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8.01 FORECLOSURE (38 C.F.R. 36.4322)

a. Servicers are delegated the authority to complete all termination actions on a VA-guaranteed loan. When a delinquency cannot be resolved, and the loan has been deemed insoluble, or the property has been abandoned, the servicer should proceed with foreclosure action. The Department of Veterans Affairs (VA) encourages servicers to continue loss mitigation efforts even after foreclosure proceedings have commenced. At any time prior to the liquidation sale, servicers must accept funds to cure a delinquency unless the servicer obtained prior written approval from VA, or if reinstatement of the loan would adversely affect the dignity of the lien, or is otherwise precluded by state law as (38 C.F.R. 36.4309 (h)).

8.02 SERVICER REPORTING REQUIREMENTS

a. Foreclosure events reported on delinquent loans provide a snapshot of how each loan is performing, and allows VA to forecast future liabilities. The following events are required to be reported by the servicer on delinquent VA-guaranteed loans. Submission of several events below requires action by the VA-assigned technician:

1. Foreclosure Referral. Servicers must submit the event to notify VA that they have referred this loan to an attorney to begin foreclosure action on a delinquent loan.

2. Foreclosure Sale Scheduled. Servicers must submit the event to notify VA that a foreclosure sale has been scheduled. In the event the servicer either postpones, or cancels a foreclosure sale, a new Foreclosure Sale Scheduled event must be reported within 7 days from the date the servicer learns of the new sale.

3. Results of Sale. Servicers must submit the event to advise VA of the results of the foreclosure sale.

4. Confirmed Sale Date with No Transfer. Servicers must submit the event to notify VA on all loans located in a confirmation state where they have received confirmation, but do not wish to convey the property to VA.

5. Transfer of Custody (TOC). Servicers must submit the event to notify VA within 15 days of foreclosure, confirmation of sale, or deed-in-lieu (DIL) of foreclosure if they wish to convey the terminated property to VA.

6. Invalid Sale Results. Servicers must submit the event to notify VA if they have determined that the foreclosure sale was invalid so the property can be removed from VA’s inventory, if conveyed.

7. Improper TOC. Servicers must submit the event to notify VA if custody was transferred in error so the property can be removed from VA’s inventory.

# 8.03 PRE-FORECLOSURE REVIEW

# a. Prior to loan termination, VA conducts a pre-foreclosure review of the loan to ensure that the borrower(s) have received every opportunity to retain homeownership, or avoid foreclosure. When a Foreclosure Sale Date Scheduled event is reported by a servicer, the VA Electronic Reporting Interface (VALERI) will open a Pre-Foreclosure Review process for review by the VA-assigned technician. VA loan technicians have the ability to manually open a pre-foreclosure review process if they have been notified of a pending foreclosure sale.

# b. During VA’s review, if it is determined the loan is soluble, the assigned technician will proceed with taking action for possible loss mitigation, or alternative actions. Refer to Chapter 5, Loss Mitigation, of this handbook for additional information on loss mitigation options.

# 8.04 NOTICE OF VALUE AND EXTENSIONS

a. At least 30 days prior to the scheduled, or anticipated date of the foreclosure sale, the servicer must request that VA assign an appraiser to conduct a liquidation appraisal. If the property is vacant, the servicer must provide the appraiser access to the property. The Construction and Valuation (C&V) section at the Regional Loan Center (RLC) of jurisdiction where the property is located may reach out to the VA-assigned technician for assistance in contacting the servicer for access to vacant properties. If state laws prevent the servicer’s ability to provide access to a vacant property, the appraiser must contact the C&V section of the RLC in the jurisdiction where the property is located for approval to conduct an exterior-only report. An interior appraisal will no longer be required in cases where the property was originally scheduled for foreclosure, and a subsequent compromise sale offer is made. The exterior-only liquidation appraisal will be sufficient to complete the Compromise Sale without any further delays. The only exception to this rule is if the purchaser is a Veteran or surviving spouse. The liquidation appraisal is valid for 180 calendar days from the date of issuance, however, the C&V section may specify a shorter validity period if rapidly-changing market conditions exist in the area. Failure to order the appraisal timely, or a delay in providing the appraiser access to a vacant property, may delay the completion of the foreclosure sale.

b. If the servicer has a Servicer Appraisal Processing Program (SAPP) authority to process liquidation appraisals under 38 C.F.R. 36.4348, the appraiser will forward the liquidation appraisal report directly to the servicer for determination of fair market value. If the servicer does not participate in SAPP, the appraiser will forward the liquidation appraisal report to the RLC of jurisdiction, for determination of fair market value. If the servicer learns of any material damage to the property after the appraisal has been completed, but prior to the foreclosure sale, the servicer must contact the C&V section of the RLC of jurisdiction for specific guidance.

c. If the NOV will expire prior to the foreclosure sale date, the servicer may request an extension of the NOV by contacting the VA-assigned technician. A Servicing Officer, or Loan Administration Officer will generally grant a 14-day extension in VALERI, as long as the following conditions apply:

1. The request is received prior to the NOV expiration date.

2. The NOV extension request is received before the foreclosure sale.

3. The current occupancy status of the property, and explanation as to why the extension is necessary has been provided.

4. No known extenuating circumstances exist that may diminish the value of the property.

d. Any requests that fall outside of these general requirements will be reviewed by VA on a case-by-case basis. If VA denies the servicer’s request to extend the validity period of the NOV, the servicer must order a new VA appraisal.

e. The servicer will compute, and determine the bid type, and amount by taking the fair market value of the property, minus estimated costs incurred by VA in acquiring, and disposing of the property. The number to be subtracted from the fair market value will be calculated by multiplying the fair market value by the current Net Value cost factor. The Net Value cost factor is published by VA in the Federal Register per 38 C.F.R. 36.4301. Current, and past rates for the Net Value cost factor can be viewed at: <http://www.benefits.va.gov/HOMELOANS/servicers_valeri.asp>.

f. The servicer is required to follow VA requirements, and comply with all federal, state, county, and local foreclosure laws when scheduling, and carrying out a foreclosure sale. Once the foreclosure sale is complete, the servicer must report the Results of Sale event in VALERI. This event will terminate all loans that are in a “guaranty issued” status except those that are located in a confirmation/ratification state. Refer to the State Foreclosure Process, and Statutory Bid Information document located on the VALERI internet at http://www.benefits.va.gov/HOMELOANS/servicers\_valeri.asp.

g. VA also requires servicers to report the type of foreclosure, either judicial, or non-judicial, in VALERI. The type of foreclosure is defined by state, county law, and is required to determine what fees are allowable at time of the claim.

8.05 PRE-FORECLOSURE DEBT WAIVER (38 C.F.R. 36.4326 (e))

a. A pre-foreclosure debt waiver is a complete release of VA’s right to collect a debt from the obligor, but does not restore the Veteran’s entitlement. VA reviews all type 2 loans, or any assumed type 6 loan for potential waiver of debt. The following explains the difference between a type 2, and type 6 loan:

1. Loan Type 2. If the security for the loan is a manufactured home, and the loan was

processed under the provisions of Title 38 U.S.C., Section 3712, or if the security for the loan is not a manufactured home, and the loan closed prior to January 1, 1990.

2. Loan Type 6. If the security for the loan is not a manufactured home, and the loan closed

on, or after January 1, 1990.

b. A waiver of the debt may be warranted in instances where the borrower’s financial ability would prohibit them from repaying any debt established within a 6-year period.

c. VA may deny a pre-foreclosure debt waiver in cases of fraud, misrepresentation, or bad faith.

1. Fraud, and/or willful misrepresentation may have occurred when the, original lender obtained guaranty as a result of willful, and material fraud, or misrepresentation (e.g., borrower hiding unacceptable credit, or submitting materially false information such as income, credit, or deposit verification).

2. Bad faith occurs when a borrower refuses to work with the servicer, and VA to pursue a loss mitigation option, and is in willful default. In addition, should VA discover there was an unauthorized transfer of ownership, or the borrower allowed the transfer of ownership to an unqualified party, these situations could be reviewed as possible reasons to establish a bad faith debt (e.g., borrower does not have a financial hardship; however, due to declining values on the VA-guaranteed property, the borrower purchased a new property within the same area, moved out, and willfully defaulted on the VA home loan that resulted in a termination).

# 8.06 FORECLOSURE BID AND LOAN TERMINATION (38 C.F.R. 36.4322)

a. The servicer calculates the bid amount using the total eligible indebtedness (TEI). For more information on how TEI is calculated, refer to Chapter 14, Claims, of this handbook.

b. There are two bid types the servicer may determine:

1. Total debt. The VA net value is greater than, or equal to the reported TEI.

2. Net value*.* The VA net value is less than TEI.

c. If the net value of the home is $0.00, or less, the servicer should not bid more than the unguaranteed portion of the loan indebtedness at the foreclosure sale, unless there are competitive bidders, and the servicer wants to acquire the property.

8.07 AUCTION SERVICE FOR THE TERMINATION OF VA LOANS

a. VA authorizes servicers to use an auction service in localities where available to legally complete the termination of a VA-guaranteed loan through an auction sale as opposed to a traditional foreclosure sale. The servicer must comply with VA regulations, and determine the likelihood of increased sale proceeds. VA cannot recommend, or advise which auction service to use. However, mortgage holders are accountable for the “selected auction service’s” failures to follow all state and local laws in addition to errors invalidating an auction sale.

1. The results of the auction must be equal to, or higher than Net Value, as VA will only apply proceeds of sale equal to, or greater than Net Value to the guaranty claim. All properties will be sold “as is.” VA does not provide financing for properties sold by foreclosure sale or auction.

2. The terms, or conditions of an agreement to sell the property via an auction sale are between the servicer and the auction service. VA does not maintain a direct relationship with auction services, nor does VA directly reimburse auction fees.

b. Guidance to Servicers.

1. Priority of review. VA expects servicers to exert all reasonable efforts to assist Veteran

borrowers in retaining ownership of their homes, or mitigating losses when retention is not possible. If the servicer has exhausted all loss mitigation efforts, and determines the loan insoluble, they may use the traditional method of foreclosure, or an auction service to terminate the loan.

2. Appraisal. Mortgage servicers must obtain a VA appraisal to determine the “Net Value” at

least 30 days prior to an auction sale. The holder must request that VA assign an appraiser to conduct a liquidation appraisal to establish fair market value. The “Net Value Factor” is applied to the fair market value to determine a Net Value bid.

3. Marketing. In order for auction expenses to be eligible for reimbursement on a VA claim,

properties selected for an auction sale will be marketed for a minimum of 15 days prior to the scheduled sale, and sold for an amount equal to, or greater than, the “Net Value Bid.” Mortgage servicers must ensure they employ a non-affiliated auction service to market properties to the greatest number of potential bidders possible. Auction services may use all marketing tools available including advertisement through television, radio, newspaper, and the internet to expose properties to potential buyers in multiple geographic regions. Marketing of the property should be designed to alert the largest number of potential buyers, and provide those potential buyers a means to participate in the auction process. A mortgage servicer that employs an auction service meeting all VA auction marketing requirements will be eligible for reimbursement of auction fees on a successful sale without the actual calling or crying the sale.

4. Servicer reporting sale results to VA. Servicers will continue to report bid results to VA

through the VALERI system. Servicers will report the amount of the highest bidder to VA on the “Results of Sale” event in the VALERI application. The credit to indebtedness must equal, or exceed the Net Value of the property securing the loan.

5. Servicer claiming fees related to termination through an auction service. VA reimburses servicers that utilize auction services, and does not reimburse the actual auction service entity. When a property is successfully sold at auction, VA will reimburse an “auction fee” up to 5 percent of the sales price at the time of claim submission. The “auction fee” will be reviewed by VA, and considered payable up to the maximum guaranty amount of the loan. When submitting the claim under guaranty, the fee incurred must be included as a line item expense.

(a) When calculating the TEI for a loan that will go through the auction process, the servicer must calculate the estimated auction fee using five percent of the Net Value bid, to be included in the TEI. Failure to include the estimated auction fee with regular liquidation expenses could result in a Total Debt bid. VA does not pay a claim under guaranty for Total Debt bids on properties not conveyed to VA. If an outstanding auction fee results from a Total Debt bid, the auction service must seek reimbursement from the mortgage servicer.

(b) VA will not pay an “auction fee” for homes offered at an auction sale, but not actually sold to a third party. If a property is conveyed to VA in error after a completed auction sale, the property will be reconveyed to the mortgage servicer, and any acquisition paid, plus the costs associated with accepting, and maintaining property in the VA Real Estate Owned (REO) portfolio, will be collected from the mortgage servicer.

6. VA foreclosure timeframes will not be extended to accommodate an auction sale. Mortgage

servicers are expected to terminate insoluble loans in accordance with the State Foreclosure Process, and Statutory Bid Information document located on the VALERI internet at http://www.benefits.va.gov/HOMELOANS/servicers\_valeri.asp, and not increase the liability of the Secretary when liquidation is the most prudent course of action. The decision whether to pursue a second auction sale, or to proceed with a traditional foreclosure to terminate a loan is not mandated by VA.