

CHAPTER 18. REGULATORY INFRACTIONS

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18.01 REGULATORY INFRACTIONS

a. Servicers are required to adhere to VA regulatory requirements. In certain circumstances, the servicer may need to obtain VA approval to deviate from a regulation. All pre-approval requests must be submitted to and approved by VA prior to servicers taking any action outside of VA regulation. Refer to Chapter 6 of this Manual for additional information on pre-approvals.

b. A regulatory infraction occurs when a servicer does not comply with VA regulatory requirement(s). Regulatory infractions are system generated or manually added by a VA technician anytime throughout the life of the loan, after termination, and when conducting a post audit. All regulatory infractions are reviewed by the VA-assigned technician to determine if a monetary adjustment is warranted prior to claim payment or post-audit certification. All reviews must be completed within the VA Loan Electronic Reporting Interface (VALERI) established timeframes and properly documented in case notes.

c. VA records all approved regulatory infractions in VALERI to gather information for servicer performance purposes.

18.02 REGULATORY INFRACTIONS DESCRIPTIONS

a. The following provides descriptions of system-identified and technician-identified infractions.

1. System-Added Infractions.

(a) Servicers must deliver to the Secretary all legal documents, including proper loan assignments required as evidence of loan transfer, within 60-calendar days of a traditional VA purchase (tVAP) notice. Identified during the tVAP process when the VA-assigned technician enters the date the title documents were received and the date is more than 60-calendar days after the refund approval date (38 C.F.R. §36.4320).

(b) Transfer of ownership on a delinquent loan. Identified when the servicer reports the Transfer of Ownership event on a loan where an electronic default notice (EDN) was previously reported and the default has not cured (38 C.F.R. §36.4303).

(c) Release of liability on a delinquent loan. Identified when the servicer reports the Release of Liability event on a loan where an EDN was previously reported for the current default and the default has not cured (38 C.F.R. §36.4309).

(d) Failure to maintain adequate insurance. Identified when the servicer reports the Transfer of Custody event and the servicer reports that the expiration date of any of the current insurance policies is prior to the report date of the event. (38 C.F.R. §36.4329).

2. Technician-Added Infractions.

(a) Late loss mitigation letter sent. Identified when VA determines that the servicer failed to send the loss mitigation letter within 45-calendar days of delinquency on early payment defaults or 75-calendar days of delinquency for non-early payment defaults (38 C.F.R. §36.4350(g)(1)(iv)).

(b) Excessive late charges. Identified when VA determines that the amount of late charges the servicer reported on the EDN or Delinquency Status Update (DSU) equals more than four percent of any installment paid more than 15-days after the due date (38 C.F.R. §36.4312(c)).

(c) Failure to order an appraisal timely. Identified when VA determines that the servicer failed to request an appraiser to conduct a liquidation appraisal at least 30 days prior to the scheduled or anticipated date of the liquidation sale. (38 C.F.R. §36.4322(b)(1)).

(d) Improper partial release of security (loan to value). Identified when VA determines the servicer completed a release for a portion of the property outside of the regulatory requirements without pre-approval from VA, which results in a negative impact on the security for a guaranteed loan (38 C.F.R. §36.4327).

(e) Improper return of partial payments. Identified any time VA determines the servicer returned a partial payment to the borrower in error (38 C.F.R. §36.4316).

(f) No contact attempted. Identified any time VA determines the servicer failed to attempt contact with the borrower (38 C.F.R. §36.4350(g)).

(g) Failure to accept funds to reinstate. Identified when the servicer refuses to accept sufficient funds to bring the delinquency current at any time prior to termination unless accepting the funds would adversely affect the dignity of the lien or precluded by law (38 C.F.R. §36.4309(h)).

(h) Failure to complete property inspections. Identified when a servicer fails to complete property inspections securing the loan when:

(1) The condition of the property may be in jeopardy,

(2) Before day 60 of delinquency or before initiating action to liquidate a loan, whichever is earlier, or

(3) At least monthly once liquidation proceedings have started unless servicing information shows the property remains owner occupied. NOTE: an infraction may not be warranted if the borrower is under an active repayment plan (38 C.F.R. §36.4350(i)).

(i) Loan terminated without appraisal. Identified when the servicer completed the termination of a loan without obtaining a fair market value from a VA appraisal (38 C.F.R. §36.4322(b)).

(j) Unauthorized transfer of ownership. Identified when the servicer reports the Transfer of Ownership event on loans that originated on or after March 1, 1988, and they do not also report

the Release of Liability event at the same time, or when VA discovers an unauthorized transfer of ownership (38 C.F.R. §36.4309).

(k) Failure to send loss mitigation letter. Identified when VA determines the servicer failed to send the loss mitigation letter to the borrower during any delinquency of the loan (38 C.F.R. §36.4350(g)(1)(iv)).

(l) Improper modification. Identified when a servicer reports a Loan Modification Complete event and the terms fail to comply with regulatory requirements unless the servicer received pre-approval (38 C.F.R. §36.4315).

(m) Improper bid amount (incorrect calculation). Identified when the servicer reports the Results of Sale (ROS) or Deed-in-Lieu Completed event and it is determined the servicer used incorrect calculations to complete the termination of the loan (38 C.F.R. §36.4322(c)).

(n) Events. Identified when the servicer fails to report required events to VA throughout the life of the loan (38 C.F.R. §36.4317).

(o) Technician Identified Other Infraction. Identified when VA becomes aware the servicer has failed to comply with any other regulatory requirement not specified in VALERI (38 C.F.R. §36.4300 series).

3. System-Added OR Technician-Added Infractions.

(a) No supporting documentation. Identified any time VA determines the servicer failed to substantiate information during the post-audit review or any process where documentation is required (38 C.F.R. §36.4324(d)(5)).

(b) Late reporting. Identified when a servicer reports an event electronically to VA after the event's reporting timeframe expires (system-added) OR when a servicer reports an event to VA after the event's reporting timeframe expires and fails to report adequate justification for the delay (technician-added) (38 C.F.R. §36.4317).