until the loan is brought current.

(d) If the analysis determines there is not sufficient money in the escrow account to pay the required disbursements, the shortage or deficiency may be advanced by the director. The required escrow payments on the loan will be increased to recover any interest, fee or advance by the director for such a shortage or deficiency, or the borrower may repay the advance, interest or fee in a lump sum;

(e) If the analysis determines there is a surplus in the escrow account equal to or greater than \$25, the entire surplus shall be refunded to the borrower. If the surplus is less than \$25, this amount will be retained in the escrow account and credited against the next year's escrow payments;

(f) A statement itemizing all escrow account activity, (annual escrow statement) will be provided to the borrower each year.

(11) The following definitions apply to section 10 above:

(a) "Aggregate analysis" — to analyze the escrow account by calculating the sufficiency of escrow funds as a whole, as opposed to calculating components separately.

(b) "Cushion" — funds that the director may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account.

(c) "Deficiency" — the amount of a negative balance in an escrow account.

(d) "Escrow account" — any account that the director establishes or controls on behalf of a borrower to pay taxes, insurance premium, or other charges, as applicable.

(e) "Escrow account computation year" — a 12-month period that the director establishes for the escrow account.

(f) "Shortage" — an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis.

(g) "Surplus" — an amount by which the current escrow account balance exceeds the target balance of the account.

(h) "Target balance" — the estimated month end balance in an escrow account that is just sufficient to cover the remaining disbursements from the escrow account in the escrow account computation year, taking into account the remaining scheduled periodic payments, and a cushion.

Stat. Auth.: ORS 86.240, 86.245, 406.030, 407.115, 407.169 & 407.275

Stats. Implemented: ORS 406.030 & 407.275

Hist.: DVA 26-1982(Temp), f. & ef. 10-1-82; DVA 3-1983, f. 1-14-83, ef. 1-15-83; Suspended by DVA 4-1983(Temp), f. & ef. 2-1-83; DVA 10-1983, f. 9-8-83, ef. 2-1-84; DVA 13-1983, f. & ef. 11-1-83; DVA 10-1984, f. 10-8-84, ef. 10-15-84; DVA 9-1985, f. 6-20-85, ef. 7-1-85; DVA 2-1989, f. & cert. ef. 6-1-89; DVA 2-1990, f. & cert. ef. 2-1-90; DVA 1-1991, f. & cert. ef. 5-1-91; DVA 7-1993, f. 5-18-93, cert. ef. 5-21-93; DVA 5-1995, f. 5-23-95, cert. ef. 5-24-95; DVA 11-1995, f. 9-11-95, cert. ef. 9-22-95; DVA 12-1995, f. & cert. ef. 9-22-95; DVA 5-2001, f. & cert. ef. 7-23-01; DVA 1-2004(Temp), f. & cert. ef. 1-15-04 thru 7-13-04; DVA 3-2004, f. & cert. ef. 2-24-04; DVA 2-2005, f. & cert. ef. 4-22-05

274-020-0391

Discount for Early Payoff

(1) The balance on some loans and contracts may be discounted in consideration of the loan or contract being paid in

full before its final payment date. The amount of the discount will be based upon a mathematical computation which uses a discount rate to compute the present value of the remaining scheduled payment stream of the loan or contract being considered for discount. The discounted amount may be further limited by a percentage based calculation determined by the Director. The Director will periodically fix the discount rate and the percentage based calculation, if any, taking into consideration:

(a) Market conditions (reinvestment opportunities);

(b) Financial statement conditions (health of programs);

(c) Cash flow conditions;

(d) Balance and term of the loan or contract being considered for discount.

(2) The loans and contracts that will be discounted and the discount rate will be periodically determined by the Director and the information will be available to all interested persons making inquiry to the Director. The amount of the discount quoted by the Director shall include a per diem amount that must be added to the quoted payoff amount in order to arrive at a payoff amount for a specific day. The quoted discount amount shall be honored for 30 days following the date of the quote.

(3) Any loan or contract that does not amortize on the agreed-to retirement date will be reamortized and a new payment determined prior to the computation of a discount amount. The reamortized payment amount will be used only for the purpose of calculating the amount of the discount.

(4) Discounts shall not be available on loans or contracts being paid in full by the proceeds from Loan Cancellation Life Insurance or hazard insurance.

(5) This rule does not apply to loans or contracts after a default of the loan or purchase agreement has occurred and settlement negotiations are in process.

(6) No discount shall be given where the loan or contract is being paid in full in connection with a change in ownership of the property securing the loan or the property being purchased on contract.

Stat. Auth.: ORS 291.021, 406.030, 407.115, 407.169, 407.177, 407.179, 407.181 & 407.275

Stats. Implemented:

Hist.: DVA 2-1986(Temp), f. & ef. 2-13-86; DVA 8-1986, f. & ef. 8-18-86; DVA 7-1993, f. 5-18-93, cert. ef. 5-21-93

274-020-0395

Partial Release of Security

(1) A partial release of security may be granted when the borrower or the contract purchaser of a State-owned property submits a complete application for one and the Director determines that granting the requested release would not jeopardize the Department of Veterans' Affairs' security position.

(2) The remaining property must qualify as security for the loan or contract balance under the provisions of ORS 407.225(3) and OAR 274-020-0325 to 274-020-0340.

(3) Notwithstanding compliance with section (2) of this rule, the Director may require that the loan or contract balance be reduced as consideration for granting the requested release.

Stat. Auth.: ORS 406 & 407

Stats. Implemented: ORS 407.115 & 407.155

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 35, f. 12-19-68, ef. 1-11-69; DVA 39, f. 5-27-71, ef. 6-25-71; DVA 45, f. & ef. 12-1-75; DVA 8-1985, f. 6-12-85, ef. 7-1-85; DVA 12-1985, f. & ef. 12-5-85

274-020-0405

Confidential Nature of Information Submitted by the Borrower

Information submitted by the veteran in support of his application shall be considered confidential and shall not be disclosed to persons outside the department, unless permission is given by the veteran to release the information, or the information is requested by a public agency in the exercise of its official duty and only then at the discretion of the Director.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407.181 & 407.201

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57

274-020-0410

Confidential Nature of Information Procured by the Director

Information secured by the Director in connection with a veteran's application for a loan shall be considered confidential and shall not be disclosed to persons outside the employ of the department, unless such information is requested by a public agency in the exercise of its official duty, and only then the release shall be at the discretion of the Director.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 192, 406.030, 407.115, 407.181 & 407.201

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57

274-020-0411

Disclosure of Information and Fees

(1) Information in the custody of the Director of Veterans' Affairs (director) will be disclosed, or protected from disclosure, consistent with the provisions of ORS Chapter 192.

(2) Requests for information can be made verbally, but the director reserves the right to require the request to be in writing, signed and dated, naming or describing the information desired and the date the information is needed. A reasonable period of time must be allowed for the custodian of the records to locate and assemble the requested information. Restrictions may be placed upon where the information will be delivered or made available for inspection. The director shall designate a staff employee to be the department's records custodian, whose function is to perform the duties necessary to manage the department's records in accordance with all applicable laws. These duties may include, but are not limited to, certifying records to be true copies of the original documents on file in the custody of the director.

(3) Mailing lists of Oregon Department of Veterans' Affairs (ODVA) active account holders, and Vets News recipients, may be made available upon payment of the required fee. The mailing lists will not contain the names of persons who submit a written request for deletion of their name from the list on the basis that such disclosure would constitute an unreasonable invasion of privacy.

(4) The following information will not be disclosed except pursuant to an order issued by the director or by the Attorney General of the State of Oregon:

(a) Internal communications of an advisory nature preliminary to any final agency determination of policy or action;

(b) The name of a confidential informant or information submitted to the department in confidence where submission of the information was not required and the department has obliged itself in good faith not to disclose the information.

(5) The following information will not be disclosed except pursuant to an order issued by the Attorney General:

(a) Information relating to the appraisal of real and personal property prior to making a loan secured by that property;

(b) Information of a financial, medical, or personal nature relating to any individual, if such disclosure would constitute an unreasonable invasion of privacy.

(6) Fees will be charged to reimburse the department the cost of making information available or for producing copies of records:

(a) For mailing lists, the fee is derived from the actual production costs. The lists are available in alphabetical or zip code order;

(b) The director may require reimbursement for any additional costs actually incurred by the department;

(c) For all requests for copies of documents, the charge is based on the actual costs incurred for search of files and for documents provided;

(d) For necessary safeguard of documents where a requestor is allowed to research records on department premises, a staff employee, designated by the director, must be present. The fee to be charged for this service will be equal to the hourly pay of the employee designated. In appointing an employee to safeguard departmental records, the director shall consider whether the pay range of the designated employee is reasonable and appropriate, reflecting the technicality and sensitivity of the documents being researched;

(e) The director may waive the fees provided in subsections 6(a), 6(c) and 6(d) of this rule for city, county, state, and federal

agencies, and for individuals obtaining information from their own files;

(f) The director may require payment of any and all fees identified in this section, in a form satisfactory to the director, prior to providing any disclosure of documents or information. Advance charges for anticipated labor expenses may be made by the director on an estimated basis.

(7) The purchase of a mailing list does not constitute permission to use ODVA's name in any marketing or advertising approach, whether expressly stated, inferred or implied.

Stat. Auth.: ORS 192, 406.030 & 407.115

Stats. Implemented: ORS 192, 406.030 & 407.115

Hist.: DVA 29-1982, f. 12-30-82, ef. 1-1-83; DVA 8-1984, f. 8-6-84, ef. 8-15-84; DVA 6-1986, f. & ef. 5-1-86; DVA 3-1988, f. 6-30-88, cert. ef. 7-1-88; DVA 6-1989, f. & cert. ef. 12-1-89; DVA 2-1993, f. & cert. ef. 1-4-93; DVA 8-1996, f. & cert. ef. 9-23-96; DVA 2-2005, f. & cert. ef. 4-22-05

274-020-0420

Director's Decisions Control in All Controversies

(1) The Director shall make all determinations as to the applicant's eligibility for a loan.

(2) The Director shall make all determinations, based upon data and information in the file, as to whether the property offered is acceptable security and whether or not a loan shall be made.

(3) The Director's decision shall be final in all matters pertaining to eligibility and the making of a loan.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 407.115, 407.125 & 407.225

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 3-1981(Temp), f. 4-3-81, ef. 4-6-81; DVA 6-1981(Temp), f. & ef. 8-13-81; DVA 3-1988, f. 6-30-88, cert. ef. 7-1-88

274-020-0421

Review of Loan Determinations and Other Decisions

(1) Any person adversely affected by a decision of a DVA official may write a letter of complaint to the Director. The Director or other designated official shall prepare and deposit in the ordinary mail, or personally deliver, a written response within 30 days of receipt of the written complaint.

(2) If the Director, or other designated official supports the decision, a request may be made for an informal hearing with a designated official at the Salem Central Office of the DVA.

(3) A request for an informal hearing shall be addressed to the Director and shall state the nature of the adverse decision, the date of and the person making the decision, and how the person requesting the hearing is adversely affected. A request for an informal hearing must be received by the Director within 60 days of the date of mailing or personal delivery of the response, provided for by section (1) of this rule. If no letter of complaint was ever written, the requirement for a letter of complaint may be waived, and the request for an informal hearing considered if the request is received by the Director within 90 days of the date of the decision leading to the request for an informal hearing. Unless ODVA received written notice of a complaint, the right to a hearing (both informal and contested) shall expire 90 days after the date the complainant had actual knowledge of, or by the exercise of due care would have had knowledge of, the occurrence in dispute.

(4) Within 30 days from receipt of a request for an informal hearing, the Director shall, by mail, notify the person making the request of the action taken on the request which may be:

(a) Designating an official to conduct an informal hearing;

(b) Reversing or modifying the adverse decision;

(c) Denying the request.

(5) Any denial of a request for an informal hearing shall state the reason for the denial. A request for an informal hearing may be denied if the Director finds:

(a) Litigation involving the issue in dispute is pending or imminent;

(b) The person making the request is not the person who would directly benefit from a modification or reversal of the adverse decision (not the real party in interest);

(c) A modification or reversal of the decision would affect persons who would not be bound by the modification or reversal (the Director is lacking power to resolve the dispute);

(d) The request was not received by the Director within the time allowed by section (3) of this rule.

(6) If an official is designated to conduct an informal hearing, the person requesting the hearing shall be notified by mail of the name and title of the official designated and the time and place for the hearing. A time for the hearing must be scheduled within 60 days of the hearing request unless otherwise mutually agreed by the parties.

(7) After conducting an informal hearing, the designated official shall prepare and submit to the Director for approval a written decision. Within 30 days after conducting an informal hearing, a decision approved by the Director shall be mailed to the person for whom the hearing was conducted.

(8) A decision of the designated official, after approval by the Director, shall be final except when, as defined by ORS 183.310(2), a "Contested Case" exists.

(9) When a "Contested Case" exists, and a contested case hearing is desired, it must be requested in writing and the request received by the Director within 20 days of the date of the mailing of the decision of the designated official if an informal hearing has been held, or within 20 days of service of the notice in a contested case under ORS 183.415.

(10) Contested case hearings will be conducted in accordance with the provisions of ORS 183.413 to 183.470 and the Attorney General's Model Rules of Procedure, OAR 137-003-0001 to 137-003-0092.

Stat. Auth.: ORS 183, 406.030 & 407.115

Stats. Implemented: ORS 183, 406.030 & 407.115

Hist.: DVA 6-1982(Temp), f. & ef. 3-11-82; DVA 10-1982, f. & ef. 4-15-82; DVA 1-1987, f. & ef. 3-16-87; DVA 6-1990, f. & cert. ef. 11-26-90

274-020-0430

Effect

These rules and regulations shall have the effect of law and shall be binding in all instances on persons making application for a loan under Article XI-A of the Oregon Constitution and ORS 407.075 to 407.595, but if any part of the regulations are found to be void or illegal, the illegality shall not affect the remaining provisions of the rules and regulations.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406 & 407

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 3-2007, f. & cert. ef. 9-25-07

274-020-0440

Fees

(1) The Director of Veterans' Affairs (director) imposes fees for the following:

- (a) New Loan;
- (b) Assumption by Eligible Veteran;
- (c) Transfer of Ownership;
- (d) Partial Release, Easement, and Modification of Mortgage;
- (e) Timber Release;
- (f) Firewood Release;
- (g) Purchase of State Owned Property;
- (h) Dishonored Check;
- (i) Reissue of Stale, Lost, Destroyed or Missing Document;
- (j) Mineral Rights and Geothermal Resource Rights Release;
- (k) Veterans' Home Improvement Loan;
- (l) Borrower requests to cancel private mortgage insurance;

and

- (m) Dishonored Electronic Funds Transfer.

(2) The fee will not be waived or reduced except when in the director's opinion, requiring the fee would cause an undue hardship. In the case of a dishonored check, the fee will be waived if the check was dishonored because of a bank error.

(3) Fee Schedule:

- (a) New Loan:

(A) A credit report fee may be charged in an amount not to exceed the amount charged by the credit reporting firm. A credit

report fee may be charged for each applicant unless a co applicant is the applicant's spouse;

(B) An appraisal report fee may be charged in an amount not to exceed the amount charged by the appraiser;

(C) In the event of cancellation of the application after acceptance for processing and collection of credit report and appraisal fees, any money not used or obligated for credit reports or appraisals shall be refunded;

(D) A loan fee shall be charged on a conventional loan not to exceed 2 percent of the loan amount;

(E) Flood determination fee for each loan may be charged in an amount not to exceed the amount charged by the flood determination company;

(F) A processing fee in the amount of \$495 will be charged for processing, document preparation, or other services permitted by the director that are usual and customary in the mortgage industry.

(b) Assumption by an eligible veteran under ORS 407.305. Effective with applications received on or after July 1, 1985, the director shall charge a fee of 1.125 percent of the total of the unpaid balance plus any new funds loaned. The minimum service fee shall be \$100;

(c) Transfer of Ownership:

(A) The fee for transfer shall be:

(i) Through June 30, 1985, 1 percent of the unpaid balance;

(ii) Effective July 1, 1985, 1.125 percent of the unpaid balance;

(iii) Effective May 1, 1992, \$450.

(B) No fee will be charged when a transfer results from:

(i) Divorce;

(ii) Death;

(iii) Marriage;

(iv) Transfer of the interest of one or more current owners to the other owner or owners; or

(v) Transfer to a relocation company on an unrecorded contract.

(d) Partial Release, Easement, and Modification of Mortgage. The director will charge the following fees:

(A) \$450 plus the cost of an appraisal for a partial release or modification of mortgage on an urban property. The appraisal fee will be refunded to the applicant if the request is withdrawn before the director is obligated to an appraiser for the cost of a property appraisal;

(B) \$450 plus the cost of an appraisal for a partial release or modification of mortgage on a farm property. The appraisal fee will be refunded to the applicant if the request is withdrawn before the director is obligated to an appraiser for the cost of a property appraisal;

(C) \$50 for consenting to an easement;

(D) \$100 for partial release involving release of a mobile home which is to be replaced with another home;

(E) \$1,100 for a partial release involving release of water rights. \$1,000 of the \$1,100 fee will be refunded if the request is withdrawn before the director is obligated to an appraiser for the cost of a property appraisal;

(F) \$50 for processing request to relocate personal property mobile home;

(G) A larger fee may be charged in complex cases to cover extra processing costs; and

(H) A fee for the partial release of property to a government entity for public use as noted in ORS 407.275. This fee may be modified or waived at the discretion of the director.

(e) Timber Release:

(A) The director shall charge \$200 for a release of more than 7,500 and less than 30,000 board feet of timber. No refund will be made after application. The director shall charge \$1,200 for a release of 30,000 board feet or more of timber. \$1,000 of the \$1,200 fee will be refunded to the applicant if the request is withdrawn before the director is committed to an appraiser for the cost of a property appraisal. One release of up to and including 7,500 board feet of timber will be allowed each calendar year without a fee being charged;

(B) An increased fee may be charged in complex cases to cover extra costs.

(f) Firewood Release:

(A) The director shall charge \$200 for a release of more than six and less than 20 cords of firewood. No refund will be made after application. The director shall charge \$1,200 for a release of 20 cords or more of firewood. \$1,000 of the \$1,200 fee will be refunded to the applicant if the request is withdrawn before the director is committed to an appraiser for the cost of a property appraisal. One release of up to and including six cords of firewood, will be allowed each calendar year without a fee being charged;

(B) An increased fee may be charged in complex cases to cover extra costs.

(g) Purchase of State Owned Property:

(A) A credit report fee may be charged equal to the amount charged by the credit reporting firm. A credit report fee may be charged for each applicant unless a co applicant is the applicant's spouse;

(B) A fee of 1.125 percent shall be charged on the amount of the contract on all properties whether or not the purchaser is a veteran. The minimum fee will be \$250. There will be no fee for a cash sale. If improvements in lieu of a cash down payment are part of the purchase agreement, a \$50 fee will be charged for any necessary completion inspection(s) after the first one. The provisions of section (4) of this rule apply to any fee charged;

(C) In the event of cancellation of an offer after acceptance for processing by Loan Processing, but prior to approval, all of the earnest money deposit except \$200 shall be refunded (\$200 to be retained by the director). If an application is canceled after approval, the full amount of the earnest money deposit shall be retained by the director;

(D) Notwithstanding the provisions of paragraph (3)(g)(C) of this rule, the director may refund all of the earnest money deposit if cancellation of the application was necessitated by some unexpected event such as redemption of the property before closing, or the death, disappearance, serious injury, serious illness, job loss, or job transfer of one or more of the parties to the transaction. Parties to the transaction include members of the immediate family.

(h) Dishonored Check. Whenever a bank check issued in payment of an obligation due to the Director of Veterans' Affairs is dishonored by the bank upon which the check is drawn, a fee in the amount of \$25 will be charged. If two dishonored checks are received from the same borrower within a 12 month period, the director may require this borrower to make all future payments by cash, money order, cashier's check or certified check;

(i) Reissue of Stale, Lost, Destroyed or Missing Document. Whenever a document issued by the director must be reissued because it has been outstanding too long without being used, or has been lost, destroyed or for some other reason is missing, a fee in the amount of \$25 may be charged for this service. "Document" means deed, satisfaction of mortgage, satisfaction of judgment, request for reconveyance, reconveyance, assumption agreement, contract, partial release, modification of mortgage, escrow closing papers (or some other document substantially the same as the ones enumerated). This fee may be waived if there is good reason to believe that the person requesting the reissue was not responsible for the delay that caused the document to become stale or for the disappearance of the original issue;

(j) Release of Mineral Rights and Geothermal Resource Rights. The director may charge a fee of \$150 for processing an application for release of mineral and geothermal resource rights. From this fee, ODVA will pay the cost of recording any document issued. An additional \$100 may be charged if the nature of the application requires a review by the Division of State Lands to determine the mineral and geothermal resource potential. A check or money order in the amount of \$100 made payable to the Division of State Lands will be required when the Division of State Lands review is necessary.

(k) Veterans' Home Improvement Loan:

(A) A credit report fee may be charged for residential mortgage credit reports in an amount not to exceed the amount charged by the credit reporting firm;

(B) An appraisal report fee may be charged in an amount not to exceed the amount charged by the appraiser;

(C) A flood determination fee may be charged in an amount not to exceed the amount charged by the flood determination company; and

(D) Any other fees, that may be incurred by ODVA, may be charged in an amount not to exceed the amount charged by the provider of the service.

(l) Borrower requests to cancel private mortgage insurance. The director may charge a \$100 inspection fee. In the event a full appraisal is necessary to establish value, and it is requested by the borrower, the \$100 inspection fee will be credited toward the cost of the appraisal.

(m) Dishonored Electronic Funds Transfer. Whenever an electronic funds transfer (also known as ACH) is authorized for payment of an obligation due to the Director of Veterans' Affairs and is dishonored by the bank upon which the funds transfer is drawn, a fee in the amount of \$25 will be charged. If two dishonored electronic funds transfers are received from the same borrower within a 12 month period, the director may require this borrower to make all future payments by cash, money order, cashier's check or certified check.

(4) Fees will be collected in advance (except for dishonored checks and electronic funds transfers). Where the director was not made a party to a transaction requiring payment of a fee, and the fee was not paid, the fee is due on demand. If payment is not made after 30 days written notice, it may be added to the amount due on the loan. The fee for dishonored checks may be added to the amount due on the loan when the check is returned by the bank. Any fee added to the amount due on the loan shall bear interest at the same rate as on the principal indebtedness. "Loan" means "contract" where context requires.

Stat. Auth.: ORS 406.030, 407.115, 407.135, 407.145, 407.275 & 742.282

Stats. Implemented: 407.135, 407.145 & 407.275

Hist.: DVA 5-1982(Temp), f. & ef. 2-12-82; DVA 16-1982, f. & ef. 6-1-82; DVA 29-1982, f. 12-30-82, ef. 1-1-83; DVA 1-1983, f. 1-14-83, ef. 1-15-83; DVA 9-1983, f. & ef. 7-1-83; DVA 15-1983, f. 12-20-83, ef. 1-1-84; DVA 7-1984, f. 7-25-84, ef. 8-15-84; DVA 7-1985, f. 5-22-85, ef. 7-1-85; DVA 4-1988, f. & cert. ef. 8-15-88; DVA 3-1989, f. & cert. ef. 8-16-89; DVA 5-1990, f. 8-20-90, cert. ef. 10-1-90; DVA 5-1991, f. 7-23-91, cert. ef. 7-24-91; DVA 7-1991, f. 10-31-91, cert. ef. 11-1-91; DVA 7-1992, f. & cert. ef. 5-1-92; DVA 12-1992(Temp), f. & cert. ef. 8-19-92; DVA 3-1993, f. & cert. ef. 1-4-93; DVA 5-1993, f. 3-16-93, cert. ef. 3-21-93; DVA 7-1995, f. & cert. ef. 7-21-95; DVA 10-1995, f. 9-11-95, cert. ef. 9-22-95; DVA 12-1995, f. & cert. ef. 9-22-95; DVA 5-1997, f. & cert. ef. 10-22-97; DVA 1-1998(Temp), f. 1-26-98, cert. ef. 2-2-98 thru 7-31-98; DVA 7-1998, f. & cert. ef. 6-23-98; DVA 3-1999, f. & cert. ef. 9-22-99; DVA 6-2001(Temp), f. 9-7-01, cert. ef. 9-10-01 thru 3-8-02; DVA 2-2002, f. & cert. ef. 2-22-02; DVA 2-2005, f. & cert. ef. 4-22-05; DVA 3-2007, f. & cert. ef. 9-25-07; DVA 2-2012, f. & cert. ef. 6-25-12; DVA 3-2015(Temp), f. & cert. ef. 10-12-15 thru 4-8-16; Administrative correction, 4-29-16

274-020-0445

Assumption of Loan by Eligible Veteran

When a veteran who is eligible to assume a loan under the provisions of ORS 407.305 seeks to acquire property and wishes to assume liability on the loan, the Director of Veterans' Affairs will approve the assumption subject to the following conditions:

(1) The applicant must submit the same evidence of eligibility and the same application as if an application were being submitted for a loan.

(2) The provisions of ORS 407.225(3) do not apply except when additional funds are being requested. If additional funds are not being requested, the applicant may be permitted to assume a loan with a balance in excess of 97 percent of the appraised value on homes which are real property, 85 percent of the appraised value on homes which are not real property, and 90 percent of the appraised value on farms.

(3) Notwithstanding the provisions of OAR 274-20-440, if additional funds are not being requested, an appraisal fee will not be collected by the director, and no appraisal of the property will be made. If additional funds are being requested, the provisions of

ORS 407.225(3) and OAR 274-20-440 shall apply, and an appraisal of the property will be made.

Stat. Auth.: ORS 406.030, 407.115, 407.225, 407.275 & 407.305

Stats. Implemented: Ch. 238 OL 1995, ORS 407.225 & 407.275

Hist.: DVA 9-1984, f. 8-6-84, ef. 8-15-84; DVA 10-1995, f. 9-11-95, cert. ef. 9-22-95; DV 12-1995, f. & cert. ef. 9-22-95; DVA 3-2003(Temp), f. & cert. ef. 4-7-03 thru 10-3-03; DVA 11-2003, f. & cert. ef. 9-23-03; DVA 3-2007, f. & cert. ef. 9-25-07

274-020-0450

Due on Sale

(1) By ORS 407.335(5) the Director has discretion to decide when a second sale or transfer of the property, or any part thereof, securing an ODVA loan, will cause the entire balance of the loan to be immediately due and payable.

(2) Effective with sales, or transfers of ownership, occurring after June 30, 1989, the Director will not declare the entire unpaid balance on any loan to be immediately due and payable because of a second sale, or transfer of ownership, of the property or any part thereof, securing the loan.

Stat. Auth.: ORS 406 & 407

Stats. Implemented: ORS 407.335

Hist.: DVA 4-1989, f. & cert. ef. 10-4-89

DIVISION 21

FORECLOSED AND DEEDED PROPERTY

274-021-0005

Foreclosed and Deeded Property

(1) When properties acquired under ORS 407.135 and 407.145(1) are being sold pursuant to the provisions of ORS 407.375, the sale will be under the following terms:

(a) Must be offered first by sealed bid.

(b) Must be advertised in the local newspaper and comply with the following:

(A) Published at least once during the 15 days prior to the bid opening;

(B) Advise prospective buyers that of the bidders who are persons meeting the eligibility requirements under Article XI-A of the Oregon Constitution (eligible veteran), the one who submits the highest bid shall be given the opportunity to purchase the property for the amount of a higher bid submitted by the highest bidder who is not eligible for a veterans loan. In order to be given an opportunity to match a higher bid, a bidder eligible for a loan under Article XI-A of the Oregon Constitution will have a specified time to match highest bid. The matching bid must be made in writing by 5 p.m. on the date and at the place specified in the notification. The matching bid opportunity is only available to a veteran purchasing the property solely in his or her own name, or with a lawful spouse. If the highest bid is not matched by a person eligible for a loan under Article XI-A of the Oregon Constitution, the highest bid will be accepted;

(C) State the minimum bid that will be accepted.

(2) When properties acquired under ORS 407.135 and 407.145(1) are being sold pursuant to the provisions of ORS 407.377, the sale will be under the following terms:

(a) The person with whom the Director of the Oregon Department of Veterans' Affairs ("ODVA" or the "Department") has entered into a personal services contract must post a "for sale" sign on the property; and

(b) The property must be advertised for sale at least once in a newspaper of general circulation in the locality where the property is located.

(3) Interest rate:

(a) The Director will prescribe interest rates for contract sales of ODVA properties. The Director may apply different rates of interest to different contract sales. Factors that the Director may consider in prescribing contract interest rates may include, but are not limited to the following:

(A) The current value of funds;

(B) The projected value of funds;

(C) The solvency of the Department's Loan Program;

(D) The rates' effect on veterans and other purchasers;

(E) Any federal tax law restrictions;

(F) Actual or projected conventional mortgage rates;

(G) The availability of lendable funds;

(H) Actual or projected demand for ODVA properties;

(I) The source(s) of funds; and

(J) Whether or not the purchaser is providing any approved "work equity" as part of the down payment on the contract.

(b) The Director may change the prescribed rates of interest from time to time to reflect changes in the Director's consideration of relevant factors.

(c) The Director will have the prescribed interest rate(s) published in the Department's Tables and Codes Manual. This publication will be available for viewing at the Oregon Department of Veterans' Affairs, 700 Summer Street NE, Salem, Oregon, during regular business hours.

(d) The interest rate on contracts with approved work equity is subject to the provisions of subparagraph (4)(b)(B)(i) of this rule;

(e) After the original purchase from the State of Oregon, each time ownership of the property is transferred to anyone (veteran or nonveteran), other than the surviving spouse, unremarried former spouse, surviving child, or surviving stepchild of the owner, the interest rate from the date of such transfer shall be the same as the then-prevailing interest rate under subsection (3)(a) of this section, or the existing interest rate on the contract, whichever is higher;

(f) The Director may modify the terms of the contract if agreeable to all parties.

(4) Each property will be sold on contract unless the Director finds that in a particular transaction it would be in the best interest of the Department that the property be sold on a Deed of Trust, or for cash. The terms of all sales will be as follows:

(a) Length:

(A) The maximum length of the contract will be established by the purchase price, as follows:

(i) \$63,000 and over — 30 years;

(ii) \$35,000–\$62,999.99 — 25 years;

(iii) \$15,000–\$34,999.99 — 20 years;

(iv) \$10,000–\$14,999.99 — 10 years;

(v) Under \$10,000 — 0 years (Cash Out Only).

(B) The Director may enter into a contract with terms different from the ones prescribed in this rule if the provisions of ORS 407.375(6) apply (no satisfactory bid received and sale negotiated).

(b) Down Payment:

(A) The term "purchase price" as used in this rule shall mean the actual purchase price agreed to by the purchaser and the Director;

(B) The Director may accept improvements of the property by the purchaser in lieu of other means of satisfying the down payment requirement, in which case the provisions of ORS 407.375(4) will apply and improvements in lieu of a cash down payment shall be subject to the following conditions and limitations:

(i) The interest rate on such a contract shall be one percent higher than the otherwise applicable contract interest rate in effect at the time of purchase, until the required improvements have been completed, inspected, and a completion letter appropriately issued. After the required improvements have been completed, inspected, and a completion letter has appropriately been issued the Director will lower the interest rate to the otherwise applicable contract interest rate, adjust the payment to reflect the lower rate, and amortize the remaining principal balance within the remaining term of the contract, provided that the purchaser has complied with the occupancy requirements provided by section (9) of this rule. The adjusted payment will be effective on the first day of the second full month following the Director's written approval of the completed improvements;

(ii) Improvements in lieu of a cash down payment will not be allowed unless the contract purchaser will occupy the property being purchased as provided by section (9) of this rule;

(iii) Improvements in lieu of a cash down payment will not be allowed unless the value added to the property by completed improvements is \$500 or more;

(iv) The Director will not consent to an assignment of the contract until the required improvements have been completed to the sole satisfaction of the Director or payment of what the original down payment would have been at the time of purchase or the new owner of the property signs an agreement agreeing to complete the improvements;

(v) If the purchaser fails to complete all of the improvements within the time allowed by the Director or fails to make the property available for inspection by the Director's representative, the Director will give the purchaser 30 days notice to either complete all of the improvements or to pay a cash down payment. The down payment will be the amount the purchaser would have been required to pay if the property had been purchased without approved work equity. The Director will not give any allowance for completion of a portion of the improvements. If purchaser elects to make a cash down payment in lieu of completing improvements, the Director will lower the interest rate one percent to the base contract interest rate at the time of purchase, reamortize the remaining principal balance on the account, and adjust the principal and interest portion of the regular payment accordingly. Failure to complete all of the improvements or pay a cash down payment will constitute a default under the terms of the Contract of Sale. Thereafter, the Director may exercise any or all of the default remedies stated in the contract.

(C) The minimum down payment required will be established by whether the property will be owner-occupied, whether the property is classified as farm, residential, personal property, unique, unusual, or bare land, the asking price and the purchase price, as follows:

(i) Residential — Asking price less than \$80,000 — Five percent down payment if owner-occupied, otherwise 15 percent down payment. In cases where the purchase price is different than the asking price, the percentage (five or 15) will be applied to the purchase price;

(ii) Farm, Mobile Home With Land, Bare Land, Residential — Asking price \$80,000 or more — 10 percent down payment if owner-occupied, otherwise 20 percent down payment. In cases where the purchase price is different than the asking price, the percentage (10 or 20) will be applied to the purchase price;

(iii) Personal Property Mobile Home or Floating Home — 20 percent down payment if owner-occupied, otherwise 30 percent down payment;

(iv) Unique or Unusual Property — The required down payment will be stated on the property description sheet in an amount or percentage determined by the Director.

(5) A purchase of property from the Oregon Department of Veterans' Affairs will not be considered a loan under ORS 407.205.

(6) All purchasers must meet the department's repayment ability requirements.

(7) If a prospective purchaser submits more than one bid for the same property, only the highest such bid will be considered.

(8) The property will not be sold on contract to anyone who had an interest in the property at the time foreclosure action was commenced or a deed-in-lieu of foreclosure was accepted.

(9) A purchaser who states that he or she will be occupying the property in order to pay a lesser percentage of down payment or to receive approval of work equity must:

(a) Occupy the property within 60 days after the sale closes; and

(b) Continuously occupy the property as his or her principal primary residence for a period of not less than 365 days from the date of closing or initial occupancy, whichever is later.

(10) In the event purchaser fails to occupy the property as stated, the Director may require cash payment of an additional down payment. The required additional down payment will be the amount the purchaser would have been required to pay if the property had been purchased as nonowner-occupied, less any cash down payment received at closing. If work equity improvements

were approved, the Director will not give any allowance for completion of all or any portion of the improvements. Following payment of the required additional down payment, the department will reamortize the remaining principal balance on the account and adjust the principal and interest portion of the regular payment accordingly.

Stat. Auth.: ORS 406.030, 407.115, 407.135, 407.145, 407.375 & 407.377

Stats. Implemented: ORS 407.135, 407.145, 407.375 & 407.377

Hist.: DVA 8-1982(Temp), f. & ef. 4-6-82; DVA 13-1982, f. & ef. 5-17-82; DVA 7-1983, f. 5-13-83, ef. 5-15-83; DVA 14-1983, f. 11-29-83, ef. 12-1-83; DVA 5-1984(Temp), f. & ef. 7-17-84; DVA 1-1985, f. & ef. 1-15-85; DVA 6-1985, f. 5-22-85, ef. 7-1-85; DVA 11-1985, f. & ef. 11-5-85; DVA 4-1987, f. & ef. 5-1-87; DVA 7-1987, f. 9-30-87, ef. 10-1-87; DVA 5-1990, f. 8-20-90, cert. ef. 10-1-90; DVA 2-1991, f. 5-29-91, cert. ef. 6-3-91; DVA 3-1996, f. 6-21-96, cert. ef. 6-22-96; DVA 9-2002(Temp), f. 10-30-02, cert. ef. 11-1-02 thru 4-29-03; DVA 5-2003, f. & cert. ef. 4-23-03; DVA 3-2005, f. & cert. ef. 4-22-05

274-021-0010

Escrow Closings of Contract Sales

Effective with offers accepted by the Director after June 30, 1988:

(1) All contract sales of real or personal property by the Director of Veterans' Affairs shall be closed by a person or firm licensed as an escrow agent under the Oregon Escrow Law (ORS 696.505 to 696.590) or an attorney at law rendering services in the performance of duties as attorney at law.

(2) The escrow agent or attorney shall be selected by the purchaser.

(3) The costs of the escrow closing shall be shared as follows:

(a) The Director of Veterans' Affairs will pay one-half of the escrow agent's fee;

(b) The purchaser will pay one-half of the escrow agent's fee;

(c) Any other closing costs will be paid by the purchaser unless otherwise agreed by the parties.

(4) The requirement for licensed escrow (or attorney) closing shall not be waived except when in the Director's opinion, requiring such closing would cause an undue hardship.

Stat. Auth.: ORS 406 & 407

Stats. Implemented: ORS 407.165 & 407.169

Hist.: DVA 2-1984, f. & ef. 5-3-84; DVA 2-1988, f. 6-6-88, cert. ef. 6-30-88; DVA 3-2007, f. & cert. ef. 9-25-07

274-021-0015

Mineral Rights and Geothermal Resource Rights

(1) As used in this rule "mineral" means oil, gas, sulfur, coal, gold, silver, copper, lead, cinnabar, iron, manganese and other metallic ore, and any other solid, liquid or gaseous material or substance excavated or otherwise developed for commercial, industrial or construction use from natural deposits, including mineral waters of all kinds. (This is the same definition as used in ORS 273.775.) As used in this rule "mineral" includes sand and gravel.

(2) As used in this rule "geothermal resource" means the natural heat of the earth, the energy, in whatever form below the surface of the earth present in, resulting from, or created by, or which may be extracted from, the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam, in whatever form, found below the surface of the earth, exclusive of helium or of oil, hydrocarbon gas or other hydrocarbon substances, but including, specifically:

(a) All products of geothermal processes, embracing indigenous steam, hot water and hot brines;

(b) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(c) Heat or other associated energy found in geothermal formations; and

(d) Any by-product derived from them. (This is the same definition as used in ORS 522.005.)

(3) The Director of the Oregon Department of Veterans' Affairs (ODVA) may sell, retain, assign, lease, release, develop, market or otherwise administer any mineral rights and geothermal resource rights obtained by ODVA after January 1974 pursuant to ORS 88.720, 406.050, 407.135, or 407.145(1):

(a) Prior to a release or transfer of any interest in mineral or geothermal resource rights pertaining to a property of three acres or more in Clatsop, Columbia, or Washington County, or of 40 acres or more in any other county, ODVA will request a review and recommendation from the Division of State Lands (DSL) regarding the potential for the occurrence of mineral or geothermal resources with value, excluding soil, clay, stone, sand and gravel. ODVA may, but shall not be required to, request a similar review and recommendation from DSL with respect to mineral or geothermal resource rights related to properties of lesser size. In any situation where additional professional services may be required by ODVA, the services shall be provided at the expense of the applicant for the release. ODVA may then, at the director's discretion, administer such rights consistent with this section in any manner that the director determines will advance the interests of the Oregon War Veterans' Fund, including the release by ODVA of all or part of such rights of the related property upon application and payment of the appropriate application fee together with such other consideration, required by ODVA;

(b) An application for any interest in mineral or geothermal resource rights held by ODVA must be completed and submitted directly to ODVA together with the documents and other information listed on the application form or otherwise required by ODVA, together with the appropriate application fee. Any or all of the application fee may be waived by ODVA if such waiver is determined by it to be in the economic interest of ODVA, or if ODVA determines that it would avoid undue hardship.

(4) Upon advice from DSL concerning potential mineral or geothermal resources, ODVA may change the acreage review for any county in Oregon at any time by administrative rule.

(5) Two years after the effective date of this rule, and each biennium thereafter, ODVA and DSL will review the rule and its effects for possible changes.

Stat. Auth.: ORS 88.720, 273.775, 406.030, 406.050, 407.115, 407.135 & 407.145

Stats. Implemented: ORS 88.720, 273.775, 273.785, 407.135 & 407.145

Hist.: DVA 6-1991(Temp), f. 9-25-91, cert. ef. 9-26-91; DVA 3-1992, f. & cert. ef. 3-23-92; DVA 3-1996, f. 6-21-96, cert. ef. 6-22-96

274-021-0020

Forcible Entry and Wrongful Detainer

Pursuant to ORS 105.130(5), in any action brought by the State of Oregon by and through the Director of Veterans' Affairs, pursuant to the provisions of ORS 105.105 to 105.168, to recover the possession of premises to which the Director of Veterans' Affairs is entitled, any officer or employee of the Department of Veterans' Affairs is authorized, on behalf of the Director of Veterans' Affairs, to:

(1) File the complaint; and

(2) Appear in District Court or Justice Court at the first appearance referred to in ORS 105.137, provided that the Attorney General has given written consent to such appearances.

Stat. Auth.: ORS 105.130(5), 406.030 & 407.115

Stats. Implemented: ORS 407.115, 407.135 & 407.145

Hist.: DVA 5-1992, f. & cert. ef. 4-2-92; DVA 3-2007, f. & cert. ef. 9-25-07

DIVISION 22

PROCUREMENT OF BENEFITS

274-022-0005

Loan Cancellation Life Insurance

(1) The Director of Veterans' Affairs (DVA), prior to obtaining loan cancellation life insurance for any person who receives or assumes a loan or makes a contract with DVA for the acquisition of a home or farm, and the spouse or former spouse of that person, may enter into a contract with an insurance carrier which allows the carrier to:

(a) Require an application for insurance;

(b) Underwrite classes of prospective insureds on the basis of information, such as age and health status, contained in the application;

(c) Set premium schedules commensurate with risk factors for other than service-connected disability;

(d) Deny payment of benefits for suicide or certain preexisting, nonservice-connected disability.

(2) The Director will negotiate a contract with the insurance carrier as necessary to insure procurement and maintenance of adequate, solvent, and uninterrupted, long-term insurance coverage.

(3) The insurance contract may provide that loan cancellation life insurance on a loan or contract for the acquisition of a home or farm will be canceled after payments on the loan or contract become four months delinquent. Accounts due monthly are considered four months delinquent when the cumulative delinquency equals four times the standard monthly payment.

(4) Accounts due quarterly, semi-annually, or annually are considered four months delinquent when an amount that would equal four monthly payments (if payments were made monthly) remains unpaid four months after the due date.

(5) The insurance contract may provide that insurance canceled for the above reason cannot be reinstated unless payments are brought current and a new application for insurance is submitted. The provisions of section (1) of this rule will apply to the newly submitted application.

Stat. Auth.: ORS 406 & 407

Stats. Implemented: ORS 407.465 - 407.490

Hist.: DVA 22-1982, f. & ef. 9-22-82; DVA 2-1983, f. 1-14-83, ef. 1-15-83; DVA 11-1983, f. & ef. 9-22-83; DVA 8-1987, f. 11-17-87, ef. 12-1-87

DIVISION 25

VETERANS' LOAN PROGRAM 1990

274-025-0010

Purpose and Objectives

OAR chapter 274, division 025, is established to administer and enforce ORS 407.075 through 407.595. These rules, together with the Loan Origination Guide/Mortgage Broker Loan Origination Guide, shall implement the Veterans' Loan Program 1990. The program's objective is to provide funds to finance owner-occupied, residential housing for qualified veterans in the State of Oregon, thereby encouraging home ownership of residential housing by such veterans. Where context allows, the provisions of OAR chapter 274, divisions 020, 021, and 022, apply equally to the loans originated after April 1, 1990. Selected words and terms as used in OAR chapter 274, division 025, are defined as follows:

(1) "Acquisition" means the purchase of a home.

(2) "Agreement" means the contract between the ODVA and the approved lender, setting forth the terms and conditions under which program loans made by the approved lender will be purchased by the ODVA

(3) "ALTA Mortgagee's Title Insurance" means a title insurance policy issued in American Land Title Insurance form by a title insurer licensed by the State of Oregon

(4) "Approved Lender" means any "Lending Institution" as defined in ORS 407.177(8) that has entered into an agreement with ODVA to originate residential loans acceptable to ODVA or to act as a conduit for the origination of residential loans acceptable to ODVA. In determining whether or not to contract with a Lending Institution, ODVA may consider factors including, but not limited to the following:

(a) ODVA's need for additional Approved Lenders, either on a statewide basis or in a specific geographical area.

(b) Whether or not the Lending Institution has had any complaints filed against it or against any of its employees, agents, officers, directors, owners, or affiliates through the Consumer and Business Services Department of the State of Oregon, through any other regulatory agency or otherwise.

(c) Whether or not representatives of the Lending Institution have attended any ODVA-sponsored training.

(d) The reputation of the Lending Institution, including its employees, agents, officers, directors, owners or affiliates.

(e) The number and experience of Lending Institution employees and other personnel available to originate loans or to act as a

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conduit for the origination of residential loans acceptable to ODVA.

(f) Status and character of the institution's loan policies and procedures.

(g) The financial capability of the Lending Institution to originate loans or to act as a conduit for the origination of loans.

(h) The Lending Institution's qualification as a loan originator or a seller/servicer for the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or the United States Department of Veterans' Affairs.

(i) Whether or not the deposits of the Lending Institution are insured by FDIC or some other federal agency or corporation.

(j) The experience, efficiency and performance of the Lending Institution in the area of residential lending and any other area of the Lending Institution's business.

(k) The willingness and commitment of the Lending Institution to accept and to fulfill the terms of an ODVA proposed contract.

(l) The result of any references which are checked as part of the application process

(5) "Commitment" means a promise made by the ODVA to an Approved Lender, evidenced by a written commitment letter, setting forth the terms upon which the ODVA will purchase or accept by underwriting and closing a specific program loan made or processed by the Approved Lender pursuant to a commitment request, or commitments to make an individual loan to a qualified veteran.

(6) "Commitment Request" means a verbal or written request from an Approved Lender to the ODVA to purchase or accept for underwriting and closing a specific program loan.

(7) "Home" means any house or dwelling, including outbuildings, and the real property in connection with it, where the veteran has, or will, establish domicile.

(8) "Lending Institution" means an entity which is licensed, or otherwise legally authorized, to conduct business in the State of Oregon exclusively or in part as a mortgage lender or a conduit for mortgage loans and that, in the judgment of ODVA, is capable of meeting the needs of ODVA in carrying out the purposes of ORS Chapter 407. In determining whether or not an entity that is licensed, or otherwise legally authorized, to conduct business in Oregon exclusively or in part as a mortgage lender or a conduit for mortgage loans is capable of meeting the needs of ODVA in carrying out the purposes of ORS Chapter 407, ODVA may consider factors including, but not limited to the following:

(a) Whether or not the entity qualifies as a "Banking Institution" or similar entity including, but, not limited to an "Extranational Institution," a "Federal Bank," a "Federal Savings Bank," or a "Financial Institution" under ORS 706.005, 706.008, 707.744, or 723.042.

(b) Whether or not the entity qualifies as a "mortgage broker" under ORS 59.840 through 59.980 for a period of three years.

(c) Whether or not the representatives of the entity have attended any ODVA-sponsored training.

(d) The reputation of the entity or of any of its employees, agents, officers, directors, affiliates or owners.

(e) The financial capability of the entity to originate loans or to act as a conduit for the origination of loans.

(f) The entity's qualification as a loan originator or a seller/servicer for the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or the United States Department of Veterans Affairs.

(g) The experience, efficiency, and performance of the entity in the areas of residential lending and any other area of the entity's business

(9) "Loan Origination Guide/Mortgage Loan Origination Guide" means the manual containing the origination instructions for the Veterans' Loan Program 1990, and any subsequent changes as they are effected.

(10) "ODVA" means the Oregon Department of Veterans' Affairs acting by and through the Director as defined in ORS 406.020.

(11)(a) "Qualified Insurer" means private mortgage insurance company licensed to do business in Oregon and with which ODVA has agreed to accept mortgage insurance coverage.

(b) When an ALTA mortgagee's title insurance policy is in force insuring the state against the usual losses covered by an ALTA policy as well as any loss from any prior encumbrance, and the encumbrance is acceptable to both the veteran and ODVA.

(12) "Security" means all of the real property that is to be acquired for a home and for which purpose the program loan is requested.

(13) "Security Instrument" means a mortgage, deed of trust, or similar document used to perfect the lien on the security by the ODVA. The lien will be a first lien on the home, except:

(a) As otherwise required by Oregon law, or allowed by Oregon law and approved in writing by ODVA; or

(b) When an ALTA mortgagee's title insurance policy is in force insuring the state against the usual losses covered by an ALTA policy as well as any loss from any prior encumbrance, and the encumbrance is acceptable to both the veteran and ODVA.

(14) "Veteran" means any eligible veteran as described in OAR 274-020-0200 through 274-020-0200(6)(d).

(15) "Veterans' Loan Program 1990" means all home loans originated after April 1, 1990, but excluding financed contract sales of ODVA owned properties.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 291.021, 406.030, 407.115, 407.177, 407.179, 407.181, 407.275

Stats. Implemented: ORS 407

Hist.: DVA 2-1992, f. & cert. ef. 1-2-92; DVA 11-1992(Temp), f. & cert. ef. 8-17-92; DVA 4-1993, f. & cert. ef. 1-4-93; DVA 1-1995(Temp), f. & cert. ef. 3-17-95; DVA 8-1995, f. & cert. ef. 7-21-95; DVA 4-2000, f. & cert. ef. 4-24-00; DVA 3-2007, f. & cert. ef. 9-25-07

274-025-0020

Approved Lenders

(1) Any lending institution, as defined in ORS 407.177(8) may apply to become an Approved Lender by submitting to the Director of Veterans' Affairs (director) information required by the Director which may include, but is not limited to the following for review:

(a) An application in the form prescribed by the Director, including a certificate of compliance with tax laws; and

(b) Its counsel's opinion regarding power and authority of the lending institution to enter into a purchase agreement with the director; and

(c) A list of authorized officers; and

(d) Its most recent, audited financial statements; and

(e) Financial Statement of Condition (Balance Sheet) for the last two fiscal years and Profit and Loss Statement; and

(f) Resumes of principal officers and key employees; and

(g) Company biography and background; and

(h) Signed and executed broker agreement; and

(i) Resolution of the Board of Directors/Certificate of Authorized Signatures; and

(j) Articles of Incorporation (if incorporated); and

(k) Signed Credit Release Authorization; and

(l) Applicable licenses as required by state and local law; and

(m) Explanation of Quality Control Procedures; and

(n) W-9; and,

(o) Any other documentation or information deemed necessary by the Director; and

(p) A credit report fee may be charged to the mortgage broker as part of the approved lender application process in an amount not to exceed the amount charged by the credit-reporting firm. Any funds not used or obligated for a credit report shall be refunded.

(2) A lending institution will qualify as an Approved Lender if the director determines that the applicant has the capability and resources to originate only or originate, underwrite and fund loans in a sound and professional manner. The director shall consider such factors as those itemized in 274-025-010(4)(a) through (l).

(3) To become an Approved Lender, a lending institution shall enter into an agreement with the Director, providing for the manner and terms of the sale or processing of loans. This agreement shall

bein the standard form prescribed by the Director. Approved Lenders shall carry out such agreement in accordance with the procedures set forth in the agreement, the rules, and the Loan Origination Guide/Mortgage Brokers Loan Origination Guide. The Director may revise such procedures from time to time. The Director may terminate its agreement with an Approved Lender at any time on the terms and conditions stated in such agreement, the rules, or the Loan Origination Guide/Mortgage Brokers Loan Origination Guide.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 291.021, 406.030, 407.115, 407.177, 407.179, 407.181 & 407.275

Stats. Implemented: ORS 407.125, 407.177, 407.205 & 407.275

Hist.: DVA 2-1992, f. & cert. ef. 1-2-92; DVA 7-1993, f. 5-18-93, cert. ef. 5-21-93; DVA 1-1995(Temp), f. & cert. ef. 3-17-95; DVA 8-1995, f. & cert. ef. 7-21-95; DVA 4-2000, f. & cert. ef. 4-24-00; DVA 3-2007, f. & cert. ef. 9-25-07

274-025-0030

Loan Requirements

(1) To be eligible for purchase or underwriting and closing by the ODVA pursuant to a commitment to an approved lender, a program loan shall be made or processed by the approved lender during the period of that commitment. The loan shall comply with the terms of such commitment, the requirements set forth in the agreement between ODVA and the approved lender, and the conditions set forth in the rules and the Loan Origination Guide/Mortgage Brokers Loan Origination Guide.

(2) Each Approved Lender shall make loans for single-family dwellings.

(3) Each program loan shall have a final maturity of at least 15 and not more than 40 years from the date of its mailing.

(4) Each program loan shall be secured by a first lien security instrument as defined or allowed pursuant to OAR 274-025-0010(11) and granted by the veteran on a home which is being financed. The veteran shall hold title to the home in fee simple.

(5) No program loan shall be made to refinance an existing loan, unless such loan was a temporary loan for the construction or rehabilitation of a home or other temporary initial financing. If a program loan is made to refinance such a loan, the approved lender shall certify to the ODVA that construction or rehabilitation has been satisfactorily completed before the delivery of the program loan for purchase.

(6) Each program loan shall be executed on forms approved by the ODVA. Such forms shall prescribe program loan requirements regarding insurance, escrow payments, late charges, defaults, and similar matters.

(7) The ODVA shall require that program loans be subject to acceleration at the option of the ODVA if at any time the veteran does not reside in the home as his/her primary residence, or if the veteran is determined to have been ineligible at the time the program loan was made.

(8) The interest rate on each program loan shall be at the rate stated in the applicable commitment issued by the ODVA.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 406.030, 407.115, 407.177, 407.179 & 407.181

Stats. Implemented:

Hist.: DVA 2-1992, f. & cert. ef. 1-2-92; DVA 4-2000, f. & cert. ef. 4-24-00; DVA 4-2008, f. & cert. ef. 2-22-08

274-025-0040

Reservations of Funds and Commitments

(1) Under the Veterans' Loan Program 1990, the Oregon Department of Veterans' Affairs (ODVA) reserves funds for individual loans in the name of the veteran upon request from an Approved Lender or from authorized ODVA staff. ODVA may solicit applications and accept loan fund reservations from Approved Lender(s) subject to the terms of the appropriate agreements, and the rate and availability of funds.

(2) ODVA will reserve funds for applications at the time of:

(a) Acceptance of application for processing by ODVA; or

(b) A verbal or written request from an Approved Lender that an application for funding is being processed.

(3) Effective September 10, 2001, when ODVA reserves funds, an interest rate will be committed to this reservation and will be effective for a period of 60 days. The loan must be closed before

the end of 60 days or the committed interest rate will expire. If the reservation is reissued, it will bear an interest rate at the "higher of" the expired/cancelled rate or the then-current interest rate at the time of reissue. This shall be called the "higher of" rate. If a veteran withdraws an application and subsequently re-applies for a loan on the same security, the "higher of" rule will apply for a period of 120 days from the date of withdrawal.

(4) If the loan is not presented to ODVA for purchase with all documentation in place within 90 calendars days of the final HUD-1 settlement date, ODVA may charge the Approved Lender a penalty fee of one basis point of the loan amount per calendar day, until the loan is approved for purchase.

Example: \$150,000 loan closed and presented for purchase 120 calendar days after final HUD-1 settlement date. The penalty fee charged and deducted from the amount due to the Approved Lender is calculated as follows: \$150,000 x .01% x 30 days = \$450.

(5) The commitment letter to the Approved Lender will contain the following information:

(a) The dollar amount of the commitment;

(b) The interest rate for the loan;

(c) The term of the loan;

(d) The mortgage insurance or guarantee required, if any;

(e) The period of time during which the ODVA will purchase the loan;

(f) The veteran who will be the borrower;

(g) The property identification (i.e., property address);

(h) Any additional information or conditions the ODVA considers appropriate in the commitment.

(6) The ODVA will promptly notify approved lenders when it will not accept a commitment request, for whatever reasons.

Stat. Auth.: ORS 406.030, 407.115, 407.177, 407.179 & 407.181

Stats. Implemented: ORS 407.177, 407.179 & 407.181

Hist.: DVA 2-1992, f. & cert. ef. 1-2-92; DVA 4-2000, f. & cert. ef. 4-24-00; DVA 6-2001(Temp), f. 9-7-01, cert. ef. 9-10-01 thru 3-8-02; DVA 2-2002, f. & cert. ef. 2-22-02

274-025-0050

Title Insurance

Each loan shall be covered by a title insurance policy issued in American Land Title Association (ALTA) form by a title insurer licensed by the State of Oregon. Such policy shall be in an amount at least equal to the outstanding principal balance of the program loan. The benefits of the policy shall run to the ODVA as either named insured or assignee. The policy shall not be subject to any exceptions or conditions other than those previously approved by the ODVA.

Stat. Auth.: ORS 406.030, 407.115, 407.177, 407.179 & 407.181

Stats. Implemented: ORS 407.115, 407.177, 407.179 & 407.181

Hist.: DVA 2-1992, f. & cert. ef. 1-2-92

274-025-0060

Hazard Insurance

The home securing a program loan shall be covered by hazard insurance, which meets the requirements of the rules and the **Loan Origination Guide/Mortgage Brokers Loan Origination Guide**. Such hazard insurance shall be in effect prior to purchase or funding of the program loan, and shall remain in effect for the term of the program loan. The ODVA shall be named as the mortgagee insured.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 406.030, 407.115, 407.177, 407.179 & 407.181

Stats. Implemented: ORS 407.155, 407.165 & 407.169

Hist.: DVA 2-1992, f. & cert. ef. 1-2-92; DVA 4-2000, f. & cert. ef. 4-24-00

274-025-0070

Flood Insurance

(1) Beginning September 1, 1995, the Director of the Oregon Department of Veterans' Affairs (Department) shall require that the location of the security on all loan applications received by the Department be reviewed and a determination made as to whether flood insurance will be required as a condition of the loan.

(2) A flood determination fee will be charged to the borrower equal to the amount charged by the flood determination reporting company at the time the application is submitted.

(3) All flood determinations are to be provided for the duration of the loan while it exists in the Department's portfolio (more commonly referred to as life-of-loan tracking).

(4) The flood determination company must meet the qualifications as determined by the Department by applying relevant industry standards.

(5) Based on the determination that the security for the loan is located in an area classified as a special flood hazard area, the director shall require the borrower to purchase flood insurance as a requirement of the loan.

(6) If following loan closing, it is determined that the security is located within a flood hazard area as defined by the **National Flood Insurance Reform Act of 1994 (42 USCS 3701-4370a)**, the borrower may be required to purchase flood hazard insurance at no cost to the Department. If flood hazard insurance is not voluntarily acquired, the director may force place said insurance and:

(a) Disburse all costs associated with the acquisition of the coverage from the escrow account; or

(b) Add said cost to the balance of the loan and interest will be collected at the note rate; and

(c) Loan payments will be increased to repay the amount advanced.

Stat. Auth.: ORS 406.030, 407.115, 407.169, 407.177 & 407.275

Stats. Implemented: ORS 407.169, 407.177 & 407.275

Hist.: DVA 9-1995(Temp), f. 8-23-95, cert. ef. 9-1-95; DVA 2-1996, f. & cert. ef. 3-22-96; DVA 6-2005, f. & cert. ef. 10-24-05

DIVISION 28

VETERANS' HOME IMPROVEMENT LOAN PROGRAM

274-028-0001

Purpose and Objectives

(1) This division is established to administer the provisions of ORS 407.145 and 407.225. These rules, together with the Processing Manual, shall implement the Veterans' Home Improvement Loan Program.

(2) The program's objective is to provide funds to finance qualified improvements of owner occupied, residential housing for qualified veterans in the State of Oregon. Where context allows, the provisions of OAR chapter 274, divisions 020, 021, 022 and 025 apply equally to the Veterans' Home Improvement Loan Program loans for which applications are received on or after November 12, 1997. No improvement will be financed that is inconsistent with the provisions of ORS chapter 407, ODVA's Processing Manual, section 143 of the Internal Revenue Code of 1986 and any subsequent changes as they are effected. Copies of section 143 of the Internal Revenue Code of 1986 and the Processing Manual are on file with the Oregon Department of Veterans' Affairs, 700 Summer Street NE, Salem Oregon, and available to the public Monday through Friday between the hours of 8 a.m. and 5 p.m.

Stat. Auth.: ORS 406.030, 407.115, 407.125, 407.145, 407.225

Stats. Implemented: ORS 407.115, 407.125, 407.145, 407.225

Hist.: DVA 6-1997, f. & cert. ef. 10-22-97; DVA 3-2007, f. & cert. ef. 9-25-07

274-028-0005

Definitions

Selected words and terms as used in OAR chapter 274, division 028, are defined as follows:

(1) Veterans' Home Improvement loan means a loan or loans issued pursuant to OAR 274-028-0001 for not more than the total loan right where said loan funds are used to improve the basic livability of the home as defined in OAR 274-025-0010(7).

(2) Qualified improvements means the remodel or improvement of an existing home which will substantially enhance or protect the basic livability of the home.

(3) Processing Manual means the manual containing the policy for the Veterans' Home Improvement Loan Program, and any subsequent changes as they are effected.

(4) Veterans' Home Improvement Loan Program means all veterans' home improvement loans for which applications are received on or after November 12, 1997.

(5) Existing loan means any loan or loans obtained by the veteran to purchase or improve the property used as security for a loan with the Oregon Department of Veterans Affairs (ODVA).

(6) Loan to Value Ratio is the loan amount plus any outstanding balance owed to ODVA on the security divided by the net appraised value.

Stat. Auth.: Ch. 214 OL 1997 & ORS 406.030

Stats. Implemented: Ch. 214 OL 1997 & ORS 406.030

Hist.: DVA 6-1997, f. & cert. ef. 10-22-97; DVA 2-2005, f. & cert. ef. 4-22-05

274-028-0010

Interest Rate

(1) The Director may prescribe interest rate(s) on veterans' home improvement loans in a manner consistent with OAR 274-020-0341. The prescribed interest rates shall be "fixed interest rates" consistent with the usage of that term in ORS Chapter 407.

(2) The Director will publish prescribed interest rates in the Department's Tables and Codes Manual. This publication will be available for viewing at the Oregon Department of Veterans' Affairs, 700 Summer Street NE, Salem, Oregon, as permitted by the Department, during regular business hours.

Stat. Auth.: Ch. 214 OL 1997 & ORS 407.327

Stats. Implemented: Ch. 214 OL 1997 & ORS 407.327

Hist.: DVA 6-1997, f. & cert. ef. 10-22-97; DVA 3-2005, f. & cert. ef. 4-22-05

274-028-0015

Approval of Veterans' Home Improvement Loans

Veterans' home improvement loans will be processed using current industry standards determined by the Department to be applicable to the proposed loan as they relate to the borrower's ability and willingness to repay and the borrower having required funds for closing. Applicable industry standards may include, but are not limited to, local lending practices, FannieMae and other lending organization standards, and federal and state legal requirements.

Stat. Auth.: ORS 407.115 & 407.265

Stats. Implemented: ORS 407.115, 407.145, 407.225, 407.265 & 407.325

Hist.: DVA 6-1997, f. & cert. ef. 10-22-97; DVA 6-2005, f. & cert. ef. 10-24-05

274-028-0020

Terms of Veterans' Home Improvement Loans

(1) The veterans' home improvement loan must be placed in the first lien position on the security or be an immediate subsequent lien to an existing ODVA lien. The first ODVA lien and any immediate subsequent lien made on the security by the director shall be deemed collectively as a first lien on the security.

(2) The net appraised value will be used as the basis for determining the maximum veterans' home improvement loan subject to statutory limitations.

(3) When a veterans' home improvement loan is made on a security with an existing balance owed to the director, the total of the unpaid balance of the existing loan and the veterans' home improvement loan shall not exceed 80 percent of the net appraised value as determined by the director.

(4) When a veterans' home improvement loan is made on a property where no balance is owing, the veterans' home improvement loan shall not exceed 97 percent of the net appraised value as determined by the director. If the loan-to-value ratio is greater than 80 percent of the net appraised value, the loan must be insured by mortgage insurance consistent with ORS 407.485.

(5) All existing nonamortizing ODVA loans on the security must be reamortized to bring the principal and interest payment and final payment date into conformance with ODVA policy as identified in the Processing Manual. A copy of the manual is on file with the Oregon Department of Veterans' Affairs, 700 Summer Street NE, Salem Oregon, and available to the public Monday through Friday between the hours of 8 a.m. and 5 p.m. All other terms of the existing loan on the security remain unchanged.

(6) Depending upon the loan amount, the maximum term of a home improvement loan may not exceed 20 years.

Stat. Auth.: Ch. 214 OL 1997, ORS 407.205, 407.275 & 407.485

Chapter 274 Department of Veterans' Affairs

Stats. Implemented: Ch. 214 OL 1997, ORS 407.205, 407.275 & 407.485
Hist.: DVA 6-1997, f. & cert. ef. 10-22-97; DVA 3-2003(Temp), f. & cert. ef. 4-7-03 thru 10-3-03; DVA 11-2003, f. & cert. ef. 9-23-03

274-028-0025

Appraisal of Property

An appraisal may be made at the discretion of the director to assist in establishing the net appraised value. A fee will be charged in accordance with OAR 274-020-0440.

Stat. Auth.: ORS 406.030 & 407.115

Stats. Implemented: ORS 406.030 & 407.115

Hist.: DVA 6-1997, f. & cert. ef. 10-22-97

274-028-0030

Transfer of Ownership

(1) The director may declare all veterans' home improvement loan sums to be immediately due and payable if all or part of the security is sold or otherwise transferred by the borrower to anyone other than those qualified persons identified in ORS 407.275.

(2) The director shall be notified in writing by the borrower of any transfer of ownership or right to possess the security, including to those qualified persons identified in ORS 407.275, that is used as security for a home improvement loan with ODVA.

(3) The provisions of OAR 274-020-0380(2), (3), (4) and (5) apply to any transfer on a veterans' home improvement loan.

Stat. Auth.: Ch. 214 OL 1997, ORS 406.030, 407.115, 407.275, 407.305 & 407.335

Stats. Implemented: Ch. 214 OL 1997 & ORS 407.275

Hist.: DVA 6-1997, f. & cert. ef. 10-22-97

274-028-0035

Taxes, Hazard Insurance and Flood Insurance

(1) For veterans' home improvement loans which are subsequent to an existing loan, the director may pay property taxes or hazard or flood insurance on the existing loan until the existing loan is paid in full, after which it will be the borrower's responsibility to pay these items directly.

(2) If delinquent taxes become a lien against the security, or the borrower fails to maintain the required insurance, the director may pay the taxes or insurance and if so paid, will collect the amount paid by ODVA from the borrower through an escrow account per the provisions of OAR 274-020-0388.

Stat. Auth.: Ch. 214 OL 1997, 407.115, ORS 407.165 - 407.181 & 407.275

Stats. Implemented: Ch. 214 OL 1997, ORS 407.165 - 407.181 & 407.275

Hist.: DVA 6-1997, f. & cert. ef. 10-22-97; DVA 2-2005, f. & cert. ef. 4-22-05

274-028-0040

Title Insurance

Each loan shall be covered by a title insurance policy as designated by the director at the borrower's expense.

Stat. Auth.: ORS 407.115, 407.177, 407.179 & 407.181

Stats. Implemented: ORS 407.115, 407.177, 407.179 & 407.181

Hist.: DVA 6-1997, f. & cert. ef. 10-22-97

DIVISION 30

WAR VETERANS' ORGANIZATIONS

274-030-0500

Definitions for 274-030-0500–274-030-0575

Whenever used in these rules or any amendments thereof, or in any blank form, document, publication, or written instrument of any kind prescribed, provided, published, issued, or used by the Director of Veterans' Affairs of the State of Oregon or any of his duly authorized agents or employees in connection with the administration of the provisions of ORS 406.310 to 406.340 and 406.450 to 406.462, providing for distribution of funds to organizations and counties for rehabilitation services, the terms herein defined shall have the meanings herein set forth unless the context of the words with which a term is used shall clearly indicate a different meaning:

(1) "Advisory Committee" shall mean the Advisory Committee to the Director of the Department of Veterans' Affairs as provided for in ORS 406.210.

(2) "Benefits" shall mean funds available for distribution to veterans' organizations and counties of the State of Oregon under ORS 406.310 to 406.330 and 406.450 to 406.462.

(3) "Capital outlay" shall be synonymous with and mean the same as "capital assets" as defined in the Oregon Accounting Manual, Number 10.50.00 PR. Copies of the Oregon Accounting Manual are available from the Department of Veterans' Affairs or the Department of Administrative Services Division website.

(4) "County" shall mean a county which carries on a program of veterans' rehabilitation work and which contracts for or employs a part-time or full-time Service Officer.

(5) "County Service Officer" shall mean a person contracted with or employed as a part-time or full-time agent or employee of the governing body of the county whose duty is to carry on a program of rehabilitation and service to veterans.

(6) "Department" means the Department of Veterans' Affairs for the State of Oregon.

(7) "Director" shall mean Director of the Department of Veterans' Affairs for the State of Oregon.

(8) "Funds Available" shall mean the funds remaining from those that have been designated by the Director, with advice from the Advisory Committee, to aid organizations and counties in connection with their respective programs of service to veterans.

(9) "Rehabilitation and Service". For the purpose of these rules, the words "rehabilitation" and "service to veterans" shall be synonymous and shall be interpreted to mean assistance rendered by paid Service Officers accredited by the U.S. Department of Veterans Affairs.

(10) "Rehabilitation Program for Two Years Preceding". For the purpose of these rules the phrase, "**However, a veterans' organization does not qualify for benefits under ORS 406.310 unless it has carried on a program of veterans' rehabilitation work in Oregon for not less than two years immediately preceding**", is interpreted to mean that, for the two years immediately preceding application for benefits under ORS 406.310, a veterans' organization must have in its employ a part-time or full-time paid Service Officer who is accredited by the U.S. Department of Veterans Affairs and who, during the past two years, has been active in representing veterans before the rating boards of the Portland Regional Office of the U.S. Department of Veterans Affairs.

(11) "Service Officer" shall mean a part-time or full-time paid state or national employee of a veterans' organization who is accredited by the U.S. Department of Veterans Affairs and employed to represent veterans before rating boards of the U.S. Department of Veterans Affairs.

(12) "Supplant" means to remove from a situation and replace or supply with a substitute.

(13) A "veterans' organization" shall mean a veterans' organization accredited by the U.S. Department of Veterans Affairs, which has carried on a program of veterans' rehabilitation work in Oregon for not less than two years immediately preceding application, by a part-time or full-time paid Service Officer.

(14) "Voluntary Service Officer" shall mean an appointee of a County Court or Board of Commissioners who acts as County Service Officer without remuneration.

Stat. Auth.: ORS 406 & 408.410

Stats. Implemented: ORS 406.030, 406.215, 406.217, 406.450 - 462

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08; DVA 2-2008, f. & cert. ef. 2-4-08

274-030-0505

Original Application

Each organization desiring to apply for benefits under ORS 406.310 to 406.340 must submit an application in writing to the Director before August 15th of the year of application. The application shall set out the organization's eligibility for benefits as defined by law, together with a statement covering its rehabilitation program carried out for a period of at least two years immediately preceding. There shall be attached to said application as an exhibit a statement of its expenditures for such work for said period of

time and a copy of the approved budget for its rehabilitation program for the forthcoming fiscal year.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.310 - 406.340

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0506

Late Applications

Any application filed after August 15 for participation in Department of Veterans' Affairs funds for the current fiscal year will be granted by the Director, with advice from the Advisory Committee, only if sufficient funds are available. This rule applies to original applications only.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.210, 406.215, 406.310 - 406.340

Hist.: DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0510

Subsequent Application

Each organization which has received benefits during the preceding fiscal year and which desires to apply for benefits during the forthcoming year shall submit a request to the Director in writing before August 15th and shall attach to the application a copy of its approved budget for the forthcoming year.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.310 - 406.340

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0515

Allocation of Funds

Upon receipt of said applications, the merits of each application shall be determined by the Director, with the advice of the Advisory Committee, and then the allocation of funds shall be made, and the organizations shall be notified regarding their entitlement to funds. Funds will be allocated on a fiscal year basis starting July 1st and ending June 30th.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.210, 406.215, 406.310 - 406.340

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0520

Quarterly Reports and Audits

Veterans' organizations found eligible to receive benefits shall submit a quarterly report of the activities of their accredited Service Officers and a quarterly report of the expenses of their accredited Service Officers on forms prescribed by the Director before reimbursements may be authorized. The Director may audit and examine the activities and expenditures of veterans' organizations in connection with their programs of service to veterans before approving reimbursements.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.450 - 406.462

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0525

Fiscal Division of Funds

Of the funds available for the biennium for disbursement to veterans' organizations under ORS 406.310, not more than one-half shall be disbursed during the first fiscal year of the biennium.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.310 & 406.330

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84

274-030-0530

Distribution of Funds

Distribution of funds available for this purpose will be made by reimbursing quarterly the participating organizations. Such distribution will be based on approved budgeted expenditures.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.310 & 406.330

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84

274-030-0535

Limitation on Distribution of Funds

Unless otherwise decided by the Director, with the advice of the Advisory Committee, no organization shall receive from the Director more than 50 percent of its approved budget, nor more than 50 percent of actual budgeted expenditures. However, in those instances where the national headquarters of an organization bears the major portion of its State Service Officer expenses, the State headquarters of that organization may consider as its State expense that portion of the annual dues of its members that are sent to its national headquarters for the purpose of paying a portion of the expenses of its State Service Officer. To meet the terminology of any organization affected by this section, the terms "State Service Officer" and "National Service Officer" are deemed synonymous.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.210 - 406.217, 406.310, 406.450 - 406.462

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0545

Application

Counties desiring to apply for benefits under ORS 406.310 shall apply in writing and shall submit budget reports and revenue and expense reports for their respective County Service Officer departments before August 15th of the year in which they wish to receive benefits.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.215, 406.310

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0550

Late Applications

Any application for benefits filed after August 15 will be granted by the Director, with the advice of the Advisory Committee, only if sufficient funds are available. This rule applies to both late applications and a request for an increase in funds because of proposed additional expenditures.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.215, 406.217, 406.450, 406.450 - 462

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0555

County Programs

The governing body of counties which have qualified for funds shall submit quarterly reports of expenses of their County Veterans' Service Officer Programs, and county Service Officers shall submit quarterly reports of their activities on forms provided by the Director before benefits shall be authorized.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.310, 406.450 - 462

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0560

Quarterly Reports and Audits

(1) Quarterly benefits to counties shall be approved for payment only after the Service Officer's activity report, the county report of expenditures, and all supporting documentation have been received by the Veterans Services Division on forms prescribed by the Director.

(2) Completed reports must be received by the Department by the last working day of the month following the end of each fiscal quarter.

(3) The Director may audit and examine the activities and expenditures of counties in connection with their programs of service to veterans before approving benefits.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.450 - 462

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0565

Fiscal Division of Funds

(1) Of the funds available for the biennium for disbursement to counties, not more than one-half shall be disbursed during the first fiscal year of the biennium.

(2) The maximum benefit to counties during the fiscal year shall be 75 percent of the approved budgeted expenditures, not to exceed \$12,500.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.450 - 462

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0570

Distribution of Funds

The Director, with the advice of the Advisory Committee, shall determine the maximum amount of benefits payable to each county. Benefits will not be allowed for capital outlay.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.215, 406.217, 406.330, 406.450 - 462

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0575

Payments and Adjustments

(1) Benefits shall be paid quarterly at the rate of reimbursement as described in OAR 274-030-0565, Fiscal Division of Funds; however, no more than 75 percent of the approved authorized funds shall be paid during the first three quarters of any fiscal year.

(2) After the required reports for the fourth quarter of the fiscal year have been filed with the Director, the total expenditures for the year by each county shall be calculated and applied against its authorized annual benefits, whereupon adjustment shall be made to allow the county to be reimbursed to its full entitlement for the year; however, benefits shall not exceed the maximum amount set forth for that county for the year.

(3) All rates of payments and adjustments shall be made upon advice from the Advisory Committee.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.215, 406.217, 406.450, 406.450 - 462

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0600

Expansion and Enhancement Appropriations Program

(1) This program's objective is to provide designated funds which are to be utilized to expand and enhance the services provided by county veterans' service programs.

(2) The Department has the responsibility to establish, revise, or add to this program's rules.

Stat. Auth.: ORS 406.030, 406.050, 406.310 - 406.340, 406.450 - 406.462, 408.410

Stats. Implemented: ORS 406.030, 406.050, 406.450 - 406.462, 408.410

Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06; DVA 6-2006, f. & cert. ef. 6-16-06; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0602

County Responsibilities

(1) In order to receive expansion and enhancement funds, the governing body of qualified counties shall submit the following forms as prescribed by the Department:

(a) An annual application to receive funds.

(A) The application will include a copy of the county's plan to use the expansion and enhancement funds. Counties must have an approved plan in order to receive expansion and enhancement funds.

(B) Financial reports, including revenue and expense and budget reports may also be required.

(b) Quarterly Expense Reports of the County Service Officer Program, including any required attachments.

(c) Quarterly Activity Reports of the County Service Officer Program, including any required attachments.

(2) Counties shall not use expansion and enhancement funds for capital outlay.

Stat. Auth.: ORS 406.030, 406.050, 406.310 - 340, 406.450 - 406.462 & 408.410

Stats. Implemented: ORS 406.030, 406.050, 406.450 - 462 & 408.410

Hist.: DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0610

Formula For and the Disbursement of Funds

(1) The Department, after consultation with the Advisory Committee, shall determine the maximum amount of funds payable to each county.

(2) Payment amounts will be calculated using a formula based on, but not limited to, the following:

(a) A base amount;

(b) The number of veterans residing in each county;

(c) The existing veterans' service resources available in each county;

(d) The rehabilitation of the greatest number of Oregon veterans; and

(e) The elimination, as much as possible, of any duplication of effort and inefficient expenditure of funds.

Stat. Auth.: ORS 406.030, 406.050, 406.310 - 340, 406.450 - 462, 408.410

Stats. Implemented: ORS 406.030, 406.050, 406.215, 406.450 - 462, 408.410

Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06; DVA 6-2006, f. & cert. ef. 6-16-06; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0615

Fiscal Division of Funds

Of the funds available for the biennium for disbursement to counties, not more than one-half shall be disbursed during the first fiscal year of the biennium.

Stat. Auth.: ORS 406.030, 406.050, 406.310 - 340, 406.450 - 462, 408.410

Stats. Implemented: ORS 406.030, 406.050, 406.450 - 462, 408.410

Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06; DVA 6-2006, f. & cert. ef. 6-16-06

274-030-0620

Quarterly Reports and Audits

(1) Quarterly disbursements to counties shall be approved for payment only after the County Service Officer's activities report, the county report of expenditures, and all supporting documentation have been received by the Veterans Services Division on forms prescribed by the Department.

(2) Completed reports must be received by the Department by the last working day of the month following the end of each fiscal quarter.

(3) The Department may audit and examine the activities and expenditures of counties in connection with their programs of service to veterans before approving reimbursements. Results, including any findings, will be provided to the director approximately 90 days after the start of an audit.

(4) Audits may require refunds of prior disbursements if expansion or enhancement activities cannot be verified.

Stat. Auth.: ORS 406.030, 406.050, 406.310 - 340, 406.450 - 406.462, 408.410
Stats. Implemented: ORS 406.030, 406.050, 406.450 - 462, 408.410
Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06; DVA 6-2006, f. & cert. ef. 6-16-06; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0621

Payments and Adjustments

Payments shall be made quarterly at the rate of disbursement as established in OAR 274-030-0610, Formula For and the Disbursement of Funds.

Stat. Auth.: ORS 406.030, 406.050, 406.310 - 340, 406.450 - 462, 408.410
Stats. Implemented: ORS 406.030, 406.050, 406.450 - 462, 408.410
Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06; DVA 6-2006, f. & cert. ef. 6-16-06

274-030-0630

Withholding Funds

(1) Funds may be withheld by the Department due, but not limited, to the following conditions:

(a) Reports are not submitted in the timeline established in OAR 274-030-0620, Quarterly Reports and Audits.

(b) Reports do not contain accurate or verifiable information.

(c) Lack of evidence that previous funds were used in a manner established in OAR 274-030-0602, County Responsibilities.

(d) Lack of evidence that acceptable progress has been made in accomplishing the timelines, goals, and objectives as contained in the county's approved plan.

(e) The determination that a county is supplanting funds.

(A) Establishment of a Baseline. For purposes of the Expansion and Enhancement Program, county funding for the fiscal year ending on June 30, 2005, will be considered the minimum level of funding that a county must maintain for their Service Officer Program in order for the county to receive state expansion and enhancement appropriations. Exceptions may be granted by the Department for one-time county funding made in fiscal year 2005, such as funds used to purchase a vehicle for transportation of veterans, or other extenuation circumstances.

(B) Except as outlined in ORS 406.460, counties must annually fund their County Veterans' Service Program at or above the established baseline to avoid supplanting.

(C) Noncompliance. The amount of supplanted monies will be withheld dollar for dollar from that county's expansion and enhancement funds. When sufficient evidence has been received by the Department showing supplanted funds have been restored to the County Veterans' Service Program, withheld funds will be released to the county, subject to budgetary limitations and if all required reports were in a current received status at the time supplanting was discovered.

(2) Withheld funds will be released at the conclusion of the quarter following the Department's receipt of:

(a) Prior quarterly reports and supporting documentation.

(b) Amended reports with accurate and verifiable information.

(c) Sufficient evidence that funds were used in the manner established in ORS 406.450 and OAR 274-030-0602(2), County Responsibilities.

(d) Sufficient evidence has been received that acceptable progress has been made in accomplishing the timelines, goals, and objectives as outlined in the county plan.

(3) In order for any withheld expansion and enhancement funds to be released, the current quarter's reports and any required attachments must be received within the timeframe outlined in OAR 274-030-0620

(4) Unless otherwise legislatively restricted, funds withheld by the Department at the conclusion of the biennium may be disbursed to all remaining qualified counties as determined by the Director, with the advice of the Advisory Committee.

Stat. Auth.: ORS 406.030, 406.050, 406.310 - 406.340, 406.450 - 406.462 & 408.410
Stats. Implemented: ORS 406.030, 406.050, 406.450 - 406.462 & 408.410

Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06; DVA 6-2006, f. & cert. ef. 6-16-06; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08; DVA 6-2013(Temp), f. & cert. ef. 7-24-13 thru 1-20-14; Administrative correction, 2-24-14

274-030-0640

Waiver of Rules

Subject to the limitations of the law, and at its sole discretion, the Department may waive all or part of these administrative rules.

Stat. Auth.: ORS 406.030, 406.050, 406.310 - 340, 406.450 - 406.462, 408.410
Stats. Implemented: ORS 406.030, 406.050, 406.450 - 462, 408.410
Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06; DVA 6-2006, f. & cert. ef. 6-16-06; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

DIVISION 31

VETERAN SERVICE OFFICER CERTIFICATION PROGRAM

274-031-0001

Purpose and Objectives

OAR 274 division 31 is established to administer and enforce ORS 406.452 and 408.095, which authorize the Department of Veterans' Affairs ("ODVA") to establish and administer a Veteran Service Officer ("VSO") Certification Program (the "Program"). The essential objectives of the Program include assuring that each certified VSO receives appropriate initial and ongoing training, education, and experience sufficient to achieve and maintain competency in applying for applicable federal and state benefits on behalf of Oregon veterans, spouses and dependents of veterans or survivors of veterans.

Stat. Auth.: ORS 406.452 & 408.095
Stats. Implemented: ORS 406.050, 406.452 & 408.095
Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

274-031-0002

Definitions

For the purposes of OAR chapter 274 division 031, the following terms have the following meanings, unless the context clearly indicates otherwise:

(1) "Certified" means that ODVA has provided specific written recognition that a particular person, employed by the state or county to counsel and apply for applicable state and federal veterans' benefits on behalf of Oregon veterans, spouses and dependents of veterans or survivors of veterans, has received requisite training, and otherwise satisfied minimum standards of education and experience, consistent with ORS 406.452 and the Program to serve in that role as a VSO.

(2) "Director" means the Director of Veterans' Affairs for the State of Oregon as defined in ORS 406.010.

(3) "ODVA" means the State of Oregon, acting by and through its Department of Veterans' Affairs.

(4) "Veteran Service Officer" or "VSO" means a state or county employee who is designated to apply for applicable state and federal veterans' benefits on behalf of Oregon veterans and certified by ODVA to so act consistent with this division.

(5) "Reestablished VSO" means a VSO who has not been employed as a VSO in the last three years.

(6) "Milestone Examination" means an examination administered by ODVA near the midpoint of the Training Program. This examination is designed to benchmark the progress, and future training needs, of the VSO related to defined training objectives as defined in OAR 274-031-0003.

Stat. Auth.: ORS 406.452
Stats. Implemented: ORS 406.050 & 406.452
Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

274-031-0003

Minimum Training Standards for Certification

(1) As it deems appropriate, ODVA will make available or recognize training for VSO certification typically including, but not necessarily limited to the following:

(a) A multiple-day training course developed and provided on-site at ODVA's Salem headquarters facility located at 700 Summer Street NE, Salem, Oregon;

(b) An introductory training course for new or reestablishing VSO applicants;

(c) Topical training as part of its VSO conference(s); and

(d) Additional training approved by ODVA offered through official sanctioned veterans' organizations.

(2) To receive VSO certification, persons must, as determined by ODVA, satisfactorily complete required training within the first 18 months of appointment, except as provided in section (5) of this rule.

(3) The training will be conducted under the supervision of ODVA's Training Coordinator or designee.

(4) Upon satisfactory completion of the training and a passing grade on the certification testing, as determined by ODVA, the VSO will qualify to become certified as determined by ODVA.

(5) VSO certification will terminate if the VSO has not been employed as a VSO in the last three years. The VSO must then satisfactorily complete the training program to qualify for certification. ODVA shall waive this requirement if the VSO:

(a) Successfully completes a written test; or

(b) Submits documentation of successful completion of equivalent training as determined by ODVA.

(6) ODVA may grant an extension of the time limit for the completion of the Training Program upon presentation of evidence by the employing agency that the VSO was unable to complete the required training due to illness, injury, military service, or other reason(s).

Stat. Auth.: ORS 406.452

Stats. Implemented: ORS 406.050 & 406.452

Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

274-031-0004

Certification Testing

ODVA shall require that all new VSOs and VSOs being reestablished must take the following examinations within a time-frame as determined by the Director or the Director's designee per OAR 274-031-0003:

(1) Milestone examination; and

(2) Certification examination.

Stat. Auth.: ORS 406.452

Stats. Implemented: ORS 406.050 & 406.452

Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

274-031-0005

Minimum Certification Standards

(1) Each certification test will require a passing grade as determined by ODVA. If a passing grade is not achieved, the test will be readministered approximately 90 days thereafter.

(2) Newly appointed and reestablished VSOs must complete the minimum training standards for certification within the first 18 months of appointment.

(3) The Director, or designee, will assign a specific value to each training as outlined in 274-031-0003.

Stat. Auth.: ORS 406.452

Stats. Implemented: ORS 406.050 & 406.452

Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

274-031-0006

Maintaining Certification

Each VSO must maintain certification by:

(1) Participating in six training units every year;

(2) Taking and passing the certification test once every two years; and

(3) Maintaining quality work performance as determined by the Director or designee.

Stat. Auth.: ORS 406.452

Stats. Implemented: ORS 406.050 & 406.452

Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

274-031-0007

Denial/Revocation of Certification

The Director, or the Director's designee, may deny or cancel a VSO's certification if the Director, or the Director's designee, determines that the VSO is not maintaining, but not limited to, the following:

(1) The minimum certification standards as outlined in 274-031-0005;

(2) Satisfactory completion and maintenance of training and education as set by ORS 406.452;

(3) Compliance with state or federal laws;

(4) Continued employment as a VSO;

(5) Lack of sanctions by the federal Veterans Administration;

(6) Quality of claims work.

Stat. Auth.: ORS 406.452

Stats. Implemented: ORS 406.050 & 406.452

Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

274-031-0008

Hearings Request

Any person adversely affected by an ODVA determination with respect to this Program, may request review of such determination by the Director. The Director, or the Director's designee, will undertake such review as he or she deems appropriate. The Director, or the Director's designee will endeavor to provide a written response within 30 days of receipt of the requested review.

Stat. Auth.: ORS 406.030 & 406.452

Stats. Implemented: ORS 406.030 & 406.452

Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

274-031-0009

Waiver of Rules

ODVA may waive or modify any requirements of OAR 274, division 31, in order to achieve substantial justice and the purposes of the Program unless such waiver or modification would violate applicable federal or state law.

Stat. Auth.: ORS 406.030 & 406.005

Stats. Implemented: ORS 406.030, 406.050 & 406.452

Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

DIVISION 35

GRANTS, DONATIONS AND GIFTS ACCEPTED BY ODVA

274-035-0005

Grants, Donations and Gifts Accepted by ODVA

The Director of Veterans' Affairs may accept grants, donations, or gifts and deposit or disburse the proceeds from these as the Director deems appropriate for the benefit to Oregon's veterans, spouses or dependents:

(1) Any grants, donations, or gifts that are accepted by the Director and that are designated, shall only be used for the purpose specified, unless the limitations are released by the donor or law.

(2) Any grants, donations, or gifts that are accepted by the Director, unless otherwise designated for a specific purpose, may be used for any purpose reasonably designated to benefit Oregon's veterans, their widows and dependents.

(3) Any undesignated property, real or personal, that is accepted by the Director in the form of a grant, donation, or gift may be sold and the proceeds may be used for any purpose reasonably designated, including the deposition to the Veteran Home Trust Fund. Any designated property, real or personal, that is accepted by the Director also may be sold and the proceeds used for the benefit of the specified purpose, unless the limitations are released by the donor or law.

(4) Unless otherwise specified by the individual(s) or organization(s) making the grant(s), donation(s), or gift(s) accepted by the Director, the Director will determine which grant(s), donation(s), or gift(s) may be fully expended and those in which only the interest earnings may be disbursed.

Stat. Auth.: ORS 406.050, 408.510 & 408.530

Stats. Implemented: ORS 408.090

Hist.: DVA 3-1994, f. & cert. ef. 5-25-94

DIVISION 40

OREGON VETERANS' HOME

274-040-0015

Eligibility for Admission to the Oregon Veterans' Home

(1) To be eligible for admission to the Oregon Veterans' Home (Home), an applicant must be:

(a) A veteran as defined by United States Code, Title 38, section 101, as currently adopted (This publication is on file with the Oregon Department of Veterans' Affairs, 700 Summer Street NE, Salem, Oregon, and is available for public review Monday through Friday between the hours of 8 a.m. and 5 p.m.); or

(b) Spouse or surviving spouse as defined by United States Code, Title 38, section 3.50, as currently adopted (This publication is on file with the Oregon Department of Veterans' Affairs, 700 Summer Street NE, Salem, Oregon, and is available for public review Monday through Friday between the hours of 8 a.m. and 5 p.m.); or

(c) A parent, all of whose children died while serving in the Armed Forces of the United States.

(2) An applicant must also:

(a) Be able to pay the resident's portion of the cost of care;

(b) Require nursing home care as determined by a physician;

(c) Not require medical care for which the Home is not equipped or staffed to provide;

(d) Not have violent traits which may prove dangerous to the applicant, residents of the Home, staff or others, provided however, that nothing in this section shall be interpreted to prevent the admission of residents diagnosed with Alzheimer's Disease or other dementia for whom the facility is equipped and prepared to provide care for common behavior problems and recommended behavior management, and that no one shall be denied admission on the basis of being a potential danger to self or others unless that condition is documented by the attending physician.

(3) Eligible applicants, as determined by the Director of Veterans' Affairs (Director) will be scheduled for admission to the Home (or placed on a waiting list if no beds are available) based on the date that all of the required application materials have been received and level of care requirements can be satisfied, or in such other order as may be deemed appropriate by the Director.

(4) Priority for admission to the Home is as follows:

(a) Former residents of the Home who are eligible for readmission;

(b) Medal of Honor recipients;

(c) Resident Oregon veterans;

(d) Non-resident veterans;

(e) Other applicants as defined in sections (1)(b) and (1)(c) above.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 406.030, 406.050, 408.510, 408.520 & 408.530

Stats. Implemented: ORS 406.030, 406.040 & 406.050

Hist.: DVA 3-1998, f. & cert. ef. 3-13-98; DVA 14-2003(Temp), f. & cert. ef. 11-14-03 thru 2-14-04; DVA 15-2003, f. & cert. ef. 12-31-03; DVA 11-2004, f. & cert. ef. 8-25-04; DVA 8-2006, f. & cert. ef. 7-27-06

274-040-0020

Review of Decisions and Procedures for Hearings

(1) Any person adversely affected by a decision of an ODVA official may write a letter of complaint to the Director. The Director shall prepare and send a written response within 30 days of receipt of the written complaint.

(2) If the Director supports the ODVA official's decision, a request may be made within 60 days of the date of mailing of the director's response for an informal hearing with a designated official.

(3) A request for an informal hearing shall be addressed to the Director and shall state:

(a) The nature of the adverse decision;

(b) The date of the decision;

(c) The name of the person making the decision; and

(d) How the person requesting the hearing is adversely affected.

(4) Unless ODVA received written notice of a complaint, the right to a hearing (both informal and contested) shall expire 90 days after the date the complainant had actual knowledge of, or by the exercise of due care would have had knowledge of, the occurrence in dispute.

(5) Within 30 days from receipt of a request for an informal hearing, the Director shall notify the person making the request of the action taken on the request which may be:

(a) Designating an official to conduct an informal hearing;

(b) Reversing or modifying the adverse decision;

(c) Denying the request and reason(s) for denial.

(6) If an official is designated to conduct an informal hearing, the person requesting the hearing shall be notified by mail of the name and title of the official designated and the time and place for the hearing. A time for the hearing must be scheduled within 60 days of the hearing request unless otherwise mutually agreed by the parties.

(7) After conducting an informal hearing, the designated official shall prepare and submit to the Director for approval a written decision. Within 30 days after conducting an informal hearing, a decision approved by the Director shall be mailed to the person for whom the hearing was conducted.

(8) A decision of the designated official, after approval by the Director, shall be final except when, as defined by ORS 183.310(2), a Contested Case exists.

(9) When a Contested Case exists, and a contested case hearing is desired, it must be requested in writing and the request received by the Director within:

(a) 20 days of the date of the mailing of the decision of the designated official if an informal hearing has been held; or

(b) 20 days of service of the notice in a contested case under ORS 183.415.

(10) Contested case hearings will be conducted in accordance with the provisions of ORS 183.413 to 183.470 and the Attorney General's Model Rules of Procedure, OAR 137-003-0001 to 137-003-0092.

Stat. Auth.: ORS 183, 406.030, 406.040, 408.360 & 408.380

Stats. Implemented: ORS 183, 406.030, 408.360 & 406.040

Hist.: DVA 5-1998, f. & cert. ef. 4-22-98

274-040-0025

The Director of Veterans' Affairs May Accept Gifts, Grants, and Donations for the Veterans' Home and Its Residents

Monetary gifts, grants, and donations will be deposited into the Oregon Veterans' Home Trust Fund.

(1) Any grant, donation, or gift that is accepted by the director, under ORS 408.365, whose use is for a designated purpose, shall only be used for the purpose specified, unless the limitations are released or modified by the donor or by law. Any designation for the use of a grant, donation, or gift may only be for a purpose related to the Veterans' Home or its residents.

(2) Any grant, donation, or gift that is accepted by the director, under ORS 408.365, unless otherwise designated for a specific purpose, may be used for the general purpose of operating the Oregon Veterans' Home including expenses that directly or indirectly benefit the residents.

(3) Any grant, donation, or gift, which had been submitted for a specific purpose for which it has been met, may be considered unrestricted and available for operational expenses upon notification to the donor.

(4) Any grant, donation, or gift of property, real or personal, that is accepted by the director under ORS 408.365, and is undesignated property, may be sold and the proceeds deposited into the Oregon Veterans' Home Trust Fund. Any designated property, real or personal, that is accepted by the director also may be sold and the proceeds deposited into the Oregon Veterans' Home Trust Fund and used for the benefit of the specified purpose, unless the limitations are released by the donor or law.

(5) Any non-monetary grant, donation, or gift of property, real or personal, that is accepted by the director, under ORS 408.365, for which it is determined by the director to have no practical value to ODVA, and can not be used or sold in a cost effective way, may

be given or otherwise transferred to other organizations that assist veterans' in a manner consistent with ORS 293.090, 293.235, 406.030, 406.040, 406.050, and 408.365. Separate and apart from the provisions of OAR 125-246-0720, prior to offering donated property for public sale through the state Surplus Property Program, the director may make surplus or donated property available to entities, including but not limited to, those whose purpose is the care of veterans, survivors, and dependents, such as:

- (a) Federal agencies;
- (b) State agencies;
- (c) Local agencies;
- (d) Political subdivisions of the state;
- (e) Any non-profit organization qualified to acquire federal surplus property pursuant to OAR 125-035-0045; who meet the purpose requirements above; and
- (f) Veteran's organizations; and
- (g) The veteran's organizations operated retail store in Oregon Veterans' Home.
- (6) Any real or personal property that is not used as designated in (5)(a) through (g), may be disposed of consistent with OAR 125-246-0720.
- (7) As used in this division, operational expenses include but are not limited to:
 - (a) Purchase of equipment;
 - (b) Facility maintenance;
 - (c) Facility repair;
 - (d) Purchase of payment of services and supplies;
 - (e) Vehicle repair and maintenance;
 - (f) Vehicle purchases;
 - (g) Recreational activities for the veterans' residents; and
 - (h) Any other expenditure that, at the discretion of the director, is to the benefit of the residents of the Oregon Veterans' Home.

Stat. Auth.: ORS 183, 406.030, 406.040 & 408.365

Stats. Implemented: ORS 183, 406.030 & 406.040

Hist.: DVA 3-2000, f. & cert. ef. 4-21-00; DVA 2-2005, f. & cert. ef. 4-22-05

274-040-0030

Purpose and Objective

(1) It is the expressed policy of the Department of Veterans' Affairs (Department) to make the Oregon Veterans' Home (OVH) financially available to current or potential OVH residents by means of the Department's Covered Care Program.

(2) Within the fund established by the Department pursuant to ORS 406.050, an account is designated for donations to be used by the Department consistent with this Covered Care Program. Funds held within this account will be used by the Department exclusively for the purpose of assisting OVH residents whose income, Medicare benefits, Medicaid benefits, and any other assets, as determined by the Department, are insufficient to meet the financial requirements necessary for the cost of OVH care.

Stat. Auth.: ORS 406.050, 408.360, 408.365 & 408.368

Stats. Implemented: ORS 408.365 & 408.368

Hist.: DVA 4-2002(Temp), f. & cert. ef. 4-5-02 thru 10-2-02; DVA 7-2002, f. & cert. ef. 9-24-02; DVA 10-2002(Temp), f. 12-27-02, cert. ef. 1-1-03 thru 6-27-03; DVA 9-2003(Temp), f. & cert. ef. 8-21-03 thru 2-17-04; DVA 12-2003(Temp), f. & cert. ef. 10-1-03 thru 2-17-04; DVA 14-2003(Temp), f. & cert. ef. 11-14-03 thru 2-14-04; DVA 15-2003, f. & cert. ef. 12-31-03; DVA 3-2006(Temp), f. & cert. ef. 3-31-06 thru 9-25-06; DVA 5-2006, f. & cert. ef. 5-30-06; DVA 9-2006, f. & cert. ef. 7-27-06

274-040-0031

Applications

(1) Applications for assistance from the Covered Care Program account shall be made in such manner and detail, and on such forms, as the Department shall determine.

(2) Applications generally will be prioritized for consideration based on the date of completed receipt by the Department. The Department may, however, consider applications in such other order and at such other times as deemed reasonable.

Stat. Auth.: ORS 406.050, 408.360, 408.365 & 408.368

Stats. Implemented: ORS 408.365 & 408.368

Hist.: DVA 9-2006, f. & cert. ef. 7-27-06

274-040-0032

Eligibility Factors

When determining to whom Covered Care Program assistance will be made available, the Department may take into consideration various factors, including but not limited to:

- (1) The amount of funds in the Covered Care Program account available for this purpose;
- (2) The anticipated future deposits into the Covered Care Program account;
- (3) The amount of any present commitments from the Covered Care Program account;
- (4) All available sources of revenue or income to a particular resident, including but not limited to:
 - (a) United States Department of Veterans Affairs (USDVA) payments;
 - (b) Social Security benefits;
 - (c) Other pensions;
 - (d) Millennium Bill benefits;
 - (e) Medicare benefits;
 - (f) Medicaid benefits;
 - (g) Annuities;
 - (h) Savings; and
 - (i) Investments.
- (5) The amount of funds available to a particular or potential resident from members of his/her family, or others who are willing to provide financial assistance and agree to be legally obligated to meet such financial obligations of the resident;

(6) Whether or not the available Covered Care Program assistance will satisfy the entire gap in necessary funding for OVH care on behalf of the resident or potential resident;

(7) Whether or not the intended beneficiary of the Covered Care Program assistance is a current OVH resident.

Stat. Auth.: ORS 406.050, 408.360, 408.365 & 408.368

Stats. Implemented: ORS 408.365 & 408.368

Hist.: DVA 9-2006, f. & cert. ef. 7-27-06

274-040-0033

Refusing, Terminating or Suspending Funds

(1) The payment of Covered Care Program assistance on behalf of any OVH resident is subject to the sole discretion of the Department. The Department may refuse, terminate, or suspend Covered Care Program assistance to any OVH resident at any time without notice. The Department shall be under no obligation to provide Covered Care Program assistance to any OVH resident or to solicit funds to meet the financial needs of the OVH resident, his/her family, or others.

(2) When determining to terminate or suspend Covered Care Program assistance to any current recipient, the Department may take into consideration various factors, including but not limited to:

- (a) Any reported change in the financial status of the recipient or other OVH care payment provider;
- (b) Any misrepresentation or omission of material facts in the application for the Covered Care Program assistance or otherwise;
- (c) The behavior of the recipient while in the OVH;
- (d) The feasibility of appropriate care for the recipient at the OVH;
- (e) The availability of funds in the Covered Care Program account.

(3) If all of the funding of an OVH resident, or potential resident, cannot be met with allowable assistance from the Covered Care Program, no amounts will be committed by the Department or paid from the Covered Care Program account.

Stat. Auth.: ORS 406.050, 408.360, 408.365 & 408.368

Stats. Implemented: ORS 408.365 & 408.368

Hist.: DVA 9-2006, f. & cert. ef. 7-27-06

DIVISION 45

POST VIETNAM ERA VETERANS'
HOME LOAN PROGRAM

274-045-0001

Definitions for OAR 274-045-0001 to 274-045-0480

As used in these regulations or any amendments to them, or any blank form, document, publication, or written instrument of any kind prescribed, provided, published, issued, or used by the director or any of his duly authorized agents or employees in connection with the administration of the provisions of Article XI-A of the Oregon Constitution and ORS Chapter 407, providing for the loaning of money to qualified persons who served in the Armed Forces of the United States, unless otherwise required by context:

(1) "Armed Forces" means and includes:

- (a) Army;
- (b) Navy;
- (c) Marines;
- (d) Air Force;
- (e) Coast Guard;
- (f) National Guard;
- (g) Federal Reserve Forces;

(2) "Active Duty" means that status in the Armed Forces in which the person on "active duty" is under the command of and subject to discipline and on active duty pay status in the respective branch of the Armed Forces in which the person is serving:

(a) Members of the reserve components; persons on a retired status from the Armed Forces; cadets at the United States Military Academy, and the United States Air Force Academy, and Midshipmen at the United States Naval Academy and the United States Coast Guard Academy, were on active duty only after reporting for active duty;

(b) Members of the National Guard were on active duty only after having entered active Federal Service for duty other than training.

(3) "Acquisition" means:

- (a) The purchase and improvement of a home; or
- (b) The payment of the balance of a purchase price and interest on purchase contract of a home and its improvements; or
- (c) The refinancing of an existing purchase money security instrument on a home or an instrument in the nature thereof, and the improvement of the property purchased; or
- (d) Improvements of a home.

(4) "Agreement" means the contract between the Oregon Department of Veterans' Affairs (ODVA) and the approved lender, setting forth the terms and conditions under which program loans made by the approved lender will be purchased by the ODVA.

(5) "ALTA Mortgagee's Title Insurance" means a title insurance policy issued in American Land Title Insurance form by a title insurer licensed by the State of Oregon.

(6) "Approved Lender" means any "Lending Institution" as defined in ORS 407.177(8) that has entered into an agreement with ODVA to originate residential loans acceptable to ODVA or to act as a conduit for the origination of residential loans acceptable to ODVA. In determining whether or not to contract with a Lending Institution, ODVA may consider factors including, but not limited to the following:

(a) ODVA's need for additional Approved Lenders, either on a statewide basis or in a specific geographical area,

(b) Whether or not the Lending Institution has had any complaints filed against it or against any of its employees, agents, officers, directors, owners, or affiliates through the Consumer and Business Services Department of the State of Oregon, through any other regulatory agency or otherwise.

(c) Whether or not representatives of the Lending Institution have attended any ODVA-sponsored training.

(d) The reputation of the Lending Institution, including its employees, agents, officers, directors, owners or affiliates.

(e) The number and experience of Lending Institution employees and other personnel available to originate loans or to act as a

conduit for the origination of residential loans acceptable to ODVA.

(f) Status and character of the institution's loan policies and procedures.

(g) The financial capability of the Lending Institution to originate loans or to act as a conduit for the origination of loans.

(h) The Lending Institution's qualification as a loan originator or a seller/servicer for the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or the United States Department of Veterans' Affairs.

(i) Whether or not the deposits of the Lending Institution are insured by FDIC or some other federal agency or corporation.

(j) The experience, efficiency and performance of the Lending Institution in the area of residential lending and any other area of the Lending Institution's business.

(k) The willingness and commitment of the Lending Institution to accept and to fulfill the terms of an ODVA proposed contract.

(l) The result of any references which are checked as part of the application process.

(7) "Commitment" means a promise made by the ODVA to an Approved Lender or veteran, evidenced by a written commitment letter, setting forth the terms upon which the ODVA will purchase, originate, or accept by underwriting and closing a specific program loan made or processed by the Approved Lender or ODVA pursuant to a reservation of funds.

(8) "Department" means the Oregon Department of Veterans' Affairs.

(9) "Director" means the Director of Veterans' Affairs for the State of Oregon.

(10) "Domicile" means the legal residence of a veteran and consists of actual or inchoate residence in conjunction with the intention to maintain that residence, or the home of the veteran, where, when temporarily away, he or she has the intention of returning:

(a) Temporary absence from the State, such as vacation, military leave, or reasons of health, will not destroy the domicile;

(b) Temporary presence in the State without an intention to establish a permanent home will not support a domicile in the State;

(c) Domicile of an unemancipated minor shall be governed by his legal parent, (if the parents are divorced, the one having custody controls);

(d) Domicile of an emancipated minor shall be determined by choice.

(11) "Home" means any house or dwelling, including out-buildings, and the real property in connection with it, where the veteran has, or will, establish domicile.

(12) "Honorably Discharged" means that the official documents of discharge, service, or separation issued upon the termination of the veteran's service with the Armed Forces are characterized as one of the following:

(a) "Honorable"; or

(b) "General" also known as "General Under Honorable Conditions".

(13) "Improvements" means any new construction, or any necessary or beneficial additions, alterations, or changes appurtenant to the house, which add to the appraised value of the premises.

(14) "Lease" means the giving of possession and use of profits of secured property for a period of time in return for compensation.

(15) "Lease Option" means a lease of real property with an option to purchase the property within a stipulated period of time.

(16) "Lending Institution" means an entity which is licensed, or otherwise legally authorized, to conduct business in the State of Oregon exclusively or in part as a mortgage lender or a conduit for mortgage loans and that, in the judgment of ODVA, is capable of meeting the needs of ODVA in carrying out the purposes of ORS Chapter 407. In determining whether or not an entity that is licensed, or otherwise legally authorized, to conduct business in Oregon exclusively or in part as a mortgage lender or a conduit for mortgage loans is capable of meeting the needs of ODVA in

carrying out the purposes of ORS Chapter 407, ODVA may consider factors including, but not limited to the following:

(a) Whether or not the entity qualifies as a "Banking Institution" or similar entity including, but, not limited to an "Extranational Institution," a "Federal Bank," a "Federal Savings Bank," or a "Financial Institution" under ORS 706.005, 706.008, 707.744, or 723.042.

(b) Whether or not the entity qualifies as a "mortgage broker" under ORS 59.840 through 59.965 for a period of three years.

(c) Whether or not the representatives of the entity have attended any ODVA-sponsored training.

(d) The reputation of the entity or of any of its employees, agents, officers, directors, affiliates or owners.

(e) The financial capability of the entity to originate loans or to act as a conduit for the origination of loans.

(f) The entity's qualification as a loan originator or a seller/servicer for the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or the United States Department of Veterans Affairs.

(g) The experience, efficiency, and performance of the entity in the areas of residential lending and any other area of the entity's business.

(17) "Loan Origination Guide/Mortgage Loan Origination Guide" means the manual containing the origination instructions for the Post Vietnam Era Veterans' Home Loan Program, and any subsequent changes as they are effected.

(18) "Loan to Value Ratio" is the loan amount or balance divided by the net appraised value.

(19) "Minor" means any single person under the age of 18 years, but any person shall be deemed to have arrived at the age of majority upon their marriage.

(20) "Net Appraised Value" is also known as "loan value," and both terms mean the lesser of the appraised value or the purchase price. The "appraised value" is the value established by an appraisal obtained by or at the direction of ODVA, or an appraisal approved by ODVA.

(21) "ODVA" means the Oregon Department of Veterans' Affairs acting by and through the director as defined in ORS 407.085(2)(b).

(22) "Original Loan" means:

(a) The first loan the veteran receives; or

(b) The first loan based on a restored loan right.

(23) "Possession" means exclusive dominion and physical control of the secured property but occupancy is not necessary.

(24) "Post Vietnam Era Veterans' Home Loan Program" means all home loans originated under this Division.

(25) "Qualified Insurer" means private mortgage insurance company(ies) licensed to do business in Oregon and with which ODVA has agreed to accept mortgage insurance coverage. When an ALTA mortgagee's title insurance policy is in force insuring the State against the usual losses covered by an ALTA policy as well as any loss from any prior encumbrance, and the encumbrance is acceptable to both the veteran and ODVA.

(26) "Rent" means the giving of possession of secured property for occupancy for a specific period of time in return for a stipulated amount of compensation.

(27) "Reservation of Funds" (Rate Lock) means the setting aside of specific funds at a designated interest rate for a specific period of time.

(28) "Resident" or "Bona Fide Resident" means one who has domiciled within the State.

(29) "Security" means all of the real property that is to be acquired for a home and for which purpose the program loan is requested.

(30) "Security Instrument" means a mortgage, deed of trust, or similar document used to perfect the lien on the security by the ODVA. The lien will be a first lien on the home, except:

(a) As otherwise required by Oregon law, or allowed by Oregon law and approved in writing by ODVA; or

(b) When an ALTA mortgagee's title insurance policy is in force insuring the State against the usual losses covered by an

ALTA policy as well as any loss from any prior encumbrance, and the encumbrance is acceptable to both the veteran and ODVA.

(31) "Separated" means the termination of active duty with the Armed Forces.

(32) "Subsequent Loan" means any loan or loans granted after the original loan and are in these categories:

(a) Additional loan;

(b) Second loan; and

(c) Veterans' Home Improvement loan.

(33) "Transfer" means a change of ownership, either by operation of law, act of the parties, or both, such as deed, contract, certificate, court decree, property settlement, foreclosure, easement, condemnation, or adverse possession of the premises.

(34) "Underwriter/Designated Loan Officers" means those employees of ODVA whose paramount responsibility shall be the approval or rejection of all applications for loans.

(35) "Veteran" means any eligible veteran as described in OAR 274-045-0001 through 274 045 0001(2)(b) eligible to receive a loan under the provisions of Article XI-A of the Oregon Constitution.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 406.030 & 407.115

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 3-2001(Temp), f. & cert. ef. 6-15-01 thru 12-11-01; DVA 9-2001, f. & cert. ef. 11-23-01; DVA 2-2005, f. & cert. ef. 4-22-05; DVA 3-2007, f. & cert. ef. 9-25-07; DVA 2-2013, f. & cert. ef. 7-8-13; DVA 4-2013(Temp), f. & cert. ef. 7-23-13 thru 1-19-14; Administrative correction, 2-24-14

274-045-0005

Purpose and Objectives

OAR 274, division 045, is established to administer and enforce ORS 407.075 through 407.595. These rules, together with the Post Vietnam Era Veterans' Home **Loan Origination Guide/Mortgage Broker Loan Origination Guide**, shall implement the Post Vietnam Era Veterans' Home Loan Program. The program's objective is to provide funds to finance owner-occupied, residential housing for qualified veterans in the State of Oregon, thereby encouraging home ownership of residential housing by such veterans.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 291.021, 406.030, 407.115, 407.177, 407.179, 407.181 & 407.275

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0010

Eligibility Requirements

Eligibility to apply for a loan under this division is subject to the eligibility criteria of Article XI-A of the Oregon Constitution. The acceptance of an application and granting of a loan is further subject to the provisions of ORS Chapter 407, OAR divisions 020, 025, 045, other applicable law, the policies and procedures of the Oregon Department of Veterans' Affairs (ODVA), and at the discretion of the Director of ODVA

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: OR Const. Art. XI-A, ORS 183, 406.030, 407.115 & 407.125

Stats. Implemented: ORS 407

Hist.: DVA 1-2001, f. & cert. ef. 3-20-01; DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0015

Authority to Protect the Security

At the discretion of the Director, funds can be disbursed to make repairs to correct a serious structural, safety, or sanitary deficiency discovered in a property that is security for a loan when it is determined such a disbursement is necessary to protect the interest of the State. This would occur when the following conditions exist:

(1) The present and probable future value of the property, without benefit of the needed repairs, is sufficiently low when compared to the existing loan balance that the State's investment would be threatened; and

(2) The current owner is the original veteran borrower who lacks the financial means to make the needed repairs or corrections in a timely manner; and the funds required, when added to the

existing loan balance, would exceed the maximum loan right or percentage of loan limitations; or

(3) The current owner is a transferee who lacks the financial means to make repairs or corrections in a timely manner.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0020

Who May Apply for Loan

(1) A loan shall be made only to an individual veteran.

(2) Joint loans or loans to a cooperative shall not be valid.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0025

Evidence Required to Establish Eligibility

The applicant shall submit to the Director the following evidence to establish eligibility:

(1) Evidence of service and separation must be documented on DD Form 214, a DD Form 215 Correction to DD Form 214, or other evidence of service provided by the Department of Defense that is satisfactory to the Director.

(2) Certificate of Service and Casualty Report when applicant is the unremarried spouse of a person who died on active duty.

(3) Proof of Oregon residence.

(4) Proof of any change in name since discharge:

(a) Where legally changed, proof shall be by a certified copy of the Court Order, or a marriage certificate, or a divorce decree;

(b) Where not legally changed, proof shall be by an affidavit from the veteran and affidavits from at least two disinterested persons.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0030

Modification of Application

An application may be modified such as to the amount of the loan requested, legal description, amount of security or plans and specifications, but the modification must be requested in writing by the veteran and shall be subject to the approval of the Director. Substitution of security is not allowed.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0035

Cancellation of Application

(1) An applicant may cancel his or her application for a State veterans' loan at any time prior to receipt of the loan proceeds.

(2) The Director may cancel any application if the applicant fails to comply with any of the conditions pertaining to the loan.

(3) The Director may destroy any application 25 months after the veteran applicant is notified of action taken on an application (whether credit was approved or adverse action was taken).

Stat. Auth.: ORS 183, 406.030, 407.115, 407.135, 407.145, 407.275, 407.305 & 407.375

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0040

Security for the Loan

(1) The veteran shall own the home offered as security in fee simple at the time the loan is closed.

(2) The State shall have the first lien at the time of making the loan except in those cases noted in OAR 274-045-0001(30) "Security Instrument."

(3) The security shall consist of real property and the security instrument shall include all property to be acquired as a home but more than one parcel of real property may be included in the security.

(4) All security must be improved to supply a home for the

applicant and it must be in existence at the time the loan is closed,

with the exception of construction loans.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0045

Legal Description of Property Offered as Security

(1) Property offered as security must have an adequate legal

description from which the boundaries of the property may be

located.

(2) The Director may require a survey to ascertain the

boundary lines and location of all permanent improvements on the

property.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0050

Appraisal of Property

An appraisal shall be made to assist in establishing the loan value only after a complete application has been received.

Stat. Auth.: ORS 406.030, 407.115 & 407.225(3)

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0060

Terms of Loan

(1) The loan value (net appraised value) shall be used as the basis for determining the maximum loan, subject to statutory limitations. Under the provisions of ORS 407.225(3), the maximum loan on a home which is real property:

(a) May not exceed 100 percent of the net appraised value of the property or the purchase price (whichever is less);

(b) May not be more than 100 percent of the net appraised value as defined in OAR 274-045-0001, if the loan is for replacement financing;

(c) Shall not be more than the maximum original principal balance permitted on a single-family first mortgage loan by the Federal National Mortgage Association, as published in its announcement and subsequently included in its Selling Guide for a home.

(2) The borrower shall not receive any cash back from the ODVA loan.

(3) The Director shall determine the period and amount of repayment based on the age, condition, location, and useful life of the security, but the maximum period of repayment shall not exceed statutory limits.

(a) Loans shall be made in multiples of one dollar (\$1).

(b) Each program loan shall have a final maturity of at least 15 and not more than 40 years from the date of purchase.

(4) The borrower shall timely pay all property taxes and other assessments that may or do become a lien against the loan security.

(5) The borrower shall carry fire and extended coverage insurance on the security. The Director may also require that hazards other than fire be covered. All premiums and charges for said coverage shall be timely paid by the borrower:

(a) The Director may determine the form and amount of insurance coverage for the security;

(b) All insurance money shall be payable to the State of Oregon, Director of Veterans' Affairs, by endorsement of the Director-approved mortgagee clause;

(c) In the event of failure to maintain coverage, the Director shall acquire the necessary coverage and collect amounts due in a manner consistent with security documents;

(d) In case of loss, the Director shall determine the disposition of any and all funds received under the insurance policies.

(6) The Director may collect in advance, unless otherwise agreed, from said borrowers together with their payments required under section (3) of this rule, sufficient amounts to pay property taxes, insurance premiums, and other charges related to the security. Such additional amounts collected by the Director shall be held in escrow pending payment of the obligations for which they are collected and interest on said amounts shall be paid to the borrower in the manner and at the rate of interest described in ORS 87.245(1).

(7) The Director may pay property taxes, insurance premiums and other charges from funds collected from the borrower for those purposes. The Director, in the absence of funds collected from the borrower (or if such funds are insufficient in amount), may at his option, elect to pay property taxes, insurance premiums, and other charges. Any amount paid by the Director may be collected in the manner consistent with the security documents or other manner agreeable to the Director and borrower. The Director will not add amounts advanced for payment of property taxes or insurance premiums to the principal balance of the loan. On these loans, any amount advanced will be entered as a negative balance in the escrow account.

(8) The borrower's loan payment may be increased to repay the money advanced to pay the property taxes, insurance premiums,

and other charges against the security, together with interest thereon, within a maximum period of 12 months or such shorter time as established by the Director.

Stat. Auth.: ORS 291.021, 406.030, 407.115, 407.169, 407.179, 407.181, 407.225(3) & 407.275

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 3-2001(Temp), f. & cert. ef. 6-15-01 thru 12-11-01; DVA 9-2001, f. & cert. ef. 11-23-01; DVA 3-2003(Temp), f. & cert. ef. 4-7-03 thru 10-3-03; DVA 11-2003, f. & cert. ef. 9-23-03; DVA 8-2005, f. & cert. ef. 12-27-05; DVA 4-2008, f. & cert. ef. 2-22-08

274-045-0070

Interest

(1) The Director, with the advice of the Advisory Committee, will prescribe interests rates for loans funded by the Oregon Department of Veterans' Affairs ("ODVA" or the "Department") pursuant to this division. In prescribing interest rates, the Department will consider the following factors:

(a) The current value of funds;

(b) The solvency of the Department's Loan Program; and

(c) The rates' effect on veterans.

(2) In prescribing interest rates, the Department also may consider factors including, but not limited to the following:

(a) The projected value of funds;

(b) Any federal tax law restrictions;

(c) Actual or projected conventional mortgage rates;

(d) The availability of funds;

(e) Actual or projected loan demand;

(f) The loan purpose; and

(g) The source(s) of funds.

(3) The Director periodically may change the prescribed rates of interest for loans to be funded by the Department to reflect reconsideration of, or changes in, factors considered under sections (1) and (2) of this rule, or in consideration of additional factors.

(4) The Director may prescribe different rates of interest for different loans, depending upon factors including, but not limited to the following:

(a) The time of an initial loan or commitment to fund a loan;

(b) The initial rate of interest on a loan;

(c) The type of loan;

(d) The status of the borrower;

(e) The status of the loan security;

(f) The perceived risk associated with the loan;

(g) Whether or not the Department agreed to maintain an interest rate commitment within a certain range or for a certain time; and

(h) Whether or not the applicant abandoned a previous loan application or loan commitment.

(5) The Department will endeavor to record prescribed interest rates as reasonably as it is practical for the Department to do so, in its Tables and Codes Manual. This publication will be available for viewing at the Oregon Department of Veterans' Affairs, 700 Summer Street NE, Salem, Oregon, as permitted by the Department, during regular business hours.

Stat. Auth.: ORS 406.030, 407.115, 407.325 & 407.327

Stats. Implemented: ORS 407.325, 407.327

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 3-2005, f. & cert. ef. 4-22-05

274-045-0080

Approval of the Loan

The approval of any loan shall be dependent upon the following:

(1) The veteran applicant must meet the current industry standards determined by the Department to be applicable to the proposed loan. Applicable industry standards may include, but are not limited to:

(a) Local lending practices;

(b) FannieMae and other lending organization standards; and

(c) Federal and state legal requirements.

(2) The veteran applicant may be required to have equity in the property.

(3) Secondary financing may be permitted.

(4) Construction shall meet the minimum standards set by federal, state or local laws.

(5) A performance bond may be required for new construction.

(6) Inspections to prove the premises safe, sanitary and structurally sound may be required, and the loan may be refused if the construction is inferior.

(7) The security shall be served by adequate means of legal and physical access and shall have an acceptable potable water supply.

Stat. Auth.: ORS 183, 406.030, 407.115, 407.135, 407.145, 407.275, 407.305 & 407.375

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 4-2005(Temp), f. & cert. ef. 6-3-05 thru 11-30-05; DVA 5-2005, f. & cert. ef. 7-22-05; DVA 6-2005, f. & cert. ef. 10-24-05

274-045-0085

Loan Funding

(1) Funding by Oregon Department of Veterans' Affairs (ODVA) of any loan is subject to the discretion of the Director of Veterans' Affairs. In determining whether or not to fund any loan, the Director may consider factors, including, but not limited to the following:

- (a) Actual or projected cost of funds;
- (b) Any applicable federal tax or other law;
- (c) Availability and source of lendable funds;
- (d) Actual or projected conventional mortgage rates;
- (e) Actual or projected loan demand;
- (f) Loan purpose;
- (g) Eligibility of applicant;
- (h) Credit worthiness of applicant;
- (i) Adequacy of security for the loan.

(2) The Director may from time to time establish priorities and other requirements with respect to the granting of loans under this Division.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0090

Grounds for Refusing to Make a Loan

The Director may refuse to make a loan to any applicant if he finds any of the following:

(1) Prior loan experience with an applicant was unsatisfactory, including, but not limited to, late payment or nonpayment on loan and impairment of security.

(2) The applicant did not disclose all debts or obligations as required under the terms of the loan credit application.

(3) The applicant has a negative cash flow.

(4) The applicant has declared bankruptcy within the last three years unless:

(a) The applicant or the applicant's spouse has been regularly employed, other than self-employed, since the discharge; and

(b) The applicant has established credit since the bankruptcy and made timely and satisfactory payments on obligations; and

(c) The bankruptcy was caused by circumstances beyond the applicant's control, such as uninsured medical expense, layoff, strike, or divorce.

(5) The applicant has declared bankruptcy between three and five years prior to application for a loan, unless the applicant has reestablished credit since the bankruptcy.

(6) Business bankruptcies will not be grounds for refusing to make a loan if:

(a) The applicant was self-employed and the bankruptcy was not due to misconduct; and

(b) There is no evidence of derogatory credit information prior to the self-employment or after the bankruptcy; and

(c) The applicant has subsequently obtained a permanent position with reliable income.

(7) Chapter 13 bankruptcies will not be grounds for refusing to make a loan if the applicant has made satisfactory payment of at least three-fourths of the total payments due the trustee.

(8) The applicant's ability to repay the loan is insufficient, as determined by the Department of Veterans' Affairs (Department) by applying relevant industry standards.

(9) The applicant is an unsatisfactory credit risk, as determined by the underwriting analysis of the credit rating agency selected by the Director. In that case, the Director shall advise the applicant of his refusal on this basis and shall advise the applicant of his decision per Regulation B of the Fair Credit Reporting Act.

(10) The applicant is involved in the following type of transactions:

(a) The purchase of property from a spouse where the amount that the applicant seeks to borrow from the Department exceeds the unpaid balance on loans used to acquire or improve the property;

(b) The purchase from a corporation wholly or substantially owned by the applicant;

(c) The purchase of property indirectly owned by the applicant.

(11) The applicant has or has had any interest, either title or contractual, in the property being purchased, **except** it will not be grounds for refusing to make a loan if:

(a) The applicant is purchasing a one-half interest from a divorced spouse, as stated in the divorce decree, and the new loan must be funded no more than 18 months from the date of the original purchase money obligation;

(b) Within the past 18 months, the applicant closed a non-ODVA loan or completed construction on a construction loan and is now applying for an ODVA loan to pay it off;

(c) If the application is for amount spent on the purchase of, or the value of, land only (whichever is less) and construction commences within 24 months of land acquisition and the loan is funded within 18 months of the start of construction.

(12) The applicant does not meet applicable underwriting or industry property standards as determined by the Department.

(13) If the applicant will use the property offered as security for the loan for a purpose that would jeopardize the tax-exempt status of interest to holders of Bonds issued by the Director:

(a) Specifically excluded uses are:

(A) As an investment;

(B) As a recreational home;

(C) As a principal place of business for any trade or business of the applicant.

(b) Examples of excluded uses (if a portion of the property is used regularly and exclusively in connection with a trade or business) are:

(A) Using any portion of the residence as a place to meet patients, clients, or customers in the normal course of business;

(B) Storage of inventory in a separate and identifiable fixed location and kept for the wholesale or retail selling of products as a part of the applicant's trade or business which would entitle the applicant to a "Business Use of the Home" income tax deduction;

(C) Providing care for children, for the elderly, or for handicapped persons, if the nature and character of the care entitles the property owner to a "Business Use of the Home" income tax deduction.

(c) Any use of a residence which does not qualify for a "Business Use of the Home" income tax deduction shall not be considered as a use in a trade or business. Examples of such permitted uses are:

(A) Storage of inventory for the benefit of an employer or in conduct of a direct selling business, if the use is not exclusive of any personal use of that part of the residence;

(B) Babysitting, if the nature and character of the babysitting does not entitle the property owner to a "Business Use of the Home" income tax deduction;

(C) Engaging in person-to-person sales of consumer products to customers in the home, such as Tupperware, Amway, Avon, wicker, crystal, or similar products;

(D) Foster home established by Court Order, or designated by a Government Agency with jurisdiction to make such a designation;

(E) Using part of the residence to write legal briefs, prepare tax returns, read financial periodicals and reports, clip bond coupons, or engage in similar work, if the use is not exclusive of any personal use of that part of the residence.

Stat. Auth.: ORS 183, 286, 406.030, 407.115, 407.135, 407.145, 407.275, 407.305, 407.375 & Federal Tax Act of 1986
Stats. Implemented: ORS 183 & 407
Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 8-2001, f. & cert. ef. 11-23-01; DVA 6-2005, f. & cert. ef. 10-24-05

274-045-0100

Evidence of Title

The veteran shall furnish at his or her expense an ALTA Mortgagee's Title Insurance policy for the amount of the loan, a title company lien search, or a certificate of title.

(1) The title policy, or other reports, shall show that the State has a first lien except in the case of:

(a) Property taxes not payable;

(b) A lien of a bonded irrigation or drainage district, in which case all due assessments must be paid;

(c) A public improvement lien, bonded or being collected by the County Tax Collector in which case all due assessments must be paid;

(d) A lien for Reclamation Service of the United States Government, in which case all due assessments must be paid;

(e) An ALTA Mortgagee's Title Insurance policy insuring the State against loss from any prior encumbrance, but the encumbrance must be acceptable to the veteran mortgagor.

(2) All water stock shall be endorsed to, and deposited with, the Director to be held by the State until its interest terminates.

Stat. Auth.: ORS 406
Stats. Implemented: ORS 407
Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0110

Escrow Closing of Loans

(1) All loans made by the Director of Veterans' Affairs (except for protection of security loans) shall be closed by persons or firms licensed to engage in the escrow business under the Oregon Escrow Laws (ORS 696.505 to 696.590), or an attorney at law rendering services in the performance of duties as attorney at law.

(2) The borrower will select the escrow agent or attorney for closing the loan and the borrower shall pay all escrow fees.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 406 & 407
Stats. Implemented: ORS 407
Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 3-2007, f. & cert. ef. 9-25-07

274-045-0120

Transfer of Ownership

(1) The Director shall be notified in writing of any transfer of ownership or the right to possess property that is used as security for a loan with the Oregon Department of Veterans' Affairs (ODVA).

(2) The following are conditions that constitute a transfer of an ownership interest or the right to possess the loan security:

(a) A borrower takes title to the property with a person other than his or her legal spouse;

(b) Contract of sale;

(c) Any deed transfer;

(d) Any other indenture that purports to convey or transfer any portion of equitable title except for the following:

(A) Deed to create a life estate retained by the eligible veteran mortgagor;

(B) Deed to a government entity for public use as noted in ORS 407.275(2);

(C) A purchase option that extends for a period of 12 months and 32 days or more;

(D) A purchase option with a consideration of three percent or more of the stated purchase price.

(3) If any or all of the above referenced conditions in subsection (2)(a) through (d) occur to the security of an ODVA

loan, the entire balance of the loan will be immediately due and payable.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 406.030, 407.115, 407.275, 407.305, 407.335

Stats. Implemented: ORS 407.275, 407.335

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 3-2001(Temp), f. & cert. ef. 6-15-01 thru 12-11-01; DVA 9-2001, f. & cert. ef. 11-23-01; DVA 3-2007, f. & cert. ef. 9-25-07

274-045-0125

Rental

The Director may approve the rental of a security, that has been occupied by the veteran. The Director, when determining whether to approve the rental of a home that serves as security for an ODVA loan, may consider the following factors including but not limited to the following:

(1) The effect on the tax-exempt status of bonds issued under Article XI-A of the Oregon Constitution.

(2) Whether the home was and is appropriately used as the principal residence of the borrower(s).

(3) The financial integrity of the loan program.

(4) Any potential decreases in the value of the security.

(5) The impact on remedies available under the loan documents.

(6) Whether or not there has been or will be any material change in the borrower's/spouse's employment.

(7) The dissolution or annulment of the borrower's marriage.

(8) A significant geographical relocation by the borrower.

(9) Any unusual hardship for the borrower(s).

(10) The borrower(s) ability to maintain the home as his/her principal residence.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 406.030, 407.115 & 407.385

Stats. Implemented: ORS 407.385

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0130

Modification of Mortgage

(1) A request for modification of a mortgage must be made in writing by the borrower.

(2) The borrower and the Director shall agree in writing to the terms of the modification, and it shall be recorded in the mortgage records in the county where the security is located.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0140

Temporary Reduction of Payments

(1) In the event a veteran is unable to make required loan payments due to loss of income because of illness, injury, death, involuntary job loss, or economic stress due to factors beyond the veteran's control, the veteran may apply for a temporary reduction of payments provided that:

(a) The veteran is the original borrower or one who assumed the loan pursuant to ORS 407.305;

(b) The veteran is residing in the property used as security for the loan at the time he or she requests the payment reduction;

(c) The veteran must request the loan reduction by writing to the Director of Veterans' Affairs, c/o Collection Unit, 700 Summer Street, NE, Salem, Oregon 97301-1285. The written request must contain a statement describing the reason for the request, current income, source of income, and must be accompanied by a copy of the veteran's previous two years' federal income tax returns;

(d) The veteran must furnish any other documentation requested by the Director relating to the reason for request.

(2) In determining the amount and term for reducing loan payments, the Director shall consider the value of the security, the balance owing on the loan, the total assets of the borrower, past payment record of the borrower, and any other matters related to financial hardship to the borrower and the financial position of the loan program:

(a) Monthly loan payments may not be reduced to an amount less than the monthly loan cancellation life insurance premiums and the escrow portion of the monthly payment, if applicable;

(b) The Director may recapture the reduced portion of the monthly payment and any other accrued delinquency by whatever repayment methods are appropriate to individual circumstances;

(c) The terms and conditions of the payment reduction and repayment must be agreed upon, in writing, and approved by both the veteran and the Director;

(d) The veteran may be required to submit information periodically regarding his income and financial affairs in order to reevaluate the necessity of continuing the reduction in payments. Following such reevaluation, the Director may modify the loan payment reduction; and

(e) The veteran must continue to reside in the loan security.

(3) A veteran whose loan is in foreclosure is not eligible under this program.

(4) Temporary reduction of loan payments is a benefit to be extended only in an extreme emergency and is not to be abused.

(5) Because of the effect of these reductions on the solvency of the loan program as a whole, on the probable financial position of the program in the future, on the condition of the tax-exempt bond market, and on other borrowers in the program, the Director has determined that the maximum number of borrowers that can be accommodated under this program is approximately one percent of the total outstanding borrowers. Therefore, at any time, the Director will enter into agreements as provided in subsection (2)(c) of this rule with no more than one percent of the total loan portfolio, the number to be specified by the Director.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 406.030, 407.095 & 407.115

Stats. Implemented: ORS 406.030, 407.095 & 407.115

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0145**Loan Cancellation Life Insurance**

(1) The Director of the Oregon Department of Veterans' Affairs (Director), prior to obtaining loan cancellation life insurance for any person who receives or assumes a loan or makes a contract with ODVA for the acquisition of a home, and the spouse or former spouse of that person, may enter into a contract with an insurance carrier which allows the carrier to:

(a) Require an application for insurance;

(b) Underwrite classes of prospective insureds on the basis of information, such as age and health status, contained in the application;

(c) Set premium schedules commensurate with risk factors for other than service-connected disability;

(d) Deny payment of benefits for suicide or certain pre-existing, nonservice-connected disability.

(2) The Director will negotiate a contract with the insurance carrier as necessary to insure procurement and maintenance of adequate, solvent, and uninterrupted, long-term insurance coverage.

(3) The insurance contract may provide that loan cancellation life insurance on a loan or contract for the acquisition of a home or farm will be canceled after payments on the loan or contract become four months delinquent. Accounts due monthly are considered four months delinquent when the cumulative delinquency equals four times the standard monthly payment.

(4) The insurance contract may provide that insurance canceled for the above reason cannot be reinstated unless payments are brought current and a new application for insurance is submitted. The provisions of section (1) of this rule will apply to the newly submitted application.

Stat. Auth.: ORS 406.030, 407.115, 407.465 & 407.475

Stats. Implemented: ORS 407.115, 407.135, 407.145, 407.465 & 407.475

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0150**Property Tax Amortization and Escrow Accounting**

(1) Except as otherwise provided herein, payments required on all loans shall include an amount, which represents advances, for taxes paid by the Director of Veterans' Affairs (director) on the

security. If for any reason the taxes cannot be paid on November 15th, the director will send the notice as soon as possible after the taxes are paid.

(2) All applications, for permission to pay taxes and hazard insurance directly, will receive a written approval or disapproval from the director. If the application is approved, the applicant will be advised of the date when the director will discontinue making disbursements, if applicable, and the date the loan payment will be adjusted, if necessary.

(3) The director may revoke any permission granted concerning the payment of taxes and hazard insurance on the security by giving the owner of the security 30 days written notice of the revocation, except as otherwise provided herein. If the director advances funds to pay unpaid taxes and/or hazard insurance, any advance by the director for such a shortage/deficiency also will constitute immediate revocation by the director of permission for the owner to pay directly any taxes and hazard insurance due on the security, and the account will revert to the last signed agreement between the director and borrower for the payment of taxes, hazard insurance and other obligations. Any advances by the director, including any interest and fee, shall be paid back within the remaining payment/escrow year. The borrower may not change this obligation without prior written approval from the director.

(4) Pursuant to the provisions of ORS 407.169, under this division, escrow accounts are available for the prepayment of estimated property taxes and insurance.

(5) On monthly simple interest loans with escrow accounts, the required escrow payment may be based, inter alia, on the preceding year's disbursements for such items as property taxes, fire and extended coverage premiums, other required insurance premiums such as mortgage insurance, condominium/homeowners dues, and bankrofted amounts. In cases of unassessed new construction, the estimate may be based, inter alia, on the assessment of comparable residential property in the market area.

(6) The director will pay interest on the escrow account as provided by ORS 86.245(1).

(7) Under this Division, all escrow accounts on monthly simple interest loans will be administered in the following manner:

(a) The director may require a cushion that shall be no greater than 1/6 of the estimated total annual disbursements from the escrow account. Estimated disbursements may be modified by an amount not exceeding the most recent year's change in the national Consumer Price Index (CPI) for all urban consumers (CPI, all items);

(b) At the end of an escrow account computation year, an aggregate analysis will be completed on each escrow account to determine the borrower's escrow account payment(s) for the new payment year. The borrower will be notified of any shortage, deficiency, or surplus in the escrow account and the amount of escrow account payment to be included in the loan payment;

(c) Except if a loan is two (2) months or more delinquent in payments, an analysis will not be done until the loan is brought current;

(d) If the analysis determines there is not sufficient money in the escrow account to pay the required disbursements, the director may advance the shortage/deficiency. The required escrow payments on the loan will be increased to recover any interest, fee or other advance by the director for such a shortage or deficiency, or the borrower may repay the advance, interest or fee in a lump sum;

(e) If the analysis determines there is a surplus in the escrow account equal to or greater than \$25, the entire surplus shall be refunded to the borrower. If the surplus is less than \$25, this amount will be retained in the escrow account and credited against the next year's escrow payments;

(f) A statement itemizing all escrow account activity, (annual escrow analysis) will be provided to the borrower each year.

(8) The following definitions apply to section (7) above:

(a) "Aggregate analysis" — to analyze the escrow account by calculating the sufficiency of escrow funds as a whole, as opposed to calculating components separately.

(b) "Cushion" — funds that the director may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account.

(c) "Deficiency" — the amount of a negative balance in an escrow account.

(d) "Escrow account" — any account that the director establishes or controls on behalf of a borrower to pay taxes, insurance premium, or other charges, as applicable.

(e) "Escrow account computation year" — a 12-month period that the director establishes for the escrow account.

(f) "Shortage" — an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis.

(g) "Surplus" — an amount by which the current escrow account balance exceeds the target balance of the account.

(h) "Target balance" — the estimated month end balance in an escrow account that is just sufficient to cover the remaining disbursements from the escrow account in the escrow account computation year, taking into account the remaining scheduled periodic payments, and a cushion.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 86.240, 86.245, 406.030, 407.115, 407.169 & 407.275

Stats. Implemented: ORS 406.030 & 407.275

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 2-2005, f. & cert. ef. 4-22-05

274-045-0160

Partial Release of Security

(1) A partial release of security may be granted when the borrower submits a complete application for one and the Director determines that granting the requested release would not jeopardize the Department of Veterans' Affairs' security position.

(2) The remaining property must qualify as security for the loan balance under the provisions of ORS 407.225(3) and OAR 274-045-0040 to 274-045-0060.

(3) Notwithstanding compliance with section (2) of this rule, the Director may require that the loan balance be reduced as consideration for granting the requested release.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 406 & 407

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0170

Confidential Nature of Information Submitted by the Borrower

Information submitted by the veteran in support of his or her application shall be considered confidential and shall not be disclosed to persons outside the Department, unless permission is given by the veteran to release the information, or the information is requested by a public agency in the exercise of its official duty and only then at the discretion of the Director.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0180

Confidential Nature of Information Procured by the Director

Information secured by the Director in connection with a veteran's application for a loan shall be considered confidential and shall not be disclosed to persons outside the employ of the Department, unless such information is requested by a public agency in the exercise of its official duty, and only then the release shall be at the discretion of the Director.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0190

Disclosure of Information and Fees

(1) Information in the custody of the Director of Veterans' Affairs (director) will be disclosed, or protected from disclosure, consistent with the provisions of ORS Chapter 192.

(2) Requests for information can be made verbally, but the director reserves the right to require the request to be in writing, signed and dated, naming or describing the information desired and the date the information is needed. A reasonable period of time must be allowed for the custodian of the records to locate and assemble the requested information. Restrictions may be placed upon where the information will be delivered or made available for inspection. The director shall designate a staff employee to be the Department's records custodian, whose function is to perform the duties necessary to manage the Department's records in accordance with all applicable laws. These duties may include, but are not limited to, certifying records to be true copies of the original documents on file in the custody of the director.

(3) Mailing lists of Oregon Department of Veterans' Affairs (ODVA) active account holders, and Vets News recipients may be made available upon payment of the required fee. The mailing lists will not contain the names of persons who submit a written request for deletion of their name from the list on the basis that such disclosure would constitute an unreasonable invasion of privacy.

(4) The following information will not be disclosed except pursuant to an order issued by the director or by the Attorney General of the State of Oregon:

(a) Internal communications of an advisory nature preliminary to any final agency determination of policy or action;

(b) The name of a confidential informant or information submitted to the Department in confidence where submission of the information was not required and the Department has obliged itself in good faith not to disclose the information.

(5) The following information will not be disclosed except pursuant to an order issued by the Attorney General:

(a) Information relating to the appraisal of real and personal property prior to making a loan secured by that property;

(b) Information of a financial, medical, or personal nature relating to any individual, if such disclosure would constitute an unreasonable invasion of privacy.

(6) Fees will be charged to reimburse the Department the cost of making information available or for producing copies of records:

(a) For mailing lists, the fee is derived from the actual production costs. The lists are available in alphabetical or zip code order;

(b) The director may require reimbursement for any additional costs actually incurred by the Department;

(c) For all requests for copies of documents, the charge is based on the actual costs incurred for search of files and for documents provided;

(d) For necessary safeguard of documents where a requestor is allowed to research records on Department premises, a staff employee, designated by the director, must be present. The fee to be charged for this service will be equal to the hourly pay of the employee designated. In appointing an employee to safeguard Departmental records, the director shall consider whether the pay range of the designated employee is reasonable and appropriate, reflecting the technicality and sensitivity of the documents being researched;

(e) The director may waive the fees provided in subsections 6(a), 6(c) and 6(d) of this rule for city, county, state, and federal agencies, and for individuals obtaining information from their own files;

(f) The director may require payment of any and all fees identified in this section, in a form satisfactory to the director, prior to providing any disclosure of documents or information. The director may make advance charges for anticipated labor expenses on an estimated basis.

(7) The purchase of a mailing list does not constitute permission to use ODVA's name in any marketing or advertising approach, whether expressly stated, inferred or implied.

Stat. Auth.: ORS 192, 406.030 & 407.115

Stats. Implemented: ORS 192, 406.030 & 407.115

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 2-2005, f. & cert. ef. 4-22-05

274-045-0200

Director's Decisions Control in All Controversies

(1) The Director shall make all determinations as to the applicant's eligibility for a loan.

(2) The Director shall make all determinations, based upon data and information in the file, as to whether the property offered is acceptable security and whether or not a loan shall be made.

(3) The Director's decision shall be final in all matters pertaining to eligibility and the making of a loan.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0205

Review of Loan Determinations and Other Decisions

(1) Any person adversely affected by a decision of an ODVA official may write a letter of complaint to the Director. The Director or other designated official shall prepare and deposit in the ordinary mail, or personally deliver, a written response within 30 days of receipt of the written complaint.

(2) If the Director, or other designated official supports the decision, a request may be made for an informal hearing with a designated official at the Oregon Department of Veterans' Affairs Office, located at 700 Summer Street, NE, Salem, Oregon 97301-1285.

(3) A request for an informal hearing shall be addressed to the Director and shall state the nature of the adverse decision, the date of and the person making the decision, and how the person requesting the hearing is adversely affected. The Director must receive a request for an informal hearing within 60 days of the date of mailing or personal delivery of the response, provided for by section (1) of this rule. If no letter of complaint was ever written, the requirement for a letter of complaint may be waived, and the request for an informal hearing considered if the request is received by the Director within 90 days of the date of the decision leading to the request for an informal hearing. Unless ODVA received written notice of a complaint, the right to a hearing (both informal and contested) shall expire 90 days after the date the complainant had actual knowledge of, or by the exercise of due care would have had knowledge of, the occurrence in dispute.

(4) Within 30 days from receipt of a request for an informal hearing, the Director shall, by mail, notify the person making the request of the action taken on the request which may be:

- (a) Designating an official to conduct an informal hearing;
- (b) Reversing or modifying the adverse decision;
- (c) Denying the request.

(5) Any denial of a request for an informal hearing shall state the reason for the denial. A request for an informal hearing may be denied if the Director finds:

(a) Litigation involving the issue in dispute is pending or imminent;

(b) The person making the request is not the person who would directly benefit from a modification or reversal of the adverse decision (not the real party in interest);

(c) A modification or reversal of the decision would affect persons who would not be bound by the modification or reversal (the Director is lacking power to resolve the dispute);

(d) The Director did not receive the request within the time allowed by section (3) of this rule.

(6) If an official is designated to conduct an informal hearing, the person requesting the hearing shall be notified by mail of the name and title of the official designated and the time and place for the hearing. A time for the hearing must be scheduled within 60 days of the hearing request unless otherwise mutually agreed by the parties.

(7) After conducting an informal hearing, the designated official shall prepare and submit to the Director for approval a written decision. Within 30 days after conducting an informal hearing, a decision approved by the Director shall be mailed to the person for whom the hearing was conducted.

(8) A decision of the designated official, after approval by the Director, shall be final except when, as defined by ORS 183.310(2), a "Contested Case" exists.

(9) When a "Contested Case" exists, and a contested case hearing is desired, it must be requested in writing and the request received by the Director within 20 days of the date of the mailing of the decision of the designated official if an informal hearing has been held, or within 20 days of service of the notice in a contested case under ORS 183.415.

(10) Contested case hearings will be conducted in accordance with the provisions of ORS 183.413 to 183.470 and the Attorney General's Model Rules of Procedure, OAR 137-003-0001 to 137-003-0092.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 406.030 & 407.115

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01

274-045-0220

Fees

(1) The Director of Veterans' Affairs (director) imposes fees for the following:

- (a) New Loan;
- (b) Partial Release, Easement, and Modification of Mortgage;
- (c) Dishonored Check;
- (d) Reissue of Stale, Lost, Destroyed or Missing Document;
- (e) Mineral Rights and Geothermal Resource Rights Release;
- (f) Veterans' Home Improvement Loan;
- (g) Borrower requests to cancel private mortgage insurance;

and

- (h) Dishonored Electronic Funds Transfer.

(2) The fee will not be waived or reduced except when in the director's opinion, requiring the fee would cause an undue hardship. In the case of a dishonored check, the fee will be waived if the check was dishonored because of a bank error.

(3) Fee Schedule:

- (a) New Loan:

(A) A credit report fee may be charged in an amount not to exceed the amount charged by the credit-reporting firm. A credit report fee may be charged for each applicant unless a co applicant is the applicant's spouse;

(B) An appraisal report fee may be charged in an amount not to exceed the amount charged by the appraiser or actual cost;

(C) In the event of cancellation of the application after acceptance for processing and collection of credit report and appraisal fees, any money not used or obligated for credit reports or appraisals shall be refunded;

(D) The director shall charge a loan fee on conventional loans not to exceed two percent (2%) of the loan amount;

(E) Flood determination fee for each loan may be charged in an amount not to exceed the amount charged by the flood determination company;

(F) A processing fee in the amount of \$495 will be charged for processing, document preparation, or other services permitted by the director that are usual and customary in the mortgage industry.

(b) Partial Release, Easement, and Modification of Mortgage. The director will charge the following fees:

(A) \$450 plus the cost of an appraisal for a partial release or modification of mortgaged property. The appraisal fee will be refunded to the applicant if the request is withdrawn before the director is obligated to an appraiser for the cost of a property appraisal;

- (B) \$50 for consenting to an easement;

(C) \$100 for partial release involving release of a mobile home, which is to be replaced with another home;

(D) \$1,100 for a partial release involving release of water rights. \$1,000 of the \$1,100 fee will be refunded if the request is withdrawn before the director is obligated to an appraiser for the cost of a property appraisal;

(E) A larger fee may be charged in complex cases to cover extra processing costs; and

(F) A fee for the partial release of property to a government entity for public use as noted in Chapter 238 Oregon Laws 1995. This fee may be modified or waived at the discretion of the director.

(c) Dishonored Check. Whenever a bank check issued in payment of an obligation due to the director of Veterans' Affairs is dishonored by the bank upon which the check is drawn, a fee in the amount of \$25 will be charged. If two dishonored checks are received from the same borrower within a 12 month period, the director may require this borrower to make all future payments by cash, money order, cashier's check or certified check;

(d) Reissue of Stale, Lost, Destroyed or Missing Document. Whenever a document issued by the director must be reissued because it has been outstanding too long without being used, or has been lost, destroyed or for some other reason is missing, a fee in the amount of \$25 may be charged for this service. "Document" means deed, satisfaction of mortgage, satisfaction of judgment, request for reconveyance, reconveyance, assumption agreement, contract, partial release, modification of mortgage, escrow closing papers (or some other document substantially the same as the ones enumerated). This fee may be waived if there is good reason to believe that the person requesting the reissue was not responsible for the delay that caused the document to become stale or for the disappearance of the original issue;

(e) Release of Mineral Rights and Geothermal Resource Rights. The director may charge a fee of \$150 for processing an application for release of mineral and geothermal resource rights. From this fee, ODVA will pay the cost of recording any document issued. An additional \$100 may be charged if the nature of the application requires a review by the Division of State Lands to determine the mineral and geothermal resource potential. A check or money order in the amount of \$100 made payable to the Division of State Lands will be required when the Division of State Lands review is necessary.

(f) Veterans' Home Improvement Loan:

(A) A credit report fee may be charged for residential mortgage credit reports in an amount not to exceed the amount charged by the credit reporting firm;

(B) An appraisal report fee may be charged in an amount not to exceed the amount charged by the appraiser;

(C) A flood determination fee may be charged in an amount not to exceed the amount charged by the flood determination company; and

(D) Any other fees that may be incurred by ODVA may be charged in an amount not to exceed the amount charged by the provider of the service.

(g) Borrower requests to cancel private mortgage insurance. The director may charge a \$100 inspection fee. In the event a full appraisal is necessary to establish value, and it is requested by the borrower, the \$100 inspection fee will be credited toward the cost of the appraisal.

(h) Dishonored Electronic Funds Transfer. Whenever an electronic funds transfer (also known as ACH) is authorized for payment of an obligation due to the Director of Veterans' Affairs and is dishonored by the bank upon which the funds transfer is drawn, a fee in the amount of \$25 will be charged. If two dishonored electronic funds transfers are received from the same borrower within a 12 month period, the director may require this

borrower to make all future payments by cash, money order, cashier's check or certified check.

(4) Fees will be collected in advance (except for dishonored checks and electronic funds transfers). Where the director was not made a party to a transaction requiring payment of a fee, and the fee was not paid, the fee is due on demand. If payment is not made after 30 days written notice, it may be added to the amount due on the loan. The fee for dishonored checks may be added to the amount due on the loan when the bank returns the check. Any fee added to the amount due on the loan shall bear interest at the same rate as on the principal indebtedness.

Stat. Auth.: ORS 406.030, 407.115, 407.135, 407.145, 407.275 & 742.282

Stats. Implemented: 407.135, 407.145 & 407.275

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 2-2005, f. & cert. ef. 4-22-05; DVA 2-2012, f. & cert. ef. 6-25-12

274-045-0230

Approved Lenders

(1) Any lending institution, as defined in ORS 407.177(8) may apply to become an Approved Lender by submitting to the Director of Veterans' Affairs (Director) information required by the Director which may include, but is not limited to the following for review:

(a) An application in the form prescribed by the Director, including a certificate of compliance with tax laws;

(b) Its counsel's opinion regarding power and authority of the lending institution to enter into a purchase agreement with the Director;

(c) A list of authorized officers;

(d) Its most recent, audited financial statements;

(e) Financial Statement of Condition (Balance Sheet) for the last two fiscal years and Profit and Loss Statement;

(f) Resumes of principal officers and key employees;

(g) Company biography and background;

(h) Signed and executed broker agreement;

(i) Resolution of the Board of Directors/Certificate of Authorized Signatures;

(j) Articles of Incorporation (if incorporated);

(k) Signed Credit Release Authorization;

(l) Applicable licenses as required by state and local law;

(m) Explanation of Quality Control Procedures;

(n) W-9;

(o) Any other documentation or information deemed necessary by the Director;

(p) A credit report fee may be charged to the mortgage broker as part of the approved lender application process in an amount not to exceed the amount charged by the credit-reporting firm. Any funds not used or obligated for a credit report shall be refunded.

(2) A lending institution will qualify as an Approved Lender if the Director determines that the applicant has the capability and resources to originate only or originate, underwrite and fund loans in a sound and professional manner. The Director shall consider such factors as those itemized in 274-045-0001(6)(a) through (l).

(3) To become an Approved Lender, a lending institution shall enter into an agreement with the Director, providing for the manner and terms of the sale or processing of loans. This agreement shall be in the standard form prescribed by the Director. Approved Lenders shall carry out such agreement in accordance with the procedures set forth in the agreement, the rules, and the **Post Vietnam**