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4.01 DELINQUENT LOAN SERVICING

a. A loan becomes delinquent when a borrower misses one or more mortgage payments. Servicers are responsible for servicing delinquent loans and working with the borrower to reach an agreement that will bring the loan current or avoid foreclosure whenever feasible. During the delinquency, the Department of Veterans Affairs (VA) reviews the loan under the Adequacy of Servicing (AOS) process in order to ensure the servicer is in compliance with VA regulations and to protect the interests of Veterans and the government. In addition to the oversight review, VA may become involved on an exception basis when:

1. A Veteran contacts VA for assistance.

2. VA determines additional assistance is required.

b. If previous contacts with the borrower have not led to reinstatement of the loan, servicers must send a delinquency letter no later than day 30 of delinquency. This letter is a means to alert the borrower to the delinquency and provide information on making the late payments. The letter should:

1. State that the loan is in default.

2. Emphasize the seriousness of the delinquency and the importance of taking prompt

action to resolve the default.

3. Report the total amount due.

4. Advise the borrower how to contact their servicer in order to make arrangements

for curing the default.

### 4.02 ELECTRONIC DEFAULT NOTIFICATION (38 C.F.R. 36.4317)

a. VA encourages servicers to work with borrowers to resolve delinquencies early and does not require default notification until the loan is 61 days delinquent. The servicer must electronically report the Electronic Default Notice (EDN) event in the VA Loan Electronic Reporting Interface (VALERI) when a loan becomes 61 days delinquent. Once the EDN event processes, the case will be assigned to a VA technician until the loan is brought current, terminated, or paid in full.

b. The servicer can submit an EDN event through the Servicer Web Portal (SWP) before day 61 of delinquency in cases where a reason for default such as “imminent default” or “property problems” is reported. Imminent default is determined if the servicer has valid reason/documentation that the borrower will not have the ability to make future payments on the loan.

c. When a loan becomes delinquent and VA is notified, additional oversight is provided to ensure adequate servicing is provided to the borrower. This chapter includes delinquent loan activities that may require additional review by VA technicians.

### 4.03 ADEQUACY OF SERVICING

a. During the delinquency, VALERI will initiate AOS processes for VA oversight to ensure the servicer is attempting to contact the borrower and service delinquent loans in accordance with VA regulations. Additional AOS processes will open throughout the delinquency to ensure the loan is being adequately serviced.

b. The purpose of the AOS process is to ensure the Veteran has been given every opportunity to pursue all possible loss mitigation options in order to avoid foreclosure.  During VA’s oversight of the AOS review, VA technicians may reach out to servicers to obtain updates, collect financial information and/or other pertinent information, and discuss what options are available to the Veteran. If the Veteran contacts VA directly, VA technicians may also obtain this information directly from the borrower.

4.04 DELINQUENT LOAN ACTIVITIES

a. In addition to reporting the loan as delinquent through the EDN and sending the loss mitigation letter, VA requires servicers to report on other relevant information concerning delinquent loans. Servicers are required to conduct these delinquent loan activities throughout the default.

4.05 DELINQUENCY STATUS UPDATE

a. On a monthly basis, VA requires servicers to report the Delinquency Status event on loans where an EDN has been submitted and the loan has not reinstated or terminated. The Delinquency Status event update includes the unpaid principal balance (UPB), payment due date, principal and interest (P&I) portion of the monthly installment, taxes and insurance (T&I) portion of the monthly installment, any other portion of the monthly installment, late charges due, and expenses incurred to date. This is reported monthly until the loan terminates or the default is cured. This update is important for VA to have up-to-date and accurate information for loans that are assigned to VA loan technicians.

4.06 BORROWER CONTACTS (38 C.F.R. 36.4350h)

a. Once a borrower fails to make a mortgage payment (or payments) when due, servicers should contact the borrower in order to reach an agreement that will bring the loan current. VA expects servicers to continue efforts to contact the borrower to reach a plan that will cure the delinquency.

b. Contact with the borrower is critical. When contact is established with the borrower, servicers should evaluate the prospects for curing the delinquency and determine whether any home retention options are feasible. At a minimum, servicers must make a reasonable effort to establish the following:

1. The reason for the default and whether the reason constitutes a temporary or

permanent condition.

2. The borrower’s present income and employment.

3. The current monthly expenses of the borrower, including all household and debt

obligations.

4. The borrower’s current mailing address and telephone number.

5. A realistic and mutually satisfactory arrangement for curing the default, if

applicable.

6. The borrower’s intent with regards to the property.

4.07 LOSS MITIGATION LETTER

a. VA regulations require servicers to attempt contact with the borrower by telephone. The servicer must also send the loss mitigation letter within 45 days of delinquency for Early Payment Defaults (EPDs) and within 75 days of delinquency for non-EPDs. A default is considered an EPD if the borrower becomes delinquent within 6 months following loan origination or the execution of a modification agreement. VA sends an automated loss mitigation letter to borrowers on all loans that reach 120 days delinquent. The loss mitigation letter must:

1. Provide information on how the borrower can contact the servicer.

2. Encourage the borrower to contact the servicer.

3. Explain loss mitigation options available to the borrower.

4. Emphasize that the intent of servicing is to retain home ownership, whenever

possible.

b. The letter must also include the following VA-drafted paragraphs:

1. “The delinquency of your mortgage loan is a serious matter that could result in the loss of your home. If you are the Veteran whose entitlement was used to obtain this loan, you can also lose your entitlement to a future VA home loan guaranty. If you are not already working with us to resolve the delinquency, please call us to discuss your workout options. You may be able to make special payment arrangements that will reinstate your loan. You may also qualify for a repayment plan or loan modification.”

2. “VA has guaranteed a portion of your loan and wants to ensure that you receive every reasonable opportunity to bring your loan current and retain your home. VA can also answer any questions you have regarding your entitlement. If you have access to the Internet, and would like to obtain more information, you may access the VA web site at [www.va.gov](http://www.va.gov). You may also learn where to speak to a VA Loan Administration representative by calling 877-827-3702.”

c. VA may become involved in the loan’s servicing at other times during the delinquency for reasons such as assistance with appraiser access, requesting forbearance for the servicer/borrower to resolve payment disputes, etc.

d. The servicer may report the Loss Mitigation Letter Sent event when the letter has been mailed to the borrower. This event includes the date the letter was mailed to the borrower.

4.08 CONTACT INFORMATION CHANGE

a. VA requires servicers to report the Contact Information Change event when contact information for the current property owner changes. This event includes any changes to the property or mailing address.

4.09 OCCUPANCY STATUS CHANGE

a. VA requires servicers to report the Occupancy Status Change event when there is a change in the occupancy status. Property occupancy change occurs when the home has been vacated or is occupied by a new tenant.

4.10 REPORTING THE DEFAULT TO THE CREDIT BUREAU (38 C.F.R. 36.4350f; 38 C.F.R. 36.4317)

a. VA requires servicers to report delinquencies to major credit bureaus no later than day 90 of delinquency, which is in accordance with the Fair Credit Reporting Act. Credit bureaus must also be notified of loan terminations, upon their completion. Servicers must inform borrowers that such action will be taken. VA requires servicers to report the Default Reported to Credit Bureau event within 7 days of the month following the month that the servicer reported the default, or loan termination to the credit bureau.

4.11 DEFAULT CURED/LOAN REINSTATEMENT

a. VA requires servicers to report the Default Cured/Loan Reinstated event when a default cures and a loan is reinstated. A loan is considered to be reinstated when the loan status changes from a delinquent to current state, and the loan has a due date in the future. If a default was originally cured in error, usually due to a non-sufficient funds payment or misapplication of funds, then servicers may revise, or withdraw the event if VALERI has not yet processed it, and the event was manually reported through the SWP. If VALERI has already processed the event or the event was submitted by a servicing system, servicers must call the VA-assigned technician to provide explanation and request assistance to have the event cancelled. VA may need to initiate a manual Bill of Collection (BOC) for any incentive that was paid in error.

4.12 SERVICEMEMBERS CIVIL RELIEF ACT

a. In order to ensure Veterans receive appropriate relief under the Servicemembers Civil Relief Act (SCRA), VA conducts a cursory review during the AOS process to identify if a servicer has determined a borrower is protected under SCRA. To be considered eligible, the loan must meet the following requirements:

1. The servicemember was called to active duty.

2. The servicemember’s loan originated prior to his, or her current period of active

military service.

3. Active duty military service affects the servicemember’s ability to make payments.

4. The servicemember provided the servicer with a written notice requesting relief and

a copy of his or her military orders in accordance with current law.

b. VA is not charged with enforcement of the Act, as that is delegated to any court of competent jurisdiction of the United States or of any state. If violations of SCRA mortgage provisions are discovered, VA will act to appropriately notify the Department of Justice and other stakeholder agencies/regulators of those violations.

c. If a borrower is deemed eligible for SCRA protection in the form of a reduced interest rate, but the loan eventually terminates, the servicer must report the rate change on the Basic Claim event (Refer to Chapter 14, Claims, of this handbook for more information).

4.13 SUBSTANTIAL EQUITY

a. VALERI calculates potential equity by comparing the reported appraised value from WebLGY to the servicer reported UPB. A Review of Substantial Equity process will open for VA review when VALERI determines that the loan-to-value is equal to or greater than 120 percent of the UPB. During this review, VA may contact the servicer to obtain any lien, and/or judgment information.

b. If the VA review decision indicates substantial equity exists, the VA-assigned technician may request the servicer to consider postponement of pending liquidation proceedings if there is evidence the borrower desires to maintain home ownership to allow extra time for the borrower to explore other options.

4.14 EARLY PAYMENT DEFAULT

a. VA reviews EPDs any time a servicer reports an EDN and the loan becomes delinquent within 6 months from the first payment due date on the modification agreement. A Review Early Payment Default process will open up for the VA-assigned technician’s review. Servicers must upload in VALERI the underwriting package to ensure compliance with 38 C.F.R. 36.4340 and Chapter 4 of the VA Lender’s Handbook. The Servicer Action Required report provides a list of loans where an EPD review is required by VA.

b. If the review determines the loan modification was not in compliance with regulations, a regulatory infraction will be automatically added to the loan upon completion of this process. There may be a claim adjustment if a loan terminates and there was an increase to VA’s liability.

c. An EPD that may occur on a loan origination will be reviewed by the Loan Production (LP) Department at the Regional Loan Centers (RLCs).

d. Loan modifications are discussed in more detail in Chapter 5, Loss Mitigation, of this handbook.

4.15 PARTIAL PAYMENT (38 C.F.R. 36.4316)

a. VA will review all cases where a borrower reports their payment was returned by the servicer. VA must review the circumstances to determine if the payment was improperly returned by the servicer.

b. In the event the servicer returns a payment(s), it must be sent back to the borrower within 10 days from the date of receipt of such payment, with a letter of explanation if one or more of the following conditions exist:

1. The property is tenant-occupied, and rental payments are not being submitted to the

servicer to be applied to the loan.

2. The payment is less than 1 full monthly installment, including the escrow portion

of the payment and late charge, if applicable, unless the lesser payment amount has been agreed to under a documented agreement.

3. The payment is less than 50 percent of the total amount then due, unless the lesser

payment amount has been agreed to under a documented agreement.

4. The payment is less than the amount agreed to in a documented agreement.

5. The amount tendered is in the form of a personal check and the servicer has

previously notified the mortgagor in writing that only cash, or certified remittances are acceptable.

6. A delinquency of any amount has continued for at least 6 months since the

account first became delinquent, and no documented retention agreement is in place.

7. The servicer has initiated foreclosure proceedings by taking the first action required

under local law.

8. The servicer’s lien position would be jeopardized by acceptance of the partial

payment.

c. If none of the above conditions exist, servicers must accept the partial payment by applying the funds to the borrower’s account or holding the funds in a suspense account. When partial payments held in suspense add up to the full monthly installment, including the escrow portion of the payment, servicers must apply the funds to the borrower’s account. A regulatory infraction will be added to the loan if VA’s review shows the servicer failed to accept a partial payment in accordance with VA regulatory requirements. A servicer’s failure to accept a partial payment does not constitute a defense to any legal action to terminate the loan and may result in a partial or total loss of guaranty per 38 C.F.R. 36.4328 (b).

d. Servicers must notify VA when the payment is returned if they do not accept a partial payment for any reason by submitting the Partial Payment Returned event through the SWP.

4.16 BANKRUPTCY

a. When a borrower files for bankruptcy protection, servicers are typically prevented from making contact. Servicers must report the bankruptcy events in VALERI to include the type of bankruptcy (Chapters 7, 11, 13) and provide updates such as relief filed, relief granted, dismissed or discharged. Significant events include:

1. Bankruptcy Filed Event, including the date and chapter filed and who filed the

bankruptcy.

2. Bankruptcy Update Event, including the date and action for the update (relief of

stay filed, relief of stay lifted, discharged, dismissed).

b. Should a loan terminate subsequent to a bankruptcy filing, VALERI automatically allows an additional 180 days of interest at claim review as long as the Bankruptcy Filed and Update events have been reported in VALERI by the servicer.

### 4.17 PROPERTY PRESERVATION

a. Servicers are required to protect and preserve the property during the delinquency of the loan. An inspection is required when a servicer is aware of any physical conditions which negatively impact the property value and before day 60 of delinquency, or before referring the case to an attorney, whichever is earlier, unless a loss mitigation option is active, and the property remains occupied. Additional inspections are required at least once per month after the initial inspection, or referral to an attorney.

b. Whenever a servicer becomes aware that the property is vacant, they are required to take appropriate measures to protect the property from vandalism, weather, etc. If a property is confirmed to be abandoned, servicers are required to report the information to VA, and begin action to terminate the loan.

c. A regulatory infraction will be added to the loan during post-audit review if the servicer fails to complete all required property inspections per 38 C.F.R. 36.4350(i).

d. For additional information, refer to Appendix G, Property Preservation Requirements, and Fees.

4.18 INSURABLE LOSS

a. Insurable loss is any type of property damage that results in an insurance claim.

Insurable losses will be captured at the claim stage. Insurable loss reporting is important because it can affect the calculation of total eligible indebtedness. Failure by the servicer to obtain and apply an adequate hazard insurance loss settlement in a timely manner may result in a claim adjustment. Causes of insurable loss include the following:

1. Fire damage.

2. Neglect.

3. Vandalism.

4. Freeze.

5. Storm.

6. Flood.

7. Hurricane.

8. Hail.

9. Tornado.

10. Wind.

11. Mudslide/landslide.

12. Earthquake.

13. Boiler explosion.

14. Unknown.

b. When an insurable loss occurs for any reason, servicers are expected to:

1. Ensure appropriate action is taken to secure the property.

2. Ensure the borrower files a claim for the damage with the insurance carrier. If the borrower fails to submit a claim, servicers must file a claim under the mortgagee clause.

3. Ensure that proceeds from the property damage claim are applied to the restoration of the security or to the loan balance.

4.19 EXTENUATING PROPERTY CIRCUMSTANCES

a. Extenuating property circumstances generally refer to unusual property conditions that decrease the value of the property and may in some cases result in the acceleration of the foreclosure sale, an insurance claim, acquisition of the property by the government for public use, or seizure of the property by law enforcement officials. If extenuating property circumstances occur prior to day 61 of delinquency, servicers may report the EDN to VA by reporting the reason for default as extenuating circumstances by selecting Property Problems. Extenuating property circumstances include the following:

1. Hazardous conditions or material.

2. Significant property deterioration.

3. Condemnation.

4. Natural disaster.

5. Property seizure.

6. Demolition.

7. Other.

b. When there is an extenuating property circumstance, servicers are expected to comply with any ordinances, or requirements associated with the extenuating property circumstance and take appropriate action. Servicers must retain all documentation relating to extenuating circumstances.