

Chapter 5. Sanctions Against Program Participants

Overview

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1. Basic Rules Governing Debarment, Suspension, and Limited Denial Participation Actions

Change Date May 23, 2017, Change 5
 • This section has been updated in its entirety.

a. Basic Rules The table below describes when a debarment, suspension, or Limited Denial of Participation (LDP) occurs and the justification for such sanctions.

	Debarment and Suspension	LDP
Against Whom May Sanctions Be Imposed?	Any program participant (individual or entity) and/or affiliate. All or part of an organization or only certain individuals of an organization. Examples: lender, employee of lender, loan holder, builder, real estate broker or agent, management broker, repair contractor, compliance inspector, fee appraiser, salesperson, manufactured home manufacturer, dealer or park operator.	Any program participant (individual or entity) and/or affiliate except lenders, employees of lenders, and manufactured home manufacturers (2 C.F.R. 801.1100).
Who May Impose Sanctions?	Central Office (CO) Note: Regional Loan Center (RLC) may make recommendations.	RLC Director (Obtain CO concurrence for multi-state participants)

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1. Basic Rules Governing Debarment, Suspension, and Limited Denial Participation Actions, Continued

a. Basic Rules,
continued

	Debarment and Suspension	LDP
What are the Causes for Sanctions?	<u>Debarment</u> - Commission of offense evidencing serious lack of integrity, conviction for fraud, forgery, destruction of records, etc., or other causes outlined in 2 C.F.R. 180.800. <u>Suspension</u> - Evidence of, or indictment for, offenses on which debarment can be based - see 2 C.F.R. 180.700.	Sanction by the Department of Housing and Urban Development (HUD), LDP by another VA RLC, OR In connection with the VA Home Loan program; irregularities or deficiencies in performance, violations of law or regulations, or other causes outlined in 2 C.F.R. 801.1105.
What is the Nature of Exclusion?	Generally, cannot participate in any Federal non-procurement programs (including the VA Home Loan program). However, sanction can be structured to exclude participants from only certain types of transactions.	Cannot participate in the VA Home Loan program or certain activities thereunder. LDP can be structured to exclude participant from only certain types of transactions. Example: LDP prohibits participant from appraising, but not from acting as a management broker.

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1. Basic Rules Governing Debarment, Suspension, and Limited Denial Participation Actions, Continued

a. Basic Rules,
continued

	Debarment and Suspension	LDP
Geographic Limits of Exclusion	No limits. Participant excluded from targeted activities in all locations.	Effective only within the jurisdiction of office or offices imposing it.
What Are the Terms of Exclusion?	<u>Debarment.</u> For a period appropriate to the seriousness of the cause - generally 3 years. <u>Suspension.</u> For a temporary period, pending completion of an investigation or legal or debarment proceedings - generally not to exceed 18 months.	For a period up to 12 months. <u>Exception for Builders:</u> RLCs may impose an LDP against a builder for construction deficiencies for an indefinite period pending correction of the construction deficiencies or for a fixed period up to 12 months (2 C.F.R. 801.1110).
Do Sanctions Against a Veteran Impact Use of Entitlement?	A Veteran subject to a debarment or suspension as a program participant (i.e., lender, builder, etc.) can still use his or her entitlement to obtain a VA home loan.	A Veteran subject to an LDP as a program participant (i.e., builder, broker, etc.) can still use his or her entitlement to obtain a VA home loan.

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1. Basic Rules Governing Debarment, Suspension, and Limited Denial of Participation Actions, Continued

b. Recommend Debarment or Suspension, if Appropriate

Submit a debarment recommendation to CO Front Office, if the seriousness of the conduct warrants such.

Submit a suspension recommendation only if needed as a temporary measure pending investigation or legal or debarment proceedings.

With either administrative action, ensure that adequate written documentation in support of the recommendation is provided, include the following:

- A description of the specific act(s) or violation(s) committed
- All relevant facts, documents, and evidence in the case
- Identification of the causes relied upon from 2 C.F.R. 180.800 (2 C.F.R. 180.700 for suspensions).

CO will request documentation from other affected RLCs, as needed, for multi-jurisdictional participants.

CO will make a final decision and notify affected participants of the suspension or debarment and their right to request a hearing.

A copy of the notice will be furnished to the RLC(s).

2. Evidence Needed to Support Limited Denial of Participation Actions

Change Date

May 23, 2017, Change 5

- This section has been updated in its entirety.
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a. Standards of Evidence

An LDP sanction must be supported by facts and adequate evidence. Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred (2 C.F.R. 180.900).

- It must not be based on unsubstantiated rumors, suspicion, or allegations.
 - Such evidence can be introduced into the record of the hearing and accorded such weight and consideration, as the circumstances warrant.
 - In some cases, secondary or hearsay evidence, signed written statements, etc., may be the only evidence available on some points.
-

b. Inspector General (IG) and Federal Bureau of Investigation (FBI) Reports May Not be Used as Evidence

IG and FBI reports may not be introduced as evidence since they are confidential because:

- The source of information in such reports may not be revealed.
- Information in such reports may only be presented to the hearing board through an independent medium; i.e., by means of witnesses, documents, records, etc.
- Unverified memoranda of interviews contained in investigative reports may not be introduced as evidence.

Exception: Allegations contained in such memoranda may be introduced into the record by direct examination of either the person interviewed or the investigator that conducted the interview when appearing as a witness at the hearing.

3. Regional Loan Center Responsibilities and Procedures for Sanctions

Change Date May 23, 2017, Change 5
• This section has been updated in its entirety.

a. Regulations Be familiar with this chapter and VA regulations at 2 C.F.R. parts [180](#) and [801](#).

Where appropriate, apply the provisions of Chapter 6 of the [M26-2](#).

b. Disclose the Identities of Parties Subject to Sanctions Notify the local HUD office(s) of VA's imposition of any debarment, suspension, or LDP against a participant within its geographic jurisdiction.

Release the names of participants against whom sanctions have been imposed to anyone requesting such information. [General Services Administration \(GSA\) System for Award Management \(SAM\)](#) can be used to determine whether they are on the list of excluded from Federal Procurement or Non-procurement Programs.

Ensure disclosure is not made of participants who are being considered or recommended for sanctions.

Send a copy of any LDP imposed, after expiration of conference rights, to CO.

CO is responsible for adding or deleting names from LDP List, and the GSA SAM.

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3. Regional Loan Center Responsibilities and Procedures for Sanctions, Continued

**c. Provide
Participants
the
Opportunity
to Avoid
Sanctions**

Notify the participant in writing that sanctions are being considered and provide the opportunity to correct problems where possible.

Does **not** apply to cases involving fraud or criminal activity.

Example: Builder Construction Deficiency. (See [M26-2](#)).

- A Veteran reports that after the RLC notified the builder of a construction deficiency complaint, the builder did not correct the problem or refuses to cooperate.
- If the facts warrant, based on a field review of the property, notify the builder in writing that sanctions are being considered. Include the builder's option to submit documentation or visit the RLC to dispute the complaint.
- If the builder fails to successfully dispute the complaint or correct the deficiencies determined by VA to be the builder's responsibility after reasonable opportunity, advise the builder by registered or certified mail that, unless satisfactory arrangements are made with the RLC by a specific date, sanctions will be imposed.
- If arrangements are not made by the builder by the specified date, impose or recommend sanctions.

Example: Excluded Individual Employed by Lender.

- An RLC learns that a debarred or suspended individual is employed by a lender.
- No party who employs a debarred individual may continue to conduct government business.
- Consult Loan Policy prior to contacting the lender.
- With CO concurrence, notify the lender that the individual has been debarred or suspended by VA and may not be employed until the sanction is lifted. Include a warning that continued employment of the individual in such capacity could result in sanctions against the lender. Provide the lender an opportunity to discuss the matter with the RLC.
- If the lender still employs the individual after a reasonable opportunity to terminate, advise the lender by registered or certified mail that, unless employment is terminated by a specific date, sanctions will be imposed.
- If the lender doesn't correct the problem by the specified date, report the facts to CO with a recommendation concerning suspension or debarment.

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3. Regional Loan Center Responsibilities and Procedures for Sanctions, Continued

**d. Investigate
and Assemble
Facts and
Evidence**

Sanctions can have severe economic consequences on program participants. Sound judgment is essential when choosing to use this option.

Develop sufficient facts and evidence as described in Topic 3(f) of this chapter.

Complete an investigation of the facts before recommending or imposing a sanction except when either:

- Evidence accumulated from ongoing RLC business is adequate and;
- The sanction will be a reciprocal action based on a like-sanction by another office within VA or another federal agency; or
- An investigation was already performed by VA IG or another agency, another office within VA, or a law enforcement agency, and there is adequate admissible evidence from that investigation.

RLCs are encouraged to consult with CO Loan Policy during any investigation regarding the development of facts and evidence. An RLC investigation may be performed either to provide full support for a sanction or supplement evidence from an investigative report by the IG or other source.

For each relevant finding, document:

- Source of information,
- Investigative activities performed, and
- Results.

Include:

- Dates of interviews, inspections, and other investigative activities,
- Observations made,
- Identity of alleged violators, victims, and possible witnesses,
- How to contact these parties in the future,
- Relevant conversations with or statements by these parties, and
- Photographic evidence or copies of records or correspondence pertaining to the alleged conduct, when relevant.

For sanctions based on allegations of fraud or other criminal activity, see the "Fraud and Other Criminal Activity" heading in Topic 3(f) of this chapter for standards of evidence.

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3. Regional Loan Center Responsibilities and Procedures for Sanctions, Continued

e. Refer Cases of Criminal Conduct to the IG

Ensure allegations resulting from RLC investigations are not frivolous. RLC management should discuss allegations with the investigating employee and CO Loan Policy before referral to IG.

Refer all well-founded allegations of fraud or criminal conduct relating to the Loan Guaranty Program to the Regional Office of jurisdiction's IG. Include, when available:

- Description of alleged violation, including date and location;
- Identities of alleged violators, victims, and possible witnesses;
- Estimate of loss to the government or individual;
- Copy of any field examination or RLC investigation of the matter;
- Copy of records related to participant's fraudulent or criminal activity such as, electronic records, application(s) for loan guaranty benefits, verification(s) of employment and deposit, and contracts, etc.;
- Identity and location of custodian of above records;
- Letters, memoranda, notes, and reports of contact, etc., related to the fraudulent or criminal conduct; and
- A request that the IG provide the RLC with a report containing evidence admissible in an administrative hearing which may sustain imposition of sanctions.

Provide a copy of the referral to CO Loan Policy. Verbal referrals may be made in unusual situations requiring immediate action. Confirm in writing, as soon as possible, thereafter.

A sanction based on allegations of fraud or other criminal activity may be imposed either before or after referral to and investigation by the IG or appropriate law enforcement agency, as long as the evidence is adequate to support the action.

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3. Regional Loan Center Responsibilities and Procedures for Sanctions, Continued

f. Recommend Debarment or Suspension, if Appropriate Submit a debarment recommendation to CO Front Office, if the seriousness of the conduct warrants such.
Submit a suspension recommendation only if needed as a temporary measure pending investigation or legal or debarment proceedings.

With either administrative action, ensure that adequate written documentation in support of the recommendation is provided, include the following:

- A description of the specific act(s) or violation(s) committed,
- All relevant facts, documents, and evidence in the case, and
- Identification of the causes relied upon from [2 C.F.R. 180.800](#) ([2 C.F.R. 180.700](#) for suspensions).

CO Loan Policy will request documentation from other affected RLCs, as needed, for multi-jurisdictional participants.

CO will make a final decision and notify affected participants of the suspension or debarment and their right to request a hearing.

A copy of the notice will be furnished to the RLC(s).

g. Impose LDP, If Appropriate This determination is at the Regional Office Director's discretion. Consider the following:

- LDP is in the best interests of the government, and
- The conduct involved is based on causes outlined in [2 C.F.R. 801.1105](#) and of a level of seriousness commensurate with this type of sanction.

An LDP can be the sole sanction against a participant or a means to immediately end unacceptable conduct while more severe sanctions are considered. An RLC can recommend suspension or debarment in conjunction with imposing an LDP.

If the LDP is against a builder, consider including any exceptions to the LDP necessary to prevent substantial harm to Veterans who have already contracted for the purchase of homes from the builder.

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3. Regional Loan Center Responsibilities and Procedures for Sanctions, Continued

g. Impose LDP, If Appropriate, continued

An affiliate or organizational element of the participant may be included in the LDP solely on the basis of its affiliation. The affiliate may be included for the following reason(s):

- No knowledge of, or participation in, the acts committed is necessary.
- The affiliate has the burden of proving it can meet VA requirements and is a responsible entity not controlled directly or indirectly by the participant receiving the LDP.
- The right to request in writing, within 30-business days of receipt of the notice, a conference.
- The right to have a conference held within 10-business days of receipt of the request ([2 C.F.R. 801.1111](#)).

If no conference is requested within 30-business days, the participant has no right to a formal hearing. Advise CO Loan Policy that an LDP has been imposed.

If a conference is requested within 30-business days, arrange the conference.

- The RLC Director may designate another official to conduct the conference.
- Formal rules of procedure do not apply.
- The participant may be represented by General Counsel.
- The participant may present all relevant information and materials.

The official sends the written decision to the participant within 20-business days, after the conference.

- The decision will be to withdraw, modify, or affirm the LDP.
- If the decision is to affirm all or part of the remaining period of the LDP, advise the participant of the right to request a formal hearing in writing to the Under Secretary for Benefits within 30-business days of receipt from the notice of the decision.

Send a copy of any notice of an affirmative decision to CO Loan Policy.

The RLC Director may terminate an LDP prior to the expiration of a fixed-period LDP where the cause for the LDP is resolved.

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3. Regional Loan Center Responsibilities and Procedures for Sanctions, Continued

g. Impose LDP, If Appropriate, continued

Before imposing an LDP against an interstate participant operating in areas beyond your RLC's jurisdiction:

- Contact all RLCs serving jurisdictions in which the participant operates to find out whether:
 - They have experienced problems with the participant, and
 - They wish to impose sanctions against the participant in their jurisdictions and to what extent.
- Obtain concurrence of CO on chosen course of action.
- Coordinate the contents of the LDP notices between all affected RLCs.

An RLC may implement an LDP to a greater or lesser degree within its jurisdiction than another RLC, or choose not to take action when another RLC does.

Ensure that the reasons for the difference in treatment are supported by adequate documentation of all relevant facts, including any differences in the participant's activities in each jurisdiction.

h. Arrange Formal Hearing

If a participant against whom debarment, suspension, or an LDP is imposed requests a formal hearing, CO Loan Policy may first encourage the participant to have an informal meeting with the RLC to resolve the issues. Make every effort toward informal resolution to avoid the time and cost of a formal hearing.

If informal means of resolution become exhausted, arrange a hearing date, in consultation with CO Loan Policy.

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3. Regional Loan Center Responsibilities and Procedures for Sanctions, Continued

**h. Arrange
Formal
Hearing,**
continued

The hearing is to begin within 30-business days of receipt from the request, unless postponed because:

- Participant requests postponement and presents a reasonable basis, or
- VA requires additional time to conclude its investigations, or
- The case has been, or is being, referred by the IG to a U.S. Attorney or the Department of Justice for consideration of criminal prosecution, or criminal prosecution has been initiated, but has not been concluded.

If there is a criminal case pending, a hearing date will not be determined until the criminal prosecution is concluded or the U.S. Attorney or Department of Justice has no objection to the hearing.

If the U.S. Attorney or Department of Justice objects to the hearing, General Counsel will report the facts through RLC management to CO Loan Policy, which will determine whether to grant the hearing.

Arrange a hearing date satisfactory to the participant.

- Generally to take place at the RLC and to begin on a Tuesday or Wednesday, not immediately preceding or following a holiday.
- Promptly advise CO Loan Policy of the hearing date.

The Under Secretary for Benefits, with the assistance of Loan Guaranty Service, will appoint members to the hearing board and arrange for their attendance at the hearing.

Prompt notice should be given to all parties concerned, including board members, whenever any change in the hearing date is made.

4. Formal Hearing on Sanctions

Change Date May 23, 2017, Change 5
• This section has been updated in its entirety.

a. Prepare for the Hearing Where an LDP is followed by debarment or suspension, the LDP is superseded and the appeal is heard solely as an appeal of the debarment or suspension.

The Under Secretary for Benefits appoints the hearing board composed of one or more officers or employees of VA. Each board member must become thoroughly familiar with appropriate sections of the law and regulations and this chapter of M26-1.

Board members should discuss the procedural aspects of the case prior to the hearing.

b. Arrange for Stenographer Select hearing stenographers and advise them of their duties.
• To transcribe their notes on standard-size paper, double-spacing, leaving sufficient room for binding at the top and numbering at the bottom.
• To make an original and two copies for VA (original and one copy for CO).

If the transcript is prepared by VA stenographic personnel, a copy will be furnished to the adverse party at the conclusion of the hearing at no charge.

If the transcript is prepared by contract personnel engaged by the RLC, the RLC will advise adverse party's counsel of the stenographic arrangement and that if the adverse party desires a copy of the transcript, arrangements must be made with the contractor directly and at the expense of the adverse party.

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4. Formal Hearing on Sanctions, Continued

c. Conduct the Hearing The Under Secretary for Benefits issues an order convening the board and designates one member as chairperson.

The chairperson is responsible for:

- Officially conducting the hearing
- Administering oaths or affirmations to witnesses
- Properly identifying all exhibits by order of introduction
 - Numerically for VA exhibits
 - Alphabetically for adverse party's exhibits
- Ruling on all questions presented to the board
 - If another board member objects to the ruling, a majority vote of the board (either in open or closed session) will decide the issue.
 - Chairman's ruling is always entered into the record.

The hearing is conducted in an orderly manner and a serious businesslike atmosphere of dignity and decorum.

- The chairperson should not permit any person to argue while testifying.
- The hearing must be fair and impartial in all respects.

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4. Formal Hearing on Sanctions, Continued

c. Conduct the Hearing,
continued

Conduct of board members

- Must be characterized by fairness, impartiality, and cooperativeness.
- No member will engage in any argument with the adverse party, his or her counsel, or any witness.
- Members of the board may question witnesses to gain material testimony. The board is entitled to all information of a material nature that is properly available irrespective of who does the questioning.

The hearing is a fact-finding proceeding, not a trial or adjudicatory proceeding.

- Any oral or written matter, which the board deems to be of probative value in determining the issues involved, can be admitted in evidence.
- Irrelevant, immaterial, or unduly repetitious evidence will be excluded.
- Wide latitude is exercised as to relevancy, materiality, and competency.

Objections relating to the jurisdiction of the board or VA regulations are not before the board for decision.

- The time of the board will not be used to hear arguments on these matters.
- Such objections will be noted in the record of the hearing.

The hearing can be opened or closed to the public according to the adverse party's preference. If the adverse party prefers a closed hearing, a majority of the board can determine that the public interest warrants an open hearing.

Interested representatives of another Government Agency or Department may attend in any case.

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4. Formal Hearing on Sanctions, Continued

c. Conduct the Hearing, continued

The adverse party has the right to:

- Present his or her case by oral or documentary evidence,
 - Submit rebuttal evidence,
 - Cross-examine witnesses, and
 - Make statements on his or her own behalf, as may be appropriate, for a true and full disclosure of the facts.
-

d. Complete the Process After the Hearing

The board will review the typed transcript for accuracy and completeness, as soon as it becomes available.

Ask the adverse party and his or her counsel to read the transcript and either indicate approval by initialing or make known any objections.

- Exceptions or changes requested, which would materially affect the meaning will receive careful consideration.
- Changes will be made only upon majority acceptance by the board.
- Exceptions and requested changes denied by the board shall be noted and appended to the transcript as a part of the record.

Finalize the transcript, as soon as possible, and forward it, with the original exhibits, to CO Loan Policy. Furnish a copy of the transcript, together with copies of all exhibits, to:

- The adverse party without cost if the transcript has been prepared by VA stenographic personnel. If completed by contract personnel, see the "Arrange for Stenographers" heading in this section.
- RLC management.

As soon as possible after the hearing, the board will prepare the written findings of fact.

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4. Formal Hearing on Sanctions, Continued

d. Complete the Process After the Hearing, continued

No one other than board members can be present when the board reviews and considers the evidence and makes its findings of fact. Thereafter, the basis for such findings of fact cannot be discussed between board members and the adverse party, or between board members and VA RLC personnel.

The board will consider:

- Only the matter which came before it during the hearing.
- The entire record of hearing.
- The manner in which witnesses testified.
- Their demeanor on the witness stand.
- Their opportunity to have personal knowledge of the facts concerning which they have testified.
- The authenticity of documentary evidence.
- Lack of evidence upon any worthy point at issue.

Documents such as FBI reports will not be read or considered.

The board will state what facts and circumstances have been established by the evidence presented at the hearing and whether and in what respects the charges in the notice of suspension, debarment, or LDP have been substantiated.

e. Prepare Report of Findings

The report of findings of fact prepared by the board will generally follow this format:

I. FINDINGS OF FACT

II. DISCUSSION, COMMENT, OR EXPLANATION (If necessary)

III. SIGNATURES OF BOARD MEMBERS

Submit findings of fact to CO Loan Policy.

- Furnish a copy to the adverse party.
 - The adverse party has the right to file with CO, within 14-calendar days of receipt of the board's findings, a brief of facts and/or laws.
-

5. Reciprocal Actions Based on other Federal Agency Sanctions

Change Date May 23, 2017, Change 5

- This section has been updated in its entirety.

a. Policy Government-wide suspensions and debarments by any Federal agency included in GSA's SAM are recognized by VA.

- No reciprocal action or notice from VA is needed.
- The participant is automatically excluded from the VA Home Loan program.

RLCs have discretionary authority to impose reciprocal LDPs by giving notice to the participant. VA policy is to impose LDPs based on LDPs by HUD/FHA (or the U.S. Department of Agriculture [USDA]) without looking into the facts of the case and terminate LDPs only when furnished satisfactory evidence of reinstatement by such agency.

The RLC may decline to impose an LDP if the participant's record of performance in the VA Home Loan program warrants, and the sanction would not be in the best interest of Veterans or VA.

CO takes any necessary reciprocal action against program participants based on HUD withdrawal of mortgagee approval, or other sanctions besides government-wide suspensions, debarments, and LDPs. Forward any notifications of such sanctions to CO.

b. Procedure for Reciprocal Actions VA learns of HUD/FHA or USDA sanctions by way of:

- A copy of the HUD/FHA or USDA letter to the participant, or
- HUD's or USDA's list of LDPs and supplements to the list.

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5. Reciprocal Actions Based on other Federal Agency Sanctions, Continued

**b. Procedure
for Reciprocal
Actions,
continued**

Upon learning of a HUD/FHA (or USDA) sanction, send a notice to the excluded firm or individual explaining that VA is recognizing HUD/FHA's (or USDA's) LDP, with a copy to CO. Include in the notice:

- The impact of the sanction,
- Programs or activities the participant is excluded from,
- The geographic area affected, and
- A statement that the VA sanction will be in effect until the HUD/FHA (or USDA) sanction has been rescinded.

Generally, implement the VA LDP to the same degree as the HUD/FHA (or USDA) LDP, and no further. In such cases, VA will not afford the participant a hearing since any appeal rights are to be exercised with HUD/FHA (or USDA).

However, the RLC may use its discretion to implement the LDP to a greater or lesser degree than HUD/FHA (or USDA), or to not impose an LDP. For example:

- VA may exclude the participant from a smaller or larger geographic area than HUD/FHA.
- VA may allow the participant limited participation in the program.

If VA chooses to impose sanctions materially more restrictive than the HUD/FHA (or USDA) action:

- The grounds for the additional restrictions must be well documented.
- The participant must be afforded the opportunity for a hearing on the additional restrictions.

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5. Reciprocal Actions Based on other Federal Agency Sanctions, Continued

c. Multi-Jurisdictional Participants

Before imposing a reciprocal LDP against an interstate participant operating in areas beyond your RLC's jurisdiction:

- Contact all RLCs serving jurisdictions in which the participant operates to find out whether:
 - They have experienced problems with the participant.
 - They wish to impose sanctions against the participant in their jurisdictions and to what extent.
- Obtain concurrence from CO only if the LDP will be materially more restrictive than the HUD/FHA (or USDA) LDP for any or all affected VA jurisdictions.
- Hearing rights are required for a more restrictive sanction than HUD/FHA (or USDA).
- Coordinate the contents of LDP notices between all affected RLCs.

The RLC may implement a reciprocal LDP to a greater or lesser degree within its jurisdiction than another RLC, or choose not to take action when another RLC does.

Ensure the reasons for the difference in treatment are supported by adequate documentation of all relevant facts, including any differences in the participant's activities in each jurisdiction.

d. Do Not Accept Submissions from Excluded Parties

Return any submission received from a participant on the GSA SAM or HUD excluded list to the participant.

Advise the participant that VA is refusing to take action on the case because of sanctions imposed by another Federal agency.

If notification of a VA reciprocal action is required, as for an LDP, and has not previously been sent to the participant, send the notice in conjunction with return of the submitted material.

VA will honor commitments issued prior to imposition of the HUD/FHA or USDA sanction.

6. Withdrawal of Lender's Automatic Processing Authority- Preliminary Actions

Change Date May 23, 2017, Change 5

- This section has been updated in its entirety.

a. Be Familiar with the Regulations The regulations at [38 C.F.R. 36.4353](#) provide:

- Criteria for withdrawal of automatic authority for supervised or non-supervised lenders for various periods of time ranging from 60-calendar days to 3 years.
- That automatic authority can be withdrawn upon 30-calendar days' notice.
- That automatic authority may be withdrawn for imprudent lending practices or practices prejudicial to the interests of Veterans or the government.
- These practices are of a lesser degree than would warrant complete debarment or suspension.

b. Work with the Lender If information casts doubt on the conformity of the lender's credit practices to the purposes of the law, spot check or audit the lender's credit underwriting practices. Options include:

- Request submission of substantiating credit data in selected cases, or
- Obtain backup credit reports.

If the lender's underwriting shows a pattern of closing loans not meeting VA's credit requirements or standards, bring it to the attention of the lender's liaison employee (non-supervised lender) or other appropriate officials in an effort to improve future performance. Participation of the Loan Guaranty Officer is required in such cases to assure the tone of the discussion is helpful and provides guidance.

If after a reasonable period the lender fails to demonstrate satisfactory performance with numerous significant underwriting errors and/or recurring deficiencies, consider requiring prior approval for all future loans. Lenders with automatic authority withdrawn may still process VA-guaranteed loans on a prior-approval basis.

7. Basis for Withdrawing Lender's Automatic Processing Authority

Change Date

May 23, 2017, Change 5

- This section has been updated in its entirety.
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a. Withdrawal for Indefinite Period

Automatic authority may be withdrawn for an indefinite period based on failure to continue meeting basic qualifying criteria.

Exceptions include:

- For supervised lenders, this includes loss of status as an entity subject to examination and supervision by a Federal or State regulatory agency,
- For non-supervised lenders, this includes no approved underwriter, failure to maintain \$50,000 working capital, and/or failure to file required financial statements, and
- Any of the causes for debarment set forth in 2 C.F.R. parts [180](#) and [801](#).

During the probationary period for newly-approved, non-supervised automatic lenders, automatic authority may be withdrawn:

- Based upon numerous significant underwriting errors and/or recurring deficiencies.
 - At any time during the probationary period if recommended by an RLC.
-

b. Withdrawal for 60 days

Automatic authority may be withdrawn for 60-calendar days based on: Loan submissions showing deficiencies in credit underwriting after repeatedly being called to the lender's attention. Examples:

- Use of unstable sources of income to qualify the borrower.
 - Ignoring significant adverse credit items affecting applicant's creditworthiness.
 - Employment or deposit verifications were hand carried by applicants or otherwise improperly permitted to pass through the hands of a third party.
 - Loan submissions were consistently incomplete after repeatedly being called to the lender's attention.
 - Continued instances of disregard of VA requirements after repeatedly being called to the lender's attention.
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7. Basis for Withdrawing Lender's Automatic Processing Authority, Continued

- c. Withdrawal for 180 Days** Automatic authority may be withdrawn for 180-calendar days based on any of the following:
- Loans conflicting with VA credit standards and would not have been made by a lender acting prudently.
 - Failure to disclose to VA significant obligations or other information so material to the Veteran's ability to repay the loan that undue risk to the government results.
 - Employment or deposit verifications were hand carried by the applicant or otherwise mishandled, resulting in submission of significant misinformation to VA.
 - Substantiated complaints are received that the lender misrepresented VA requirements to Veterans to the detriment of their interests.

Examples to Support Withdrawal for 180-Calendar Days

- Veteran was dissuaded from seeking a lower interest rate based on the lender's incorrect advice that such options were excluded by VA requirements.
 - Closing documents show instances of improper charges to the Veteran after the impropriety of such charges were called to the lender's attention by VA, or the lender refuses to refund such charges after notification by VA.
 - Other instances of lender actions prejudicial to the interests of Veterans such as deliberate delays in scheduling loan closings.
-

- d. Withdrawal for 1 to 3 years** Automatic authority may be withdrawn for 1 to 3 years based on:
Failure to properly disburse loans, such as loan disbursement checks returned due to insufficient funds or involvement by the lender in the improper use of a Veteran's entitlement. Examples include:
- Knowingly permitting the Veteran to violate occupancy requirements, or
 - Lender involvement in the sale of a Veteran's entitlement, etc.
-

8. Authority to Withdraw Lender's Automatic Processing Authority

Change Date

May 23, 2017, Change 5

- This section has been updated in its entirety.
-

a. Authority of the RLC

An RLC may withdraw the automatic authority of non-supervised lenders without operations in other jurisdictions for 60-calendar days. The basis for withdrawal must be one of those listed in Topic 7 of this chapter as a basis for withdrawal for 60-calendar days, 180-calendar days, or 1 to 3 years.

Discuss the basis of the action with CO Loan Policy staff prior to providing the 30-calendar day notice of intent to withdraw automatic processing privileges to the lender.

b. CO Jurisdiction

CO will process all cases involving withdrawal of automatic authority for:

- More than 60-calendar days,
- Supervised lenders,
- Multi-jurisdictional lenders, or
- Cases described under the "Withdrawal for Indefinite Period" heading in Topic 7(a) of this chapter.

RLCs will make their recommendations to CO in writing with all necessary documentation and evidence.

Include the following:

- Statement of deficiencies uncovered
 - Summary of attempts to get the lender to conform to applicable VA policies
 - The loan files involved. If numerous, submit representative loan files and a list of remaining cases, detailing deficiencies in each case
 - The lender's file
 - Available information on the RLC's guaranty claims experience with the lender
-

9. Notice and Hearing Rights for Withdrawal of Lender's Automatic Authority

Change Date May 23, 2017, Change 5
• This section has been updated in its entirety.

a. Procedures For cases within your RLC's authority, give 30-calendar day notice of intent to withdraw, this will allow the lender time to close or obtain prior approval for any loan(s) in which processing has begun.

The lender has 15-calendar days from receipt of the notice to submit information in opposition to the withdrawal to the RLC.

Although there is no right to a formal hearing, if the lender's submission raises a dispute over facts material to the withdrawal, the lender will be afforded the opportunity for a hearing.

- A hearing officer or panel will be appointed by the Under Secretary for Benefits.
 - Hearing procedures set forth in Topic 4 of this chapter may be generally followed, as appropriate.
 - If requested, make a transcribed record of the proceedings available at a cost to the lender. The requirement for a transcript is waived by mutual agreement.
 - A request to defer the effective date of withdrawal until after the hearing will be approved by the Under Secretary for Benefits, only if it is in the best interest of the government.
-

10. False Lender Certification on Loan Submissions

Change Date May 23, 2017, Change 5

- This section has been updated in its entirety.

a. What Is It? The certification a lender must sign for each loan submission is described in Chapter 5 of the [Lender's Handbook](#). Any lender who knowingly and willfully makes a false certification may be subject to civil money penalties under the provisions of [38 C.F.R. 36.4340\(k\) and \(l\)](#).

b. RLC Responsibilities If it appears that a lender's certification is false, prepare a report that includes:

- The evidence supporting the finding of a false certification and of liability,
- A description of the claims or statements which form the basis for assessing liability, and
- Any mitigating circumstances that may relate to the certification.

Submit this report to CO Loan Policy and Oversight for endorsement of the findings and a determination of the amount of liability to be assessed against the lender.

c. CO Responsibilities CO, along with the IG, will review the information provided.

If the Under Secretary for Benefits confirms that a false certification has been made, IG will take any necessary steps to move forward with the investigation and/or litigation.

11. Withdrawal of Lender Appraisal Processing Program Authority

Change Date May 23, 2017, Change 5

- This section has been updated in its entirety.

a. Authority The Loan Guaranty Officer (LGO) is authorized to withdraw the special privilege of Lender Appraisal Processing Program (LAPP) authority:

- When proper cause exists,
- For an indefinite or specified period of time, and
- After consultation with CO.

b. Procedures Be familiar with the regulations at [38 C.F.R. 36.4347](#) and the [VA Lender's Handbook](#).

Provide 30-calendar days written notice of intent to withdraw.

The lender has 15-calendar days from receipt of the notice to submit information to the LGO in opposition to the withdrawal.

Although there is no right to a formal hearing at this stage of processing, the LGO will review the lender's submission and make a recommendation to the RLC Director to sustain, modify, or rescind withdrawal.

Provide the lender a written decision with the right to appeal to the Under Secretary for Benefits.

If the lender's submission raises a dispute over facts material to the withdrawal, the lender will be afforded the opportunity for a hearing. A hearing officer or panel will be appointed by the Under Secretary for Benefits. Hearing procedures set forth in Topic 4 in this chapter may be generally followed, as appropriate.

12. Sanctions Based on Unfair Contract Provisions or Marketing Practices

Change Date

May 23, 2017, Change 5

- This section has been updated in its entirety.
-

a. Sanctions Available

VA may refuse to appraise property for VA-guaranteed financing (i.e., impose sanctions) if the parties in interest are identified with previous sales involving VA-guaranteed financing and the contract of sale or methods or practices pursued in the marketing of such properties were unfair, unethical, or prejudicial to the Veteran purchasers.

Whenever appropriate, provide a reasonable opportunity for the builder or other program participant to correct the problem(s) prior to imposing sanctions.

Impose or recommend debarment, suspension, or an LDP (subject to their specific rules and limitations) where there has been a general or continued employment of unfair contractual practices or sales methods accompanied by a disregard for the consequences to the purchasers.

These sanctions may also be appropriate where special factors such as an attempt to defraud VA, the Veteran, or the lender, or a substantial financial injury to the Veteran, which the seller has not remedied, accompany an unfair contractual feature or sales method.

b. Review of Sales Contracts

Lenders are required to review the provisions of each sales contract or purchase agreement on a proposed construction case and determine whether it is acceptable and does not contain unfair contractual provisions. The closing of the loan denotes the lender has determined the contract is acceptable.

Continued on next page

12. Sanctions Based on Unfair Contract Provisions or Marketing Practices, Continued

c. Examples of Unfair Contract Provisions or Features

Unfair contract provisions or features include, but are not limited to, the following:

Example	Unfair Contract Provisions or Features
1	Provisions allowing the downpayment or earnest money of the purchaser to be forfeited or retained as liquidated damages if the purchaser cannot obtain VA financing.
2	Inclusion in a lump-sum contract of an "escalator clause" which obligates the purchaser to pay a higher price in the event of increased costs for labor, material, or other items prior to delivery of title. Unless accompanied by a provision which gives the purchaser the option of canceling the contract and obtaining a refund of the monies paid if the increased price is not acceptable to the Veteran.
3	Provisions which infringe upon the usual or customary freedom or right of an owner to sell a property, except as allowed under 38 C.F.R. 36.4309(e) and 36.4354(b)(5). Example. A provision that the purchaser will give a stated real estate agency an exclusive listing if he or she resells the property within 2 years after acquisition, or will give the seller or another a first option to buy.
4	A requirement that purchasers waive or release any claim or right for nonperformance by the builder under the contract. • This does not prevent a builder from obtaining a statement from the purchaser at closing that he or she has inspected the house and has not observed any unsatisfactory construction. • Nor does it prevent the builder from obtaining a release from the purchaser in settlement of a bona fide dispute.
5	Omission of a description sufficient to identify accurately the property sold.

Continued on next page

12. Sanctions Based on Unfair Contract Provisions or Marketing Practices, Continued

c. Examples of Unfair Contract Provisions or Features, continued

Example	Unfair Contract Provisions or Features
6	Omission of a provision specifying whether the builder or the Veteran is to be charged with any special assessments or improvement bonds. Includes those payable in the future, for improvements included in the plans and specifications or commenced or completed at the time of closing, such as streets, sidewalks, curbs, gutters, and sewers.
7	Omission of a date for completion of proposed construction or failure to give the Veteran the option of canceling the contract and obtaining a refund of the deposit if the dwelling is not completed on a specified date or within a reasonable time afterwards.
8	Failure of a contract covering proposed construction to obligate the seller to complete the dwelling in substantial accordance with identified and definite plans and specifications.

d. Examples of Unfair Marketing Practices

Unfair marketing practices include, but are not limited to, the following:

Example	Unfair Marketing Practices
1	Enforcement of unfair contractual provisions.
2	Requiring purchasers to execute so-called "contracts" which legally bind the purchasers, but do not bind the seller to deliver the property when completed to the purchasers i.e., limiting a seller's liability to the refund of the earnest money deposit.

Continued on next page

12. Sanctions Based on Unfair Contract Provisions or Marketing Practices, Continued

**d. Examples
of Unfair
Marketing
Practices,
continued**

Example	Unfair Marketing Practices
3	Advertising that a property or project is "VA-guaranteed," or "VA-approved," or "VA-inspected" in such a way as to lead Veterans to believe that VA guarantees the construction and workmanship. "VA financing available," or "Eligible for VA financing," or similar advertising is acceptable.
4	Delaying tactics on the part of the builder to postpone completion of the property or the closing of the sale after completion in an effort to induce the Veteran to agree to a modification of a firm contract such as: • The substitution of inferior materials, • The omission of appliances, or • An increase in price.
5	Failure of the seller or agent of the seller of proposed or newly constructed properties to place in a special trust account deposits or downpayments received from Veteran purchasers, as required by 38 U.S.C. 3706 . On existing properties, the failure to place downpayments or earnest money deposits in a trust fund or in escrow when required by law or by local practice. When it is not required or not customary for these deposits to be "isolated," the failure or inability of the seller to return the deposit when and if required under the contract.

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12. Sanctions Based on Unfair Contract Provisions or Marketing Practices, Continued

e. Questionable Contract Provisions or Marketing Practices	For questionable contract features or marketing practices not listed in this section, the relevant facts, including research on customary practices in the locality (if necessary), should be submitted to CO for a determination of whether the feature or practice is unfair or unduly prejudicial.
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f. Application to Existing Dwellings	This section is not ordinarily applicable to the sale of individual existing (previously occupied) dwellings. However, there may be some cases in which it would be proper to apply the provisions to sales of existing property.
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13. Sanctions Based on Violations of Equal Housing Opportunity Laws

Change Date May 23, 2017, Change 5

- This section has been updated in its entirety.

a. Equal Housing Opportunity Laws and Regulations

RLCs may recommend or impose sanctions (subject to the rules and limitations applicable to the particular sanction) against program participants for violations of statutory provisions and regulations governing equal opportunity in housing. These laws and regulations include the following:

Equal Credit Opportunity Act (ECOA). ECOA prohibits lenders from discriminating against credit applicants on the basis of:

- Race, color, religion, national origin, sex, or marital status,
- Age (provided that the applicant has the capacity to enter into a binding contract),
- All or part of the applicant's income derives from any public assistance program, and
- The applicant has in good faith exercised any full right under the Consumer Credit Protection Act.

It applies to applicants for nearly all types of credit, including home loans, and all aspects of the credit transaction, including:

- The solicitation and taking of applications
- Information gathering and dissemination
- Credit investigation
- Standards of creditworthiness
- Credit terms
- Credit denial
- Loan servicing and collections

ECOA applies to classes of applicants as well as individual applicants; e.g., a lender may not ask pregnant applicants about their prospects for continued employment over a certain period unless the same question is asked of male applicants. VA must comply with ECOA in its role as a processor of prior approval loans, and be watchful for violations by lenders when reviewing loan submissions. VA may impose sanctions against a lender for ECOA violations or refer the case to the Department of Justice for prosecution, if appropriate.

Continued on next page

13. Sanctions Based on Violations of Equal Housing Opportunity Laws, Continued

a. Equal Housing Opportunity Laws and Regulations, continued

The Fair Housing Act. The Act prohibits discrimination on the basis of race, color, religion, sex, handicap, familial status or national origin:

- In the sale, rental, or advertising of dwellings,
- In the provision of brokerage services, and
- In the availability of residential real estate-related transactions.

The Act mandates executive departments and agencies to affirmatively administer their programs and activities relating to housing to further the purposes of the law.

Section 527 of the National Housing Act. This section prohibits discrimination on account of sex in the making of federally-related mortgage loans. It also requires all persons making such loans to consider, without prejudice, the combined income of the borrower and spouse when determining sufficient income to support a loan to a married couple or either member thereof.

VA Regulations at 38 C.F.R. 36.4363. This regulation requires builders or other parties requesting VA appraisals of individual existing housing not previously occupied, newly constructed housing, or a proposed subdivision, to certify that they will not decline to sell the property appraised to a prospective purchaser because of his or her race, color, religion, sex or national origin. Any Veteran obtaining a VA-guaranteed loan is also required to certify that he or she will not decline to sell the home in the future based on these discriminatory factors (on VA Form 26-1820, *Report and Certification of Loan Disbursement*).

14. Discrimination Complaints

Change Date May 23, 2017, Change 5
• This section has been updated in its entirety.

a. What is a Discrimination Complaint? It is a complaint made to VA regarding a discriminatory act or acts committed against the complainant, which arose from operations of VA's Home Loan program.

It can involve the guaranteed loan program, the direct loan program, VA's property management division, administration of VA's portfolio loans, or any other facet of VA's Home Loan program.

It can be directed against lenders, builders, brokers, or any other industry participant, as well as VA fee personnel or VA employees.

It can involve a wide range of VA Home Loan program activities; e.g., the selection of fee appraisers, the acceptance of purchase offers on acquired properties, etc.

b. How Must the Complaint be Submitted? Complaints must be written, either by letter or on [VA Form 26-8827](#), *Housing Discrimination Complaint*.

If a discrimination complaint is initially received by telephone, inform the complainant to submit the complaint in writing. Complaints can be emailed to the VA Regional Office.

c. Processing the Complaint Upon receipt of a written complaint, follow these procedures:

Step	Action
1	Immediately forward a copy of the complaint to CO.
2	Simultaneously forward a copy of the complaint to the respondent with a request for a detailed written response within 10-business days. A reasonable request for extension of the 10-business day period may be granted.

Continued on next page

14. Discrimination Complaints, Continued

c. Processing the Complaint, continued

Step	Action
3	Advise the complainant that the complaint has been received and is under investigation, and that the complainant will be notified of VA findings.

Bear in mind that an investigation and report of findings and a recommended resolution of the complaint must be completed within 20-business days of receipt of the written complaint.

d. Conduct an Investigation

The LGO is responsible for conducting all discrimination complaint investigations. Portions of the investigation may be delegated to staff under the close monitoring and guidance of the LGO.

All complaints and allegations will be considered valid until refuted by the subsequent development of facts.

While the investigative methods used in developing the facts of a specific complaint are left to the discretion of the LGO, the following basic steps must be taken in each investigation:

Step	Action
1	Search the respondent's individual file to determine whether the respondent has been the subject of previous complaints.
2	Examine the respondent's general operating practices to provide a basis for determining whether the complainant was treated in a standard manner.
3	Interview all parties involved in the complaint. Properly qualified personnel (i.e. Loan Guaranty Service, or field examiners) must conduct the interviews.

Continued on next page

14. Discrimination Complaints, Continued

d. Conduct an Investigation,
continued

Step	Action
4	Once a final report is submitted, CO will advise the RLC of the appropriate disposition of the case. Do not close a complaint, forward a final report to the complainant or respondent, or impose sanctions until the RLC receives instructions from CO. This is because sanctions may be imposed pursuant to 2 C.F.R. parts 180 and 801 and a hearing required, with the burden of proof on VA. CO will ensure the facts are well-developed and sufficient to document discrimination.
5	Implement the course of action specified by CO within 5-business days following receipt of the CO notice and appropriately annotate the complaint. In some instances CO may determine that the complaint and supporting documentation should be referred to the Department of Justice for consideration of criminal or civil action, or to HUD, the Federal Trade Commission, or another Federal Agency. CO will provide appropriate instructions.

e. Discrimination Complaint Files

Maintain a file in the RLCs local shared drive that includes:

- A complainant's file will be established when the written complaint is received.
- Alphabetize all individual files by name.
- Each file will contain the written complaint, and all subsequent correspondence, documents, and materials related to the complaint, the investigation, and ultimate resolution.
- When the complaint has been closed, the originals of all material will be retained in the individual complainant's file in accordance with [RCS VB-1, part I, item No. 12-055.100](#).

Copies of the complaint and the correspondence with the complainant and respondent closing the case will be placed in the loan file, if any, and the appropriate program participant or fee personnel file ([RCS VB-1, part I, item No. 12-055.200](#)) maintained in the Loan Guaranty Division; i.e., the lender, builder, appraiser, compliance inspector, or management broker file.

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14. Discrimination Complaints, Continued

e. Discrimination Complaint Files,
continued

Maintain a discrimination complaint log for quick reference and easy retrieval in accordance with [RCS VB-1, part I, item No. 12-055.300](#).

The log will contain five columns, as follows:

Column	Item
1	Complainant's name. Enter the complainant's case number, if there is one, under the complainant's name.
2	Nature of complaint. Enter an abbreviated description of the basis of the complaint (race, sex, age, etc.) and the type of discrimination (low appraisal, loan denied, offer rejected, etc.) in the nature of complaint column.
3	Date received.
4	Status of complaint.
5	Date closed. The date closed will be the date the RLC closes the complaint as directed by CO.

15. Sample Letter Imposing Limited Denial of Participation

Change Date May 23, 2017, Change 5
• This section has been updated in its entirety.

The below sample letter is intended to be used for LDPs.

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

Name
Title
Company
Address

Dear Mr./Ms. Last name:

Effective (date of this notice), and continuing ("through" date sanction expires"), you are prohibited from participating as a (specify roles participant is excluded from) in the VA (specify loan guaranty and/or other applicable programs) anywhere within the jurisdiction of VA's (name of responsible RLC) Office. This includes (describe territory by state, county, etc.).

The cause of this limited denial of participation, under 38 C.F.R. 44.705 (list specific letter and numerical references for the applicable sections), is (state exact regulatory language of applicable causes). The conduct leading to this determination includes:

- (1) (Describe specific conduct or transactions)
- (2)
- (3)

Optional Paragraph

Your limited denial of participation will be lifted by VA once you have resolved the construction deficiencies which led to the sanction. Should you wish to participate in VA's (loan guaranty and/or other programs) program in the future, you will be required to (specify corrections of existing construction deficiencies required and controls that must be put in place to ensure these deficiencies are not repeated in the future). Once VA is satisfied that all necessary corrective action has been taken, we will inform you of your right to participate in the (loan guaranty and/or other programs) program again.

Continued on next page

15. Sample Letter Imposing Limited Denial of Participation, Continued

You have the right to request a conference regarding this limited denial of participation. If you choose to request a conference, you must submit a request in writing within 30-business days of receipt of this letter. You have the right to have such conference held within 10-business days of VA's receipt of your request. The conference is an informal proceeding at which you may present any relevant information and materials to the presiding VA official. You may be represented by counsel at the conference if you choose.

After consideration of the information and materials presented at such conference, the VA official shall advise you in writing of the decision to withdraw, modify or affirm the limited denial of participation.

If you choose to request a conference, please direct your request to:

Director
VA Regional Office
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Any questions you have regarding this matter should be directed to XXXXXXXXXX at XXX-XXX-XXXX.

Sincerely,

XXXXXXXXXX
Loan Guaranty Officer
