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Department of Veterans Affairs

38 CFR Part 36

Loan Guaranty: Loan Servicing and Claims Procedures Modifications; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AL65

Loan Guaranty: Loan Servicing and Claims Procedures Modifications

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Loan Guaranty regulations related to several aspects of the servicing and liquidating of guaranteed housing loans in default, and submitting of guaranty claims by loan holders. Specific topics addressed include: Increased authority of servicers to implement loss-mitigation options, incentive payments to servicers for successful alternatives to foreclosure implemented, establishing a system of measuring and ranking servicer performance, permitting loan holders to review liquidation appraisals, requiring holders to calculate the net value of the security property prior to foreclosure, establishing a timeframe for when foreclosure of a defaulted loan would be expected to have been completed, limiting the amount of interest and other fees and charges that may be included in a guaranty claim, establishing attorneys fees allowed to be included in the guaranty claim, establishing a deadline for the submission of guaranty claims, modifying the requirements for title evidence for properties conveyed to VA following foreclosure, modifying the requirements for how long a holder must maintain records relating to loans for which VA has paid a claim on the guaranty, and eliminating the requirement for the submission of legal procedural papers to VA.

DATES: Comments must be received on or before April 19, 2005.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail to *VAregulations@mail.va.gov;* or, through *http://www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AL65.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Richard P. Fyne, Assistant Director for Loan Management (261), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at 202–273–7380, e-mail *lgyrfyne@vba.va.gov.*

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. chapter 37, VA guarantees loans made by private lenders to veterans for the purchase, construction, and refinancing of homes owned and occupied by veterans.

In connection with this program, VA is conducting an internal, in-depth review of the entire Loan Administration process. ''Loan Administration''ludes the servicing of existing loans, dealing with loans in default and loans being terminated, and the processing of claims by loan holders under the guaranty after defaulted loans have been foreclosed or otherwise terminated. Loan Administration also includes efforts by VA and private loan holders to assist homeowners whose loans are in default to cure the default, retain their home if possible, or find other means short of foreclosure. VA hopes to revise the Loan Administration process to reflect changes in the loan servicing industry in recent years, as well as advances in technology. VA is moving toward placing greater reliance on private-sector servicing in accordance with VA guidelines, with VA using advanced technology to oversee holder actions.

VA is now proposing a number of changes to current procedures, including: giving servicers increased authority to implement loss-mitigation alternatives to foreclosure and paying servicers an incentive bonus for each successful loss-mitigation intervention alternative to foreclosure implemented; establishing a performance-based tier-ranking system for servicers; permitting qualified loan holders to review liquidation appraisals and establish the fair market value of the property; requiring loan holders to calculate the net value of properties securing loans prior to foreclosure; establishing timeframes for when VA would expect holders, exercising reasonable diligence, should be able to complete the foreclosure of defaulted loans; limiting the amount of interest and other fees and charges that may be included in a guaranty claim; establishing reasonable and customary attorney fees allowed to be claimed under the guaranty; establishing a deadline for holders to submit claims under the guaranty and to request reconsideration of denied claims; modifying the requirements for title evidence submitted to VA when the holder is conveying the property to VA following the liquidation sale; modifying the requirements for how long a holder must maintain records relating to loans for which VA has paid a claim on the guaranty; modifying the requirements for holders to report key events with regard to loans being serviced; and repealing the requirement for holders to provide VA with procedural papers in legal or equitable proceedings related to a loan on the security property.

Loss Mitigation Options/Alternatives to Foreclosure

VA has always stressed the importance of loan holders and servicers finding alternatives to foreclosure. Under current regulations, however, holders generally need VA consent before they could accept a deed-in-lieu of foreclosure or approve a compromise sale. Further, holders have limited authority to modify existing loans without prior approval. VA is proposing to delegate more authority to servicers to approve these foreclosure alternatives by removing many existing restrictions on holders with regard to such alternatives to foreclosure, publishing clear rules for how holders may use such alternatives, and establishing a hierarchy of alternatives to use in determining which alternative should be considered and under what conditions they should be pursued.

Loan Modification

VA is proposing to modify § 36.4314 by removing restrictive and confusing conditions and providing clear and understandable rules to apply when considering whether or not to modify a loan to avoid termination. The industry has indicated that the current regulation is not in line with industry practices and this has resulted in both under use of this alternative to foreclosure and improper use in some cases.

VA is also proposing to make a conforming amendment to § 36.4311(c). That section currently prohibits a loan holder from charging an interest rate in excess of the rate reported by the lender when the loan was made, on any advance or in the event of delinquency or default. The proposed amendment would make an exception to that prohibition to allow such an increased interest rate as permitted under the proposed amendments to § 36. 4314.

Refunding

VA is proposing to amend § 36.4318 by adding language that would require servicers to provide VA with the necessary loan transfer documents, including all loan assignments, within

60 days from receipt of VA's decision to refund the loan and further provides for a penalty that may be imposed on servicers who continually fail to provide loan transfer documents timely. VA anticipates that the number of loans refunded by VA will be dramatically reduced because of the revisions being made to the loan modification authority and feels that 60 days is a reasonable amount of time for servicers to obtain and provide the documents required to VA.

VA also proposes to amend § 36.4330 relating to records retention. See the discussion under the heading ''Records Retention and Post-Audit,'' below.

Deeds-in-Lieu of Foreclosure and Compromise Sales

Under § 36.4324(a), a holder currently may not, without the prior consent of the VA, release a lien on the property securing the loan. There are, however, circumstance where VA believes that it is in the best interests of all concerned to permit a loan holder to take prompt action and allow a transfer of title to the property securing the loan to resolve a serious default short of actual foreclosure.

One such case would be to allow the holder to accept a deed to the property tendered by the obligor. Another situation is what VA refers to as a ''compromise sale.'' This is when the property cannot be sold for an amount that will generate proceeds sufficient to repay the entire loan balance. Under current VA procedures, the holder must obtain prior VA approval to accept a deed-in-lieu of foreclosure or conduct a compromise sale.

VA believes the delays caused by VA needing to review and approve such transactions in advance have resulted, in a number of cases, in missed opportunities to resolve defaults in a quick, cost-efficient manner. VA further believes that holders, given appropriate guidelines, can make proper decisions on approving deeds-in-lieu and compromise sales.

Accordingly, VA is proposing paragraphs (f), (g), and (h) to the new 38 CFR 36.4319a. These paragraphs will delegate authority to servicers to approve a compromise sale of the property or accept a deed-in-lieu of foreclosure and will specify the conditions under which servicers may exercise that authority.

Under the proposed § 36.4319a(f), a holder would be permitted to approve a compromise sale if the holder determines the loan is insoluble, the net sale proceeds will equal or exceed the net value of the property as computed by the holder, and that the estimated guaranty payment it would receive following the compromise sale would not exceed the guaranty payment following an actual foreclosure. In addition, the holder would be required to ensure that the current owner of the property will not share in any of the sales proceeds. Finally, certain obligors will be required to execute a repayment agreement before the holder may approve the compromise sale. (*See* discussion of the proposed § 36.4319a(h), below.)

In the event all conditions specified in this proposed paragraph (f) cannot be met, but the holder believes a compromise sale would be in the best interest of the veteran and the Secretary, the holder may request advance approval from VA for a compromise sale.

Under the proposed § 36.4319a(g), holders would be permitted to accept deeds-in-lieu of foreclosure. VA regards compromise sales as preferable to deeds-in-lieu of foreclosure. Under a compromise sale, the property will be sold at approximately the fair market price, and VA will not be required to incur the expenses of acquiring, managing, and reselling the property. Therefore, the proposed paragraph (g) would require that, before a holder may accept a deed-in-lieu, the holder must consider a compromise sale and find it is not practical. As with compromise sales, the holder would be required to estimate that the guaranty payment it would receive following the deed-in-lieu would not exceed the guaranty payment following an actual foreclosure. In addition, the holder would be required to determine that the current owner can convey clear and marketable title of the property to VA. Finally, certain obligors will be required to execute a repayment agreement before the holder may approve the deed-in-lieu. (*See* discussion of the proposed § 36.4319a(h), below.)

Also, as with compromise sales, in the event all conditions specified in this proposed paragraph (g) cannot be met, but the holder believes a deed-in-lieu would be in the best interest of the veteran and the Secretary, the holder may request advance approval from VA for accepting a deed-in-lieu.

VA also proposes to add a new § 36.4319a(h) regarding repayment agreements. Under current § 36.4323, which is not being modified in this regard by this proposed rule, certain individuals are deemed to be liable to the Government if VA is required to make a payment under the guaranty. Generally, veterans whose loans have closed on or before December 31, 1989, and individuals who have been approved to assume a veteran's loan so the veteran may be released from further liability on the loan under 38 U.S.C. 3713 and 3714 have such liability. The proposed paragraph (h) defines the term ''liable obligor'' to include such individuals. The proposed paragraph (h) would require liable obligors to execute an agreement to repay VA 50 percent of the debt that would otherwise be assessed under existing § 36.4323. Reducing the obligor's debt to VA should help induce liable obligors to cooperate with holders in compromise sales and deeds-in-lieu.

The repayment agreement would require that the first payment would be due on the first day of the first month which is one year after the deed-in-lieu is executed or the compromise sale is closed. For example, if the deed-in-lieu were executed October 23, 2004, the first payment would be due November 1, 2005. The obligation would bear interest as established by the Secretary under 38 U.S.C. 5315(b)(2). That statute mandates collecting interest on VA benefit debts. Interest would accrue from the date the first payment was due. The agreement would require equal monthly payments, with the total debt repaid within 5 years after the first payment was due.

The signing of the required repayment agreement would not preclude a veteran from seeking to have the debt waived by VA pursuant to 38 U.S.C. 5302.

Finally, the proposed paragraph (h) would require a written notice, sent by VA to the obligor by certified mail, return receipt requested, of the actual amount of the debt, the rate of interest, the required monthly payment, the rate of interest, and the right of veterans to request waiver. This notice will be sent after VA pays the guaranty claim because the amount paid under the guaranty establishes the debt. In this case, the debt would normally be 50 percent of such claim payment, plus interest.

VA is also proposing to add a new definition to 38 CFR 36.4301 for the term ''compromise sale.'' This term will mean a sale to a third party for an amount less than is sufficient to repay the unpaid balance on the loan where the holder has agreed in advance to release the lien in exchange for the proceeds of such sale. In addition, VA is proposing a conforming amendment to § 36.4324.

Servicer Tier Rankings and Loss-Mitigation Incentive Payments

In newly proposed 38 CFR 36.4316 VA proposes to rank servicers into four tiers, depending on their performance, with tier one being the highest rated and

tier four the lowest. VA is modeling the tier ranking system after that used by the Federal Home Loan Mortgage Corporation (FHLMC), also known as Freddie Mac. Specific criteria are not yet established. VA is soliciting comments on criteria to be used in developing the tier rankings. A servicer's performance and tier ranking will not be publicly disclosed.

For at least the first year, all servicers will be presumed to be in tier two, and eligible for loss-mitigation incentives paid for that level.

After VA has collected data under the new reporting requirements (see discussion under ''Revised Reporting Requirements,'' below) for six months, VA intends to review the data and develop the criteria for ranking servicers. Those criteria will then be published in the **Federal Register** for notice and comment. VA expects that the computer system for such reporting will be operational by Summer 2005, and proposed rules for tier ranking will be published in early calendar year 2006. Those projected dates could be subject to adjustment due to technical delays in the development of the new system.

Once VA has adopted final rules for tier rankings, VA will monitor and grade servicer performance on a quarterly basis, and annually adjust the tier ranking depending on the servicer's performance over the past four calendar quarters using those standards. All servicers will remain in tier two until their performance has been evaluated for four calendar quarters after final tier ranking rules have been adopted.

VA is also proposing to add a new 38 CFR 36.4317 which provides for making incentive payments to loan servicers in tier ranks one through three upon their successful completion of certain foreclosure avoidance, loss-mitigation options. Currently, loan servicers receive incentive payments from the Department of Housing and Urban Development, Fannie Mae, Freddie Mac, and some private mortgage insurance companies for implementing various foreclosure-avoidance procedures on loans in serious default. As explained below, VA currently pays such incentives under limited circumstances.

In July 1995, VA administratively instituted the Servicer Loss Mitigation Program (SLMP). Participation in SLMP has been voluntary. Under SLMP, VA pays participating servicers an incentive for deeds-in-lieu of foreclosure and compromise sales. SLMP currently requires servicers to obtain VA consent before completing either of these alternatives to foreclosure.

VA has received anecdotal evidence that some servicers place less emphasis on widespread use of foreclosure-avoidance measures on VA loans due to the fact that VA normally does not pay the incentives which have become the industry standard.

A major goal of the VA housing loan program is to assist veterans in obtaining home financing, and doing so with the least risk of loss upon default to both the veteran and VA as guarantor of the loan and, ultimately, to the Federal Treasury. VA strives to avoid foreclosure whenever reasonably possible. If a means can be found to keep a veteran and the veteran's family in the home or, if that is not possible, to terminate the loan without foreclosure, VA wishes to pursue that alternative. This will be less costly to both VA and the veteran, will prevent the veteran's credit record from reflecting a foreclosure, and if necessary, allow the veteran a reasonable time to voluntarily vacate and move from the home.

Therefore, VA is now proposing to expand the incentive payment program by increasing the number of options for which incentives will be paid, increasing the number of servicers that may qualify for incentives, and formalizing the rules regarding the amount of the incentive payments, the timing of the payments, and the tests for qualifying for such payments.

Under the proposed § 36.4317, VA will pay any servicer in tiers one, two, and three an incentive payment for successfully completing any of the following loss-mitigation options: repayment plan, special forbearance, loan modification, compromise sale, and deed-in-lieu of foreclosure. Only one incentive payment will be made with respect to a default required to be reported to the Secretary under the proposed new § 36.4315a(d). That section would require reporting a default to VA within 5 business days after a loan has been delinquent for 61 days.

The amount of the incentive payment is set forth in a chart contained in the proposed § 36.4317(b), and will depend upon the servicer's tier ranking and the type of loss-mitigation action. The incentive payment will range from $1,000 (to a servicer in tier one for a compromise sale) to $120 (for a servicer in tier three for a repayment plan or special forbearance).

The criteria for when a loss-mitigation option will be considered successfully completed are contained in the proposed § 36.4317(c). A repayment plan would be deemed successful when four consecutive payments under the plan have been made or when the total delinquency has been repaid, whichever occurs sooner. Special forbearance will be deemed successful when the loan reinstates. A loan modification would be deemed completed when the modification agreement is signed and the loan reinstates. Finally, a compromise sale or deed-in-lieu of foreclosure will be deemed successful when the servicer submits a claim under the guaranty.

Finally, § 36.4317(d) provides that incentive payments for successful repayment plans, special forbearance, and loan modifications will be made to eligible servicers monthly. Payments for compromise sales and deeds-in-lieu of foreclosure will be paid with the guaranty claim.

No incentive payment will be made to a servicer in tier four. While, as stated above, the exact criteria for ranking servicers are still being developed, VA anticipates that tier four will be reserved for servicers whose performance has been significantly and repeatedly below acceptable VA and industry standards. VA does not believe additional rewards should be provided to a servicer whose performance has been consistently below an acceptable level. The successful completion of loss-mitigation options by tier four servicers will, however, be considered in future rankings. Thus tier four servicers will have an incentive to successfully complete these options.

Revised Reporting Requirements

VA is also proposing to significantly revise the requirements for holders to report the status of all guaranteed loans in their portfolio and also to report significant events in the servicing and termination of such loans.

Currently, § 36.4315(a) requires the holder to notify VA within 45 days after the debtor is 60 days in default on a payment (in effect, not later than 105 days after the borrower fails to make a payment due). This section also requires reporting within 45 days after the obligor has failed to pay real estate taxes when due and such taxes have remained unpaid for at least 180 days, or the obligor has been in default on any other obligation under the loan for at least 90 days after receiving notice from the lender to comply with such requirement.

Currently, § 36.4316 establishes conditions under which servicers may, at their option, file the notice prescribed in § 36.4317, Notice of Intention to Foreclose. This section, as well as the related § 36.4317, are being eliminated in their entirety because they will no longer be necessary under the reporting

requirements defined in the new § 36.4315(a).

VA is proposing to delete the current default and foreclosure reporting requirements cited in paragraph (a) of § 36.4315, and §§ 36.4316, 36.4317. VA is proposing to add a new § 36.4315a which will establish the new servicer reporting requirements for all outstanding guaranteed loans.

This new section will require all holders to report information electronically to VA by use of a computer. VA is currently developing a computer-based system for this purpose. It is contemplated that holders will have the option of using a variety of methods to input data to VA's system. These include:

Data file exchange.

Direct system interface.

Direct input to VA through the Internet.

More specific information regarding the use of this system will be provided later through industry releases, conferences, and training provided by VA prior to implementation. Holders will need to obtain a user identification and password from VA. Procedures for this will be announced at a later date.

The existing paragraph (b) of § 36.4315, pertaining to acceptance of partial payments by a holder, will remain in a renamed § 36.4315, with minor, non-substantive editorial revisions.

Procedural Papers

Currently, paragraph (a) of § 36.4319 requires that, when a loan holder initiates or becomes a party to a legal or equitable proceeding involving a guaranteed housing loan or the property securing such loan, the holder provide VA with copies of all legal procedural papers related to such action. Paragraph (b) of that section requires the holder to provide VA with a copy of the notice of sale with respect to the property securing such loans at least 30 days prior to the liquidation sale or within 5 days after first publication, whichever is later. Paragraphs (c) through (e) of that section relate to service of such papers when the Secretary is a party to a legal proceeding.

VA believes the requirement to provide VA with all such papers when VA is not a party to the litigation imposes an unnecessary paperwork burden on holders and their counsel. The vast majority of papers filed in legal proceedings are ordinarily of little benefit to VA. Should VA have a need to review certain documents, VA can make a specific request to the holder for copies of any specific documents VA needs to review. In addition, under the proposed reporting requirements, discussed above, holders would be required to inform VA within 5 business days after any bankruptcy or other legal, equitable, or administrative proceeding is filed that would materially affect the loan termination, the lien, or the security property.

Accordingly, VA is proposing to delete paragraphs (a), (b), and (c) of § 36.4319. VA is further proposing to rewrite the existing paragraph (d) of § 36.4319, which would become paragraph (a), by requiring that any legal process in an action to which VA is a party, prior to VA entering an appearance, shall be served on the VA Regional Counsel, the Attorney General, and the United States Attorney having jurisdiction over the area where the court is located. Currently, this paragraph requires service on the Loan Guaranty Officer. VA believes these pleadings should be served on VA's counsel rather than the program official. Service on the Attorney General and United States Attorney are required by the Federal Rules of Civil Procedure. The existing paragraph (e), relating to service of papers after the Secretary's attorney in a legal proceeding has entered an appearance, is being redesignated as paragraph (b).

Paragraph (f) of § 36.4319 does not pertain to procedural papers. It is being deleted for the reasons explained under the heading, Time for Loan Termination and Limit on Interest and Charges, below.

Calculation of Net Value

Under the governing statute, 38 U.S.C. 3732(c)(3), when VA receives a notice that a guaranteed loan in default is about to be terminated, VA is required to compute the ''net value'' of the property securing the guaranteed loan. The term ''net value'' is defined in 38 CFR 36.4301. Generally, ''net value'' is the fair market value of the property minus the costs VA estimates it would incur to acquire and dispose of the property. Those costs are computed using the methodology contained in that definition. Currently, VA calculates the net value and provides this value in writing to the holder along with instructions regarding the holder's bid at the liquidation sale. Under detailed formulae contained in 38 U.S.C. 3732(c), the relationship between the veteran's total indebtedness at time of foreclosure, the net value of the property, and the amount that the holder bids or receives at the foreclosure sale determines the amount that VA will pay the loan holder on a guaranty claim and whether or not the holder has the option to convey the property to VA following foreclosure.

The computation of the net value for a specific property involves a simple mathematical computation. All that is required is knowing the fair market value of the property and the percentage factor used by VA to represent the cost to VA of acquiring and disposing of the property. Multiplying the fair market value by the cost factor produces the amount to subtract from the fair market value and arrive at the net value. That percentage is determined annually by VA pursuant to 38 CFR 36.4301 (definition of net value) and published in the **Federal Register**. Currently, that factor is 11.87 percent. If the property has a fair market value of $100,000, the net value would be calculated as follows:

Fair market value	$100,000
Cost factor (11.87 percent of $100,000)	(11,870)
Net Value	88,130

Program participants have complained that VA has not been providing bidding instructions in a timely fashion. Program participants have also advised that delays on the part of the agency have resulted in delayed or postponed foreclosure sales and ultimately increased costs of loan termination to VA, the veteran, and the loan holder.

Accordingly, VA is proposing to add a new § 36.4319a, entitled ''Loan Termination.'' This new section will require loan holders to calculate the net value of the security property for each loan being terminated. Under the proposed rule, at least 30 days prior to the scheduled or anticipated date of the liquidation sale, the loan holder must request that VA assign an appraiser to conduct a liquidation appraisal.

Under existing regulations, § 36.4301, the term ''liquidation sale'' includes voluntary deeds-in-lieu of foreclosure. VA is proposing to amend the definition of ''liquidation sale'' to clarify that such term includes a ''compromise sale'' (see the discussion under the heading, ''Deeds-in-lieu of Foreclosure and Compromise Sales,'' above). Following a compromise sale, the holder will submit a claim under the guaranty to VA for the unpaid balance on the loan.

The liquidation appraisal will ordinarily be valid for 6 months. VA may, however, specify a shorter validity period on the appraisal if rapidly-changing market conditions make such shorter period in the best fiscal interests of the United States.

At this point, one of two scenarios will occur. VA is proposing to permit certain loan holders, within guidelines being established by VA, to review the appraisal report and determine the fair

market value of the property (see the discussion under the heading, Servicer Appraisal Processing Program, below).

If the holder is not eligible to participate in the Servicer Appraisal Processing Program (SAPP), VA will review the liquidation appraisal report and determine the fair market value of the property. VA will then inform the holder of such fair market value in writing.

Once the holder has either been advised of or determined the fair market value of the security property, the holder will then calculate the net value using the published percentage-factor. The holder will then determine what to bid on the property at the liquidation sale, taking into account the net value of the property the holder has calculated, the obligor's total indebtedness, and the formulae contained in 38 U.S.C. 3732(c).

The loan holder's accounting records will contain sufficient information to enable the holder to determine the total indebtedness. VA also proposes to insert in § 36.4301 a definition of the term ''Total Indebtedness.'' For purposes of 38 U.S.C. 3732(c), ''Total Indebtedness'' will mean the sum of the unpaid principal on the loan as of the date of the liquidation sale, accrued unpaid interest, subject to the maximum interest allowable (which is discussed below under the heading Time for Loan Termination and Limit on Interest and Charges) and fees and charges permitted to be included in the guaranty claim by the regulations.

Because the statute contains clear guidance regarding how the guaranty is calculated and when the holder may convey the security to VA, there is no need for VA to provide bidding instructions in each case where there is an actual foreclosure proceeding or other liquidation sale. VA will, however, provide periodic training for all loan holders and servicers regarding net value calculation and bidding procedures.

VA is also proposing a clarifying amendment to § 36.4321 regarding claim payments when the holder accepts a voluntary conveyance of the property in lieu of foreclosure. Under the formulae contained in 38 U.S.C. 3732(c), in order for VA to compute the guaranty claim payable to the holder, it is necessary to know the amount for which the holder acquired the property at the liquidation sale. Unlike a traditional foreclosure sale, when a holder accepts such a voluntary conveyance there is no public bid or exchange of funds. Therefore, VA is proposing to add language to § 36.4321(c)(2) stating that, in the case of a voluntary conveyance in lieu of foreclosure, the holder shall be deemed to have acquired the property at the liquidation sale for the lesser of the net value of the property or the obligor's total indebtedness.

Editorial changes are also proposed to be made to § 36.4320 to reflect that the holder will be computing the net value and to remove unnecessary language that merely repeats, without further elaboration, the formulae contained in 38 U.S.C. 3732(c). In addition, VA is proposing to delete the provision in § 36.4320(c), which requires a holder to obtain advance approval from VA before accepting a deed-in-lieu of foreclosure.

Servicer Appraisal Processing Program

Under current procedures, prior to the liquidation sale loan holders request that VA assign an appraiser from the VA fee panel to perform a liquidation appraisal. VA then reviews this appraisal and determines the fair market value of the property. As explained above, this fair market value is used to calculate the net value of the property.

As discussed above, industry representatives have complained that VA does not furnish timely bidding information. VA believes that permitting holders to complete the net value computation will help alleviate this situation. VA recognizes, however, that delays can still occur when VA obtains and reviews the liquidation appraisal. VA has received suggestions that VA move to another method of valuing properties at liquidation, such as broker price opinions and automated valuation models. VA carefully considered such alternatives, and concluded not to adopt an alternative valuation method at this time. VA believes by randomly assigning the valuation to a member of VA's fee panel, the opportunity for fraud and undue influence is greatly reduced. Further, VA already has a panel of appraisers in place. VA will continue to monitor the work of its fee appraisers, and emphasize the necessity of performing liquidation appraisals in a timely manner.

Public Law 100–198, enacted December 21, 1987, authorized the Lender Appraisal Processing Program (LAPP) where VA could permit qualified lenders, under guidelines issued by VA, to review loan-origination appraisals, ensure adherence to VA-published minimum property requirements, and set the reasonable value of properties for purposes of determining the maximum loan VA could guarantee. VA's experience is that the LAPP has worked well and often expedites the loan-origination process.

Accordingly, VA is also proposing to establish a Servicer Appraisal Processing Program (SAPP), modeled after the LAPP guidelines, which are contained in § 36.4344.

Under the proposed SAPP, VA is proposing to delegate authority to qualified employees of the servicer to review liquidation appraisals and issue Notices of Value that establish the fair market value of the property for use when determining the net value of the property for liquidation purposes. The proposed SAPP will be similar to the current LAPP guidelines and will require the same qualifications for Staff Appraisal Reviewer approval.

Time for Loan Termination and Limit on Interest and Charges

In computing the guaranty claim, as explained above under the heading ''Calculation of Net Value,'' when VA computes the amount payable under the guaranty, one of the statutory factors affecting this calculation is the obligor's total indebtedness. Under the legal instruments evidencing the loan, an obligor's total debt would ordinarily include all accrued but unpaid interest through the date of the liquidation sale. In addition, § 36.4313 allows a holder to advance and include as part of the total indebtedness certain reasonable costs and charges. VA is permitted by 38 U.S.C. 3732(a)(3), however, to establish a date not later than the date of judgment or decree of foreclosure or sale, upon which the accrual of interest and other charges shall cease. Currently, § 36.4319(f) provides that if the holder does not bring appropriate action to terminate the loan within 30 days after being requested to do so by VA, than VA may fix a date after which interest and other charges will no longer accrue.

As part of the Loan Administration redesign process, VA has concluded that holders should be given a reasonably-objective standard for determining when the foreclosure of a defaulted loan would be expected to have been completed. VA further has concluded that the accrual of interest and other charges, for purposes of a guaranty claim, should cease after the holder has had such reasonable time to complete loan termination.

VA is therefore proposing to repeal the existing § 36.4319(f) which currently provides for an interest cut-off date.

VA is also proposing to add a new § 36.4319a that would require a holder of a loan in serious default to expeditiously and diligently pursue foreclosure as permitted under law once the decision to foreclose has been made. This section contains a table stating the length of time a holder, exercising reasonable diligence, should be able to complete the foreclosure in each State.

In formulating that table, VA will consider the published foreclosure timeframes for similar loans used by the U.S. Department of Housing and Urban Development (HUD), Fannie Mae, and Freddie Mac. VA will periodically review the continued reasonableness of such timeframes, and propose adjustments if needed, especially if changes in State law have a significant impact on the continued ability of holders to meet such timeframes.

VA is also proposing to require holders to notify VA five business days prior to the foreclosure of any loan where the veteran has substantial equity in the property securing the loan. Holders will determine the equity by subtracting the total indebtedness on the guaranteed loan plus the balance owed on other liens of record from the fair market value of the property securing the loan. If the equity equals at least 25% percent of the fair market value of the security, this notice will be required.

VA expects loan holders to aggressively work with veterans in default who have significant equity and attempt to find ways to avoid foreclosure. As discussed above, VA is also proposing to provide servicers incentives for the successful implementation of loss-mitigation alternatives to foreclosure options. VA believes these loss-mitigation servicing efforts are and will be generally successful. Nevertheless, VA is proposing to require this notice as a final effort to try to prevent a veteran needlessly losing substantial equity through foreclosure. This notice will enable VA to review the servicing history and ensure that every reasonable effort was made to avoid foreclosure.

Once the holder has given VA this notice, the holder may proceed with the foreclosure unless specifically instructed by VA to do otherwise. VA does not intend that this requirement will give veterans who have substantial equity in the property any special rights or treatment, or that the notice will automatically trigger any delay in the foreclosure. It merely provides VA the opportunity to take one last look and intervene in cases where VA, in its sole judgment, considers such action to be appropriate.

This proposal will also define the term ''business day'' to be Monday through Friday, inclusive, excluding Federal holidays.

In lieu of the current procedure where VA notifies holders on a case-by-case basis of a cut-off date after which interest and fees will no longer be paid, VA is proposing to amend § 36.4321 to provide that the maximum unpaid interest which will be allowed under a guaranty claim will be the lesser of total unpaid interest as of the liquidation sale or interest for the timeframe VA specified under the proposed § 36.4319a(a) plus 180 days. VA is also proposing to amend § 36.4313 to state that advances and property expenses accruing more than the number of months VA specifies for liquidation to be completed plus 180 days from the date of the first uncured default may not be included in the claim.

VA may, however, permit additional interest, fees, and charges if the holder was unable to complete the foreclosure due to bankruptcy of the debtor, appeals of the foreclosure judgments, forbearance in excess of 30 days granted at the request of VA, or other factors beyond the control of the holder. The determination of whether to permit additional interest and charges to be included in the claim will be made by those officials specified in § 36.4342(b). This rule will further provide that the Loan Guaranty Officer is authorized to redelegate the authority to make determinations to allow additional interest and other costs.

VA wishes to note that establishing a maximum amount of interest allowable in a claim is not intended to be a deadline for initiating foreclosure. VA will include sufficient time in the foreclosure completion timeframes to allow a holder exercising reasonable diligence to complete the foreclosure without losing the right to include in the guaranty claim all unpaid interest and otherwise-allowable fees and charges.

The proposed rule would also make editorial changes to paragraphs (b) and (c) of § 36.4321 consistent with this proposed rule.

Attorneys Fees

Currently, § 36.4313(b)(5) permits a holder that has foreclosed a VA-guaranteed loan to include as part of their guaranty claim a reasonable amount for legal services necessary to terminate the loan. The amount of attorney fees which may be included in the claim may not exceed the lesser of 10 percent of the outstanding indebtedness or $850. The current regulation also permits additional fees approved in advance by VA. By administrative circular, VA has given blanket consent to field offices permitting some additional fees for bankruptcy. In addition, the current rule restricts the combined total of attorney fees and trustee fees allowed by § 36.4313(b)(4) to $850.

It has been the position of VA that the allowance of legal fees was never intended to limit the amount the loan holder may pay for legal services. It merely limited the amount that VA would reimburse the holder. As a practical matter, however, VA has been advised, on numerous occasions, that many loan holders effectively limit what they will pay counsel for legal services in connection with the termination of VA guaranteed loans to what VA will reimburse the holder. The legal fees VA permits are often significantly less than fees for similar services permitted under other Federal housing programs or by federally-chartered market investors. VA believes that, in some instances, attorneys give less priority to work related to the termination of VA guaranteed loans than to loans where attorney fees are greater. That can lead to costly delays.

Under the proposed rule, § 36.4313 will be amended to permit holders to include in their claim legal fees not to exceed the reasonable and customary charge for such services in the State where the property is located. VA will publish at least annually following publication of the final rule in the **Federal Register** a schedule listing the reasonable and customary fees for various services such as foreclosure actions, deeds-in-lieu of foreclosure, and bankruptcies for each State. In formulating this schedule, VA will consider the published allowance for attorney fees permitted for single-family loan terminations by HUD, Fannie Mae, and Freddie Mac.

Upon publication of the final rule, the following schedule of allowable fees for services will be effective and will remain unless changed by publication in the **Federal Register** as stated in the above paragraph:

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SCHEDULE OF ALLOWABLE ATTORNEY FEES BY JURISDICTION			
Jurisdiction	Non-Judicial Foreclosure	Judicial Foreclosure	Deed-in-Lieu of Foreclosure
Alabama	$550.00	N/A	$350.00
Alaska	$1,200.00	N/A	$350.00
Arizona	$625.00	$625.00	$350.00
Arkansas	$600.00	$750.00	$350.00
California	$600.00	$600.00	$350.00
Colorado	$800.00	N/A	$350.00
Connecticut	N/A	$1,250.00	$350.00
Delaware	N/A	$950.00	$350.00
District of Columbia	$600.00	N/A	$350.00
Florida	N/A	$1,200.00	$350.00
Georgia	$600.00	N/A	$350.00
Guam	$1,200.00	N/A	$350.00
Hawaii	N/A	$1,850.00	$350.00
Idaho	$600.00	N/A	$350.00
Illinois	N/A	$1,100.00	$350.00
Indiana	N/A	$1,000.00	$350.00
Iowa	$550.00	$850.00	$350.00
Kansas	N/A	$850.00	$350.00
Kentucky	N/A	$850.00	$350.00
Louisiana	N/A	$900.00	$350.00
Maine	N/A	$1,250.00	$350.00
Maryland	$800.00	N/A	$350.00
Massachusetts	N/A	$1,250.00	$350.00
Michigan	N/A	$650.00	$350.00
Minnesota	$650.00	$800.00	$350.00
Mississippi	$550.00	N/A	$350.00
Missouri	$650.00	N/A	$350.00
Montana	$600.00	N/A	$350.00
Nebraska	$600.00	$850.00	$350.00
Nevada	$600.00	$600.00	$350.00
New Hampshire	$900.00	N/A	$350.00
New Jersey	N/A	$1,300.00	$350.00
New Mexico	N/A	$900.00	$350.00
New York	N/A	$1,250.00	$350.00
North Carolina	$550.00	N/A	$350.00
North Dakota	$650.00	$900.00	$350.00
Ohio	N/A	$1,100.00	$350.00
Oklahoma	N/A	$900.00	$350.00
Oregon	$675.00	N/A	$350.00
Pennsylvania	N/A	$1,250.00	$350.00
Puerto Rico	N/A	$1,100.00	$350.00
Rhode Island	$900.00	N/A	$350.00
South Carolina	N/A	$850.00	$350.00
South Dakota	$650.00	$850.00	$350.00
Tennessee	$550.00	N/A	$350.00
Texas	$550.00	$550.00	$350.00
U.S. Virgin Islands	N/A	$1,100.00	$350.00
Utah	$600.00	N/A	$350.00
Vermont	N/A	$950.00	$350.00
Virginia	$600.00	N/A	$350.00
Washington	$675.00	N/A	$350.00
West Virginia	$550.00	N/A	$350.00
Wisconsin	N/A	$1,100.00	$350.00
Wyoming	$600.00	N/A	$350.00

SCHEDULE OF REIMBURSABLE FEES FOR OBTAINING BANKRUPTCY RELEASES DIRECTLY RELATED TO LOAN TERMINATION.
(These are in addition to the allowable attorney fees shown above.)

Jurisdiction	Chapter 7 Bankruptcy	Chapter 13 Bankruptcy	Each Additional Release Obtained For Multiple Filings
Alabama	$450.00	$650.00	$250.00
Alaska	$450.00	$650.00	$250.00
Arizona	$450.00	$650.00	$250.00
Arkansas	$450.00	$650.00	$250.00
California	$450.00	$650.00	$250.00
Colorado	$450.00	$650.00	$250.00
Connecticut	$450.00	$650.00	$250.00
Delaware	$450.00	$650.00	$250.00
District of Columbia	$450.00	$650.00	$250.00
Florida	$450.00	$650.00	$250.00
Georgia	$450.00	$650.00	$250.00
Guam	$450.00	$650.00	$250.00
Hawaii	$450.00	$650.00	$250.00
Idaho	$450.00	$650.00	$250.00
Illinois	$450.00	$650.00	$250.00
Indiana	$450.00	$650.00	$250.00
Iowa	$450.00	$650.00	$250.00
Kansas	$450.00	$650.00	$250.00
Kentucky	$450.00	$650.00	$250.00
Louisiana	$450.00	$650.00	$250.00
Maine	$450.00	$650.00	$250.00
Maryland	$450.00	$650.00	$250.00
Massachusetts	$450.00	$650.00	$250.00
Michigan	$450.00	$650.00	$250.00
Minnesota	$450.00	$650.00	$250.00
Mississippi	$450.00	$650.00	$250.00
Missouri	$450.00	$650.00	$250.00
Missouri	$450.00	$650.00	$250.00
Montana	$450.00	$650.00	$250.00
Nebraska	$450.00	$650.00	$250.00
Nevada	$450.00	$650.00	$250.00
New Hampshire	$450.00	$650.00	$250.00
New Jersey	$450.00	$650.00	$250.00
New Mexico	$450.00	$650.00	$250.00
New York	$450.00	$650.00	$250.00
North Carolina	$450.00	$650.00	$250.00
North Dakota	$450.00	$650.00	$250.00
Ohio	$450.00	$650.00	$250.00
Oklahoma	$450.00	$650.00	$250.00
Oregon	$450.00	$650.00	$250.00
Pennsylvania	$450.00	$650.00	$250.00
Puerto Rico	$450.00	$650.00	$250.00
Rhode Island	$450.00	$650.00	$250.00
South Carolina	$450.00	$650.00	$250.00
South Dakota	$450.00	$650.00	$250.00
Tennessee	$450.00	$650.00	$250.00
Texas	$450.00	$650.00	$250.00
U.S. Virgin Islands	$450.00	$650.00	$250.00
Utah	$450.00	$650.00	$250.00
Vermont	$450.00	$650.00	$250.00
Virginia	$450.00	$650.00	$250.00
Washington	$450.00	$650.00	$250.00
West Virginia	$450.00	$650.00	$250.00
Wisconsin	$450.00	$650.00	$250.00
Wyoming	$450.00	$650.00	$250.00

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The rule will retain the limit that the combined total of attorney fees and trustee fees may not exceed the maximum allowance for attorney fees.

Submitting Claims Under the Guaranty

Under current regulations, the holder does not have any deadline for filing a claim with respect to a terminated guaranteed housing loan.

The Federal Credit Reform Act of 1990, 2 U.S.C. 661, requires all Federal agencies to determine the actual cost of making and guaranteeing loans. For budgetary purposes, the cost is attributed to the ''cohort year'' in which the loan is guaranteed or made. For example, all costs related to a loan guaranteed by VA in Fiscal Year 2002 are attributed to the funds appropriated for that year, regardless of when a particular loan is terminated or when a specific cost is actually paid. Agencies are required to re-estimate the costs annually of all loans guaranteed or made for each cohort year. The fact that a certain number of loans for a particular cohort year were terminated and the Government was required to pay a claim or acquire a property is important information needed to make the annual re-estimate.

To ensure accuracy in the Federal budget process, VA needs to know within a reasonable time that specific loans for particular cohort years have been terminated and that costs will be incurred.

VA recognizes that holders cannot file a claim immediately upon termination because the holders need time to receive all bills and reconcile their accounts. VA believes, however, that holders should be able to ascertain all necessary information and submit a claim within 1 year of the completion of the loan termination process.

Accordingly, VA is proposing to amend § 36.4321 to require a holder to submit a guaranty claim electronically within 1 year of the completion of the liquidation sale. For purposes of this requirement, the liquidation sale will be considered completed when the last act required under state law is taken to either make the liquidation sale final, or obtain a judgment, a confirmation, or an approval of the sale, excluding any redemption period.

When the holder accepts a voluntary conveyance in lieu of foreclosure, the liquidation sale will be deemed completed when the owner executes a deed to the holder or the holder's designee. In the case of a compromise sale, the liquidation sale will be deemed completed on the date of settlement.

With respect to any loan where the liquidation sale was completed prior to the effective date of the final rule, the guaranty claim must be submitted within 1 year after the effective date of the final rule.

If a holder files a claim within this one-year period and new information subsequently comes to light, this proposal would also permit supplemental claims based on this new information, provided that the supplemental claims are filed within this one-year window. No claims will be considered if they are filed after this one-year period has elapsed.

This section will also permit a holder to request that the Loan Guaranty Officer reconsider any item in the claim that was denied, provided that such a request for reconsideration is made electronically within 30 days after the holder is advised that one or more items in their claim have been denied. This rule will further provide that the Loan Guaranty Officer is authorized to redelegate the authority to make a determination on a reconsideration.

Records Retention and Post-Audit

In order to expedite claim payment, VA will not ordinarily require the routine submission and review of supporting documentation, such as copies of bills and receipts, prior to payment of guaranty claims. In order to ensure the fiscal integrity of the program, VA will, however, perform a full review, on a post-audit basis, of a random sample of claims filed by each servicer to ensure that amounts claimed are proper and fully supported. The size of the sample audited and the frequency of audits may be increased if VA finds a greater frequency of errors in claim submissions by a particular holder. VA anticipates that the size of the sample and the frequency of audit would be reduced for servicers in tier one, and increased for servicers in tiers three and four. In all cases, however, the size and frequency of audit will be based on a statistically valid sampling methodology, and the size of the sample and the frequency of audit would be immediately adjusted if significant errors or irregularities were discovered.

Likewise, VA will not require holders to submit back-up documentation regarding their credit underwriting when holders modify existing loans under the proposed revision to § 36.4314. However, VA will review the back-up documentation for a sample of modified loans as part of the routine post-audit process.

Accordingly, in order to ensure VA is able to perform such audits and ensure the fiscal integrity of the loan guaranty program, VA is proposing to amend § 36.4330, which pertains to maintenance of records. Currently, this section requires holders to maintain records of payments received on a loan and disbursements chargeable to such loan until the Secretary is no longer liable as guarantor of such loan. It also requires the lender to retain copies of all loan origination records for at least two years after loan closing. This section also grants VA the right to inspect, examine, or audit these records at a reasonable time and place.

VA is proposing to modify that section to require that, if the Secretary pays a claim on a guaranty, the records currently required to be maintained by § 36.4330(a) relating to payments received and disbursements chargeable to the loan be maintained electronically until 3 years after the Secretary made such claim payment.

Pursuant to the proposed amendments to § 36.4314, VA is also proposing to require holders who modify loans to maintain the records supporting their decision to modify the loan for 3 years after the modification agreement is executed. Such records would include credit reports, verifications of income, employment, assets, liabilities, and other factors affecting the obligor's credit worthiness, work sheets, and any other documents supporting the holder's decision to modify the loan.

Title Evidence

VA is proposing to standardize the documentation required as evidence of acceptable title to the Secretary. Currently, the documentation required may vary significantly depending on the property jurisdiction. In many cases, VA is requiring servicers to obtain title policies insuring the Secretary following the foreclosure. VA's experience has not demonstrated that obtaining title insurance is cost effective and this requirement is therefore being eliminated. VA is proposing that title evidence presented for conveyance of a property be standardized across all jurisdictions and reducing the amount of documentation required. VA will accept as evidence of title conveyance: a copy of the original mortgage, deed of trust, or other security instrument used for the terminated guaranteed loan, a copy of the deed or document evidencing transfer of interest and title at the foreclosure sale, and a Special Warranty Deed conveying title to the Secretary. The holder will be deemed to warrant marketability of the title to the property for 3 years after transfer to VA.

VA is proposing to add a provision that, when property is conveyed to VA, title should be conveyed to the ''Secretary of Veterans Affairs, an

Officer of the United States.'' The name of the current incumbent Secretary should not be included unless State law requires naming a real person. This complies with internal guidance currently contained in VA operating manuals.

VA is also proposing to delete, as obsolete, the language in § 36.4320(h)(5) (redesignated as paragraph (c)(5) in this proposed rule) stating that a violation of a restriction based on race, color, creed, or national origin will not cause the conveyance of the property to be unacceptable to VA. Court decisions and fair housing laws enacted since the current rule was originally issued shortly after World War II have made clear that any deed restrictions or recorded covenants purporting to restrict the ownership or occupancy of housing based upon race, color, religion, national origin, or any other prohibited classification are absolutely void and unenforceable, and any attempt to enforce such a restriction or otherwise discriminate in the sale, rental, financing, or providing of brokerage services with regard to residential real property is unlawful. Therefore, VA sees no need to continue to refer to such unfortunate historical relics in the title regulations.

Miscellaneous Servicing Procedures

VA is also proposing to amend § 36.4346 which pertains to servicing procedures for holders.

VA proposes to amend paragraph (c) of that section to require the holder to provide an annual statement of interest paid, and taxes disbursed within 30 days following the end of the calendar year. This rule currently requires such statement within 60 days of the end of the calendar year. This amendment will conform § 36.4346 to the requirements of 12 U.S.C. 2601, *et. seq.*, the Real Estate Settlement Procedures Act (RESPA). Because VA assumes holders are now complying with RESPA requirements, VA does not believe this proposed change will have any impact on holders.

VA is also proposing to amend paragraph (g)(1) of that section. That paragraph sets forth minimum collection actions holders must undertake when a guaranteed loan is in default. VA is proposing to delete the current requirement that the holder send a written notice to any borrower if a loan installment payment is not received within 17 days after the due date. The current rule requires that this notice be mailed no later than the 20th day of the delinquency.

VA is also proposing to require holders to send a new letter to certain delinquent borrowers. This new letter would be required to be sent if, within the first 6 months following the loan closing or the execution of a modification agreement under the proposed revision to § 36.4314, the borrower is 45 days delinquent on a loan payment, or, in the case of any other default, a payment is 75 days delinquent. This letter must be mailed within 5 business days after the payment is delinquent for the time period stated in the preceding sentence. The letter shall contain at least the following information:

(1) A toll-free telephone number and, if available, an e-mail address for contacting the servicer;

(2) Explain the loss mitigation options that may be available to the borrower; and

(3) Emphasize that the intent of loan servicing is to retain home ownership whenever possible.

In addition, this letter must contain the following language:

> 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.
>
> 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 *http://www.va.gov*. You may also learn where to speak to a VA Loan Administration representative by calling 1–800–827–1000.

In addition, VA is proposing to amend the last sentence of paragraph (i)(2) of § 36.4346, which concerns procedures for when a holder learns that the property securing a guaranteed loan may have been abandoned. Currently, this provision requires that, with respect to a loan more than 30 days delinquent, if the holder confirms that the property is abandoned, the holder must so notify VA within 15 days. VA is proposing to revise this provision to require the holder to report to VA within 5 business days of confirming that the property has been abandoned or subjected to extraordinary waste or hazard, and to immediately initiate action to protect the property and terminate the loan.

Minor editorial and conforming amendments are also being made to this section.

Processing Release of Liability

VA is also proposing to authorize all holders or their servicing agent who are authorized to process loans under the automatic processing authority to process releases of liability for loans originated prior to March 1, 1988. Authority has already been given to those certain holders or their servicing agents to process releases of liability for loans originating after March 1, 1988.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), a collection of information is set forth in the provisions of §§ 36.4314, 36.4315a, 36.4317, 36.4318, 36.4319, 36.4320, 36.4321, 36.4323, 36.4324, and 36.4344a.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Regulations Management (00REG1)), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AL65.''

Title: Loan Guaranty—Loan Servicing and Claims Procedures Modifications.

Summary of Collection of Information: Under these proposed regulatory amendments, parties servicing VA guaranteed loans must comply with the following program changes (broken down by regulation):

- Section 36.4314 ''Under this section, VA proposes requirements that loan servicers must apply to process loan modifications. Current provisions are ambiguous as to when servicers are required to process documentation of loan modifications.
- Section 36.4315a ''Proposed changes to this section would increase the reporting burden for (a) current loans, (b) loss mitigation actions, and (c) foreclosure alternatives considered for delinquent loans and certain specific loan events (*e.g.*, servicing transfer) as they may occur. While these proposed changes would most likely result in an increase in the number of defaults being reported, due to changes in reporting processes attributable to technological advances, the current reporting burden

for § 36.4315a(d) with regard to default reporting would be reduced from 10 minutes per loan to about 1 second per loan. As a result, the overall burden imposed by this section would be significantly reduced.

• Section 36.4317—This section proposes to establish an incentive system to encourage servicers to perform certain loss mitigation and foreclosure avoidance actions instead of VA performing these actions. Elimination of the currently-required Notice of Intention to Foreclose would eliminate an annual reporting burden of 15,075 hours.

• Section 36.4318—This proposed change provides for the possible temporary suspension of property acquisition and claim payments, at the discretion of the Secretary, for certain servicers who continually fail to provide the loan transfer legal documents to VA in a timely manner. VA expects to exercise its authority to refund a loan only infrequently because of proposed changes discussed elsewhere in this publication. Therefore, we estimate that there will be a 95% reduction in the number of refunding cases completed annually. Since the refunding request carries certain paperwork burdens, estimated at 5 minutes per case, we estimate that there will be a net decrease in this burden by 197 hours.

• Section 36.4319—Proposed changes to this section would result in a significant reduction in the reporting and recordkeeping burden to the public. First, under existing requirements, loan servicers are required to provide a copy of all legal notices or filings to the Secretary in all legal proceedings, including bankruptcy and foreclosure. VA proposes to eliminate this requirement. In addition, this proposal would also eliminate the requirement that a servicer send VA a completed VA FL 26–567 in every potential loan termination. The net decrease in the public's reporting and recordkeeping burden is estimated at just over 26,000 hours.

• Section 36.4320—This section proposes a modification in the way in which servicers may file an election to convey a property to VA and reduces the amount of information VA currently obtains from a servicer when properties are conveyed to VA. As a result of this proposed change, the net reporting burden would be decreased by 2,500 hours annually.

• Section 36.4321—This proposal would change the manner in which claims are filed from paper submission to electronic data transfer, would reduce the amount of data and documentation required for servicers to file claims, and would limit the amount of time a servicer has to file a claim under guaranty. This proposal would not require any additional data collection beyond what is currently being collected, but would change the transfer media from paper to electronic. VA estimates that this change would reduce the annual net reporting burden by 22,297 hours.

• Section 36.4323—The proposed amendment to this section would extend authority to servicers who are authorized to process loans under the automatic processing authority to process releases of liability for loans originated prior to March 1, 1988. The change also allows servicers to collect processing fees at the same rate as authorized for processing releases of liability for loans originating after March 1, 1988. Current processes require servicers to complete and submit a statement of account to VA on each case (VA FL 26–559). This OMB-approved form letter carries a respondent burden of 10 minutes. Since this form letter will no longer be required, the existing respondent burden would be reduced. However, since servicers would have to process releases of liabilities under this proposal, there will be an increased number of occurrences. We estimate an annual increased respondent burden of 2,067 hours.

• Section 36.4324—Pursuant to the proposed change to this section, VA would delegate authority to servicers to process partial releases without prior VA approval if specific conditions are met. Currently, servicers must provide VA with paper copies of all documents required for VA to make the decision. Under the proposed process, the servicer will not be obtaining and forwarding those documents to VA since the servicer will be making the decision. In those cases in which the servicer would have to obtain an appraisal and review and make a decision, there will be a new respondent burden. We anticipate an increased annual burden of 160 hours.

• Section 36.4344a—Proposed changes to this section would extend authority to those servicers currently authorized to process origination appraisals under the Lender Appraisal Processing Program (LAPP) to process liquidation appraisals under the new Servicer Appraisal Processing Program (SAPP). All requirements currently in place for LAPP will also be in place for SAPP. During Fiscal Year 2003 VA processed a total of 43,504 liquidation appraisals. We estimate that 75% of those appraisals (32,628) would be able to be processed by servicers meeting the eligibility criteria and estimate the processing and reporting time at one hour per case. This would result in an estimated annual burden of 32,628 hours.

Description of Need for Information and Proposed Use of Information: The collections of information are necessary to meet the program requirements for servicing VA guaranteed home loans.

Description of Likely Respondents: Companies who service housing loans guaranteed or insured by VA.

Estimated Number of Respondents: 150.

Estimated Frequency of Responses: 2,539,200.

Estimated Average Burden Per Collection: 1 minute.

Estimated Total Annual Reporting and Record Keeping Burden: 42,320.

The Department considers comments by the public on proposed collections of information in—

• Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

• Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This final rule would have no such effect on State, local, or tribal governments, or the private sector.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a

significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The vast majority of VA loans are serviced by very large financial companies. Only a handful of small entities service VA loans and they service only a very small number of loans. This proposal, which only impacts veterans, other individuals obligors with guaranteed loans, and companies that service VA loans, will have very minor impact on a very small number of small entities servicing such loans. Therefore, pursuant to 5 U.S.C. 605(b), the proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program number is 64.114.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Indians, Individuals with disabilities, Loan programs-housing and community development, Loan programs-Indians, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and record keeping requirements, Veterans.

Approved: March 1, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

Editorial Note: This document was received at the Office of the Federal Register February 14, 2005.

For the reasons set out in the preamble, 38 CFR part 36 is proposed to be amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. Section 36.4301 is amended by:

A. Adding the term ''Compromise sale''.

B. Revising the term ''Holder'' (the authority citation remains unchanged).

C. Adding a sentence at the end of the term ''Liquidation Sale''.

D. Removing the term ''Specified amount''.

E. Adding the term ''Total Indebtedness''.

The revisions and additions read as follows:

§ 36.4301 Definitions.

* * * * *

Compromise sale. A sale to a third party for an amount less than is sufficient to repay the unpaid balance on the loan where the holder has agreed in advance to release the lien in exchange for the proceeds of such sale.

* * * * *

Holder. The lender or any subsequent assignee or transferee of the guaranteed obligation or the authorized servicing agent (also referred to as ''the servicer'') of the lender or of the assignee or transferee.

* * * * *

Liquidation sale. * * * This term also includes a compromise sale.

* * * * *

Total indebtedness: For purposes of 38 U.S.C. 3732(c), the veteran's ''total indebtedness'' shall be the sum of: the unpaid principal on the loan as of the date of the liquidation sale, accrued unpaid interest permitted by § 36.4321(a), and fees and charges permitted to be included in the guaranty claim by § 36.4313.

* * * * *

3. Section 36.4311 is amended by revising paragraph (c) to read as follows. The authority citation following paragraph (c) remains unchanged.

§ 36.4311 Interest rates.

* * * * *

(c) Except as provided in § 36.4314, interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency or default: Provided, that a late charge not in excess of an amount equal to 4 percent on any installment paid more than 15 days after due date shall not be considered a violation of this limitation.

* * * * *

4. Section 36.4313 is amended by:

A. Revising paragraph (b)(5).

B. Adding paragraph (f).

The revision and addition read as follows:

§ 36.4313 Advances and other charges.

* * * * *

(b) * * *

(5)(i) Fees for legal services actually performed, not to exceed the reasonable and customary fees for such services in the State where the property is located, as determined by the Secretary.

(ii) In determining what constitutes the reasonable and customary fees for legal services, the Secretary shall review allowances for legal fees in connection with the foreclosure of single-family housing loans, including bankruptcy-related services, issued by HUD, Fannie Mae, and Freddie Mac. The Secretary shall publish annually in the **Federal Register** a table setting forth the amounts determined to be reasonable and customary for such fees.

(iii) In no event may the combined total paid for legal fees under paragraph (b)(5)(i) of this section and trustee's fees pursuant to paragraph (b)(4) of this section exceed the applicable maximum allowance for legal fees established under paragraph (b)(5)(ii) of this section.

* * * * *

(f)(1) Fees and charges otherwise allowable by this section that accrue after the date specified in paragraph (f)(2) of this section may not be included in a claim under the guaranty.

(2) The date referenced in paragraph (f)(1) of this section will be computed by adding to the date of the first uncured default the reasonable period that the Secretary has determined, pursuant to § 36.4319a(a) of this part, it should have taken to complete the foreclosure, plus 180 days. There will also be added to the time period specified in the previous sentence such additional time as the Secretary determines was reasonably necessary to complete the foreclosure if the Secretary determines the holder was unable to complete the foreclosure within the time specified in that section due to Bankruptcy proceedings, appeal of the foreclosure by the debtor, the holder granting forbearance in excess of 30 days at the request of the Secretary, or other factors beyond the control of the holder.

(Authority: 38 U.S.C. 3703(c))

5. Section 36.4314 is revised to read as follows:

§ 36.4314 Loan modifications.

(a) Subject to the provisions of this section, the terms of any guaranteed loan may be modified by written agreement between the holder and the borrower, without prior approval of the Secretary, if all of the following conditions are met:

(1) The loan is in default or default is imminent.

(2) The event or circumstances that caused the default has been or will be resolved and it is not expected to re-occur.

(3) The obligor is considered to be a reasonable credit risk, based on a review by the holder of the obligor's creditworthiness under the criteria specified in § 36.4337, including a current credit report. The fact of the recent default will not preclude the holder from determining the obligor is now a satisfactory credit risk provided the holder determines that the obligor is able to resume regular mortgage installments when the modification becomes effective based upon a review of the obligor's current and anticipated income, expenses, and other obligations as provided in § 36.4337.

(4) At least 12 months must have elapsed since the closing date of the loan.

(5) The current owner occupies the property securing the loan and is obligated to repay the loan.

(6) All current owners of the property are parties to, and have agreed to the terms of, the loan modification.

(7) The loan will be reinstated to performing status by virtue of the loan modification.

(b) A loan can be modified no more than once in a 3-year period and no more than three times during the life of the loan.

(c) All modified loans must bear a fixed-rate of interest, which may not exceed the lesser of—

(1) A rate which is 100 basis points above the interest rate in effect on this loan just prior to the execution of the modification agreement, or

(2) The Government National Mortgage Association (GNMA) current month coupon rate that is closest to par (100) in effect at the close of business on the business day immediately preceding the date the modification agreement is executed by the obligor plus 50 basis points.

(d) The unpaid balance of the modified loan may be re-amortized over the remaining life of the loan. The loan term may extend the maturity date to the shorter of—

(1) 360 months from the due date of the first installment required under the modification, or

(2) 120 months after the original maturity date of the loan.

(e) Only unpaid principal, accrued interest, and deficits in the taxes and insurance impound accounts may be included in the modified indebtedness. Late fees and other charges may not be capitalized.

(f) Holders will ensure the first lien status of the modified loan. No current owner of the property will be released from liability as a result of executing the modification agreement without prior approval from VA. Releasing a current owner obligor from liability without prior approval will release the Secretary from liability under the guaranty.

(g) The dollar amount of the guaranty may not exceed the greater of the original guaranty amount of the loan being modified or 25 percent of the loan being modified subject to the statutory maximum specified at 38 U.S.C. 3703(a)(1)(B).

(h) The obligor may not receive any cash back from the modification.

(Authority: 38 U.S.C. 3703(c)(1))

6. Section 36.4315 is revised to read as follows:

§ 36.4315 Acceptability of partial payments.

A partial payment is a remittance on a loan in default (as defined in § 36.4301) of any amount less than the full amount due under the terms of the loan and security instruments at the time the remittance is tendered.

(a) Except as provided in paragraph (b) of this section, or upon the express waiver of the Secretary, the mortgage holder shall accept any partial payment and either apply it to the mortgagor's account or identify it with the mortgagor's account and hold it in a special account pending disposition. When partial payments held for disposition aggregate a full monthly installment, including escrow, they shall be applied to the mortgagor's account.

(b) A partial payment may be returned to the mortgagor, within 10 calendar days from date of receipt of such payment, with a letter of explanation only if one or more of the following conditions exist:

(1) The property is wholly or partially tenant-occupied and rental payments are not being remitted to the holder for application to the loan account;

(2) The payment is less than one full monthly installment, including escrows and late charge, if applicable, unless the lesser payment amount has been agreed to under a documented repayment plan;

(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 repayment plan;

(4) The payment is less than the amount agreed to in a documented repayment plan;

(5) The amount tendered is in the form of a personal check and the holder 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 written repayment plan has been arranged;

(7) Foreclosure has been commenced by the taking of the first action required for foreclosure under local law; or

(8) The holder's lien position would be jeopardized by acceptance of the partial payment.

(c) A failure by the holder to comply with the provisions of this paragraph may result in a partial or total loss of guaranty or insurance pursuant to § 36.4325(b), but such failure shall not constitute a defense to any legal action to terminate the loan.

(Authority: 38 U.S.C. 3703(c)(1))

7. Section 36.4315a is added to read as follows:

§ 36.4315a Servicer reporting requirements.

(a)(1) Servicers of loans guaranteed by the Secretary shall report the information required by this section to the Secretary electronically. The Secretary shall assign a user identification and password for access to each entity currently servicing loans guaranteed under 38 U.S.C., chapter 37 on [effective date of final rule to be inserted]. Each report to the Secretary required by this section shall include the VA-assigned Servicer Identification Number.

(2) Any other servicer may apply for a Servicer Identification Number and password by following the procedures at *http://www.homeloans.va.gov*.

(b) Not later than the fifth business day of each month each servicer shall report to the Secretary the following information for each loan guaranteed by the Secretary currently being serviced by that entity:

(1) The VA loan number;

(2) The servicer's loan number;

(3) The original veteran's name and social security number;

(4) The unpaid principal balance; and

(5) The next payment due date.

(c) Servicers shall report to the Secretary within five business days after any of the following events occur:

(1) Transfer of servicing;

(2) Loan is assumed by another party;

(3) An obligor has been released from liability;

(4) Property taxes and hazard insurance has been paid;

(5) Loans have been modified pursuant to § 36.4314;

(6) Any obligor on the loan requests or is deemed to be entitled to relief with regard to the loan under the Servicemembers Civil Relief Act;

(7) Any obligor files a petition under the Bankruptcy Code, and when any significant events impacting the guaranteed loan or the security therefore occurs in a pending bankruptcy, including but not limited to a contested action, the approval of a plan, any hearing on relief from the automatic stay, the granting of a discharge to the debtor, dismissal of the bankruptcy case, and other orders of the court;

(8) The holder receives notice of any legal, equitable, or administrative proceeding that might materially affect the termination of the loan, the lien, or the security for the loan;

(9) The holder has released the lien on a part of the security for the loan pursuant to § 36.4324; or

(10) The loan has been paid in full.

(d) The holder shall report to the Secretary within 5 business days after any loan has been delinquent for 61 days. This report will include the:

(1) Information specified in paragraphs (b)(1) through (b)(3) of this section;

(2) Date of first payment on the loan;

(3) Date of last unpaid installment;

(4) Names and social security numbers of present owners of the property;

(5) Mailing address of present owners if different from the property;

(6) Current or last known address of the original veteran;

(7) Interest rate on the loan;

(8) Amount and details of the current required installment; *i.e.*, how much is allocated for principal and interest, how much for taxes, how much for insurance, and how much for any other purpose;

(9) Late charges due;

(10) Total delinquency amount, and how much is allocated for each item specified in paragraph (d)(8) of this section;

(11) Summary of servicing actions taken since the loan went into default, including dates of actions, actions taken, and description of results or responses by obligors;

(12) Property occupancy status;

(13) Dates of property inspections and the results and findings of such inspections;

(14) Income and credit information for all current obligors;

(15) Obligor's contact information, including home and work phone numbers and e-mail addresses, if known; and

(16) Reason(s) the obligor(s) defaulted.

(e)(1) With respect to any default reported pursuant to paragraph (d) of this section, the servicer shall provide updates to the Secretary within five business days after any of the following events occur:

(i) Contact with the borrower;

(ii) Default cured;

(iii) A repayment plan is under consideration by the servicer;

(iv) A repayment plan has been denied by the servicer;

(v) A repayment plan has been approved by the servicer;

(vi) A partial payment has been returned to the borrower;

(vii) A loan modification is under consideration by the servicer;

(viii) A loan modification has been denied by the servicer;

(ix) A loan modification has been approved by the servicer;

(x) The servicer determines the loan default is insoluble;

(xi) The servicer considers, denies, or approves any other loss mitigation options defined in § 36.4317 of this part;

(xii) The servicer referred the loan to legal counsel for foreclosure;

(xiii) The date of a judicial foreclosure proceeding or a liquidation sale has been set;

(xiv) The liquidation sale was held; and

(xv) Any other event or occurrence that materially affects the loan or the security property over the course of servicing the default.

(2) Such report shall include the information specified in paragraphs (b)(1) through (b)(3) of this section, plus a brief description of the event or action taken, the date such action was taken or event occurred, a statement of the reasons why the holder approved or rejected a particular course of action, the results of any contact with the obligor, judicial proceeding, the terms of any repayment plan or loan modification, and any other material fact concerning such event or occurrence.

(f) When the holder determines that equity of at least 25% exists (see § 36.4319a(e)), the holder shall report its equity calculations to the Secretary at least 5 business days prior to the foreclosure date. The equity calculations will include the fair market value of the property, the total indebtedness on the loan guaranteed by the Secretary, and the unpaid balance of all other liens of record on the property.

(g) The servicer shall report to the Secretary not later than 15 calendar days after the liquidation sale was held. Such report shall include the information specified in paragraphs (b)(1) through (b)(3) of this section, plus a brief description of the results of the sale, including the amount of sale proceeds, whether the holder acquired the property, and, if the holder acquired the property, whether the holder elects to convey the property to the Secretary pursuant to § 36.4320.

(Authority: 38 U.S.C. 3703(c))

8. Section 36.4316 is revised to read as follows:

§ 36.4316 Servicer Tier Ranking—Temporary Procedures.

(a) The Secretary shall assign each servicer to a ''Tier Ranking'' based upon the servicer's performance in servicing guaranteed loans. There shall be four tiers, known as tier one, tier two, tier three, and tier four, with tier one being the highest rated and tier four the lowest. Effective July 1, 2005, every servicer of loans guaranteed by the Secretary shall be presumed to be in servicer tier two, and shall remain in tier two until the date specified in paragraph (c)(2) of this section.

(b) For purposes of this section, the term ''calendar quarter'' shall mean the 3-month periods ending on March 31, June 30, September 30, and December 31.

(c)(1) No later than 30 days after the last business day of the first calendar quarter occurring after the rules for determining tier rankings take effect, and then not later than 30 days after the last business day of each subsequent calendar quarter, the Secretary shall provide each servicer with an evaluation of their performance under such criteria.

(2) No later than 45 days after the last business day of the fourth calendar quarter during which the Secretary evaluates the performance of servicers, and then annually thereafter, VA shall advise each servicer of its tier ranking.

(3) Any entity which begins servicing guaranteed loans after the first calendar quarter occurring after rules for determining tier rankings take effect shall be presumed to be in tier two. The Secretary will evaluate the performance of such servicer as provided in paragraph (c)(1) of this section. The Secretary will advise such servicer of its tier ranking at the time other servicers are advised of their tier rankings pursuant to paragraph (c)(2) of this section, provided the servicer has received evaluations for at least four calendar quarters.

(d) The quarterly evaluation and tier ranking of a servicer shall be deemed to be confidential and privileged and shall not be disclosed by the Secretary to any other party.

(Authority: 38 U.S.C. 3703(c))

9. Section 36.4317 is revised to read as follows:

§ 36.4317 Servicer Loss-Mitigation Options and Incentives.

(a) The Secretary will pay a servicer in tiers one, two, or three an incentive payment for each of the following successful loss-mitigation options completed: repayment plans, special forbearance, loan modification, compromise sale, and deed-in-lieu of foreclosure. Only one incentive payment will be made with respect to any default required to be reported to the Secretary pursuant to § 36.4315a(d). No incentive payment will be made to a servicer in tier four.

(b) The amount of the incentive payment is as follows:

Tier ranking	Repayment plan	Special forbearance	Loan modification	Compromise sale	Deed-in-lieu of foreclosure
One	$200	$200	$500	$1,000	$250
Two	160	160	400	800	200
Three	120	120	300	600	150
Four	0	0	0	0	0

(c) For purposes of this section, a loss-mitigation option will be deemed successfully completed as follows:

(1) With respect to a repayment plan, when four consecutive payments under such plan have been made or the total amount of the delinquency has been paid, whichever is earlier;

(2) With respect to special forbearance, when the loan reinstates;

(3) With respect to a loan modification, when the modification is executed and the loan reinstates;

(4) With respect to a compromise sale, when the claim under guaranty is filed; or

(5) With respect to a deed-in-lieu of foreclosure, when the claim under guaranty is filed.

(d) Incentive payments with respect to repayment plans, special forbearances and loan modifications shall be made monthly. For all other successful loss-mitigation options, incentives shall be paid in the final claim payment.

(Authority: 38 U.S.C. 3703(c))

10. Section 36.4318 is amended by:

A. In paragraph (a), removing ''§ 36.4317'' and adding, in it place, ''§ 36.4315a(d)''; and removing ''within 30 days thereafter''.

B. Adding paragraph (c).

The addition reads as follow:

§ 36.4318 Refunding of loans in default.

* * * * *

(c) Servicers must deliver to the Secretary all legal documents, including but not limited to proper loan assignments, required to evidence proper loan transfer within 60 days from receipt of notice that VA has decided to refund a loan under this section. Servicers exhibiting a continued failure to provide timely loan transfer documentation may, at the discretion of the Secretary and upon delivery of notice to the servicer, be subject to temporary suspension of all property acquisition and claim payments until all deficiencies identified in the notice provided to the servicer have been corrected.

(Authority: 38 U.S.C. 3703(c) and 3732(a))

11. Section 36.4319 is amended by:

A. Revising paragraph (a) and adding an authority citation.

B. Removing paragraphs (b), (c), (d), and (f).

C. Redesignating paragraph (e) as paragraph (b).

The revision reads as follows:

§ 36.4319 Service of process.

(a) In any legal or equitable proceeding (including probate and bankruptcy proceedings) arising from a loan guaranteed, insured, or made, or a property acquired by the Secretary pursuant to title 38, U.S.C., chapter 37, to which the Secretary is a party, original process and any other process prior to appearance, proper to be served on the Secretary, shall be delivered to the VA Regional Counsel having jurisdiction over the area in which the court is situated. Copies of such process will also be served on the Attorney General of the United States and the United States Attorney having jurisdiction over that area. Within the time required by applicable law, or rule of court, the Secretary will cause appropriate special or general appearance to be entered in the case by an authorized attorney.

(Authority: 38 U.S.C. 3703(c) and 3720(a))

* * * * *

12. Section 36.4319a is added to read as follows:

§ 36.4319a Loan Termination.

(a) For purposes of this part, the Secretary has determined that a holder, using reasonable diligence, will need the time set forth in the following table to complete a foreclosure:

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Jurisdiction	Procedure	Final Event	Timeframe
Alabama	Sale W/Publication	Trustee's Sale	60 Days
Alaska	Non-Judicial	Trustee's Sale	120 Days
Arizona	Non-Judicial	Trustee's Sale	120 Days
Arkansas	Judicial W/Personal Service	Commissioner's Sale	120 Days
	Non-Judicial	Sheriff's Sale	90 Days
California	Non-Judicial	Trustee's Sale	140 Days
Colorado	Non-Judicial	Public Trustee's Sale	150 Days
Connecticut	Judicial - Strict Foreclosure	Judicial Order	180 Days
	Foreclosure By Sale	Committee Deed	180 Days
Delaware	Judicial	Sheriff's Sale	240 Days
District of Columbia	Non-Judicial	Sale	60 Days
Florida	Judicial	Confirmation	180 Days
Georgia	Non-Judicial	Sale	60 Days*
	*(First Tuesday of the month which is more than 30 and less than 60 days after referral)		
Guam	Non-Judicial	Sheriff's Sale	180 Days
Hawaii	Judicial	Confirmation	180 Days
Idaho	Non-Judicial	Sale	180 Days
Illinois	Judicial	Sheriff's Sale	270 Days
Indiana	Judicial	Sheriff's Sale	270 Days
Iowa	Judicial	Sheriff's Sale	180 Days
Kansas	Judicial	Sheriff's Sale	140 Days
Kentucky	Judicial	Confirmation of Sale	150 Days
Louisiana	Judicial by Executor Process	Sheriff's Sale	180 Days
Maine	Judicial	Sale	300 Days
Maryland	Non-Judicial W/Ratification	Trustees Sale	60 Days
Massachusetts	Judicial Order	Sale And Deed	240 Days
Michigan	Non-Judicial	Sheriff's Sale	105 Days
Minnesota	Non-Judicial	Sheriff's Sale	90 Days
Mississippi	Non-Judicial	Trustee's Sale	60 Days
Missouri	Non-Judicial	Trustee's Sale	60 Days
Montana	Non-Judicial	Trustee's Sale	150 Days
Nebraska	Judicial (Mortgage)	Confirmation	180 Days
	Non-Judicial (Deed of Trust)	Sheriff's Sale	105 Days
Nevada	Non-Judicial	Trustee's Sale	140 Days
New Hampshire	Non-Judicial	Sale and Deed	120 Days
New Jersey	Judicial	Sheriff's Sale	300 Days
New Mexico	Judicial	Confirmation	180 Days
New York			
*Western Counties	Judicial	Referee's Sale	240 Days
Eastern Counties	Judicial	Referee's Sale	270 Days
North Carolina	Non-Judicial	10 Days after Sheriff's Sale	90 Days
North Dakota	Judicial	Sheriff's Sale	150 Days
Ohio	Judicial	Confirmation	360 Days
Oklahoma	Judicial	Confirmation	210 Days
Oregon	Non-Judicial	Trustee's Sale	150 Days
Pennsylvania**			
Western Counties	Judicial	Sheriff's Sale	180 Days
Eastern Counties	Judicial	Sheriff's Sale	240 Days
Puerto Rico	Judicial	Confirmation	240 Days***
Rhode Island	Non-Judicial	Sale and Deed	120 Days
South Carolina	Judicial	Sale	180 Days
South Dakota	Judicial	Sheriff's Sale	140 Days
	Non-Judicial	Sheriff's Sale	90 Days
Tennessee	Non-Judicial	Trustee's Sale	60 Days
Texas	Non-Judicial	Trustee's Sale	60 Days
Utah	Non-Judicial	Trustee's Sale	150 Days
Vermont	Judicial	Certificate of Non-Redemption	300 Days
Virginia	Non-Judicial	Trustee's Sale	60 Days
Washington	Non-Judicial	Trustee's Sale	150 Days
West Virginia	Non-Judicial	Trustee's Sale	60 Days
Wisconsin	Judicial – Abandoned	Confirmation	210 Days
	Judicial – Tenant Occupied	Confirmation	240 Days
	Judicial – Owner Occupied	Confirmation	330 Days
Wyoming	Non-Judicial	Sheriff's Sale	90 Days

*Western Counties of New York are: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Steuben, Wayne Wyoming, and Yates.. The remaining counties are in Eastern New York.

** Eastern Pennsylvania of are: Adams, Berks, Bradford, Bucks, Cameron, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York. The remaining counties are in Western Pennsylvania.

***360 days in Carolina Court & VI.

BILLING CODE 4191–02–C

(b)(1) At least 30 days prior to the scheduled or anticipated date of the liquidation sale, the holder must request that VA assign an appraiser to conduct a liquidation appraisal. This appraisal will be requested by means of the Department of Veterans Affairs Internet-based Appraisal System (''TAS''). The Internet address (URL) for TAS is: *http://tas.vba.va.gov*.

(2) If the holder (or its authorized servicing agent) has been approved by the Secretary to process liquidation appraisals under § 36.4344a, the appraiser shall forward the liquidation appraisal report directly to the holder for a determination of the fair market value of the property pursuant to § 36.4344a of this part.

(3) If the holder (or its authorized servicing agent) has not been approved by the Secretary to process liquidations appraisals under § 36.4344a, the Secretary shall review the appraisal and determine the fair market value of the property. The Secretary will provide the holder with a statement of the fair market value.

(4)(i) Except as provided in paragraph (b)(4)(ii) of this paragraph, a liquidation appraisal or statement of fair market value issued pursuant to paragraph (b)(3) of this section will be valid for 6 months.

(ii) The Secretary may specify in writing a shorter validity period, not less than 90 days, for a liquidation appraisal or statement of fair market value if rapidly-changing market conditions in the area where the property is located make such shorter validity period in the best fiscal interests of the United States.

(c) Prior to the liquidation sale, the holder shall compute the net value of the property securing the guaranteed loan by subtracting the estimated costs to the Secretary for the acquisition and disposition of the property from the fair market value, as determined under paragraph (b) of this section. Those costs will be calculated using the percentage derived by the Secretary and published in the **Federal Register** pursuant to § 36.4301.

(d) If the holder learns of any material damage to the property occurring after the appraisal and prior to the liquidation sale, the impact of such damage on the fair market value must be determined in consultation with the fee appraiser, and the net value adjusted accordingly.

(e)(1) In any case where the veteran's or other obligor's equity in the property securing the loan is equal to at least 25 percent of the fair market value of the property, the holder shall notify the Secretary of the equity calculations at least 5 business days prior to the foreclosure date. Such notice will be given as an electronic event update or by e-mail if the event update will not occur in time to meet the 5 business day requirement.

(2) For purposes of this paragraph:

(i) ''Business day'' means Monday through Friday, inclusive, excluding the legal public holidays specified in 5 U.S.C. 6103(a).

(ii) ''Equity'' means the fair market value of a property, as determined pursuant to paragraph (b)(2) or (b)(3) of this section, minus the sum of:

(A) The total indebtedness on the loan guaranteed by the Secretary; and

(B) The unpaid balance of all other liens of record on the property.

(iii) ''Foreclosure date'' means the date of the scheduled judicial or nonjudicial foreclosure sale (e.g., sheriff's or trustee's sale).

(f)(1) A holder may approve a compromise sale of the property securing the loan without the prior approval of the Secretary provided that:

(i) The holder has determined the loan is insoluble;

(ii) The net proceeds from the compromise sale must equal or exceed the net value of the property securing the loan as computed by the holder pursuant to paragraph (c) of this section;

(iii) The holder has determined that the estimated guaranty payment it would receive following the compromise sale would not exceed the estimated guaranty payment it would receive following foreclosure;

(iv) The current owner of the property securing the loan will not receive any proceeds from the sale of the property; and

(v) If the current owner is a liable obligor, the owner executes the repayment agreement required by paragraph (h) of this section.

(2) A holder may request advance approval from the Secretary for a compromise sale notwithstanding that all of the conditions specified in paragraph (f)(1) of this section cannot be met if the holder believes such compromise sale would be in the best interests of the veteran and the Secretary.

(g)(1) A holder may accept a deed voluntarily tendered by the current owner of the property securing the loan in lieu of conducting a foreclosure without the prior approval of the Secretary provided that:

(i) The holder has determined the loan is insoluble;

(ii) The holder has computed the net value of the property securing the loan pursuant to paragraph (c) of this section;

(iii) The holder has considered a compromise sale pursuant to paragraph (f) of this section and determined such compromise sale is not practical;

(iv) The holder has determined that the estimated guaranty payment it would receive following the deed-in-lieu of foreclosure would not exceed the estimated guaranty payment it would receive following foreclosure;

(v) The holder has determined the current owner of the property can convey clear and marketable title to the property that would meet the standard stated in paragraph (c)(5) of § 36.4320; and

(vi) If the current owner is a liable obligor, the owner executes the repayment agreement required by paragraph (h) of this section.

(2) A holder may request advance approval from the Secretary for a deed-in-lieu of foreclosure notwithstanding that all of the conditions specified in paragraph (g)(1) of this section cannot be met if the holder believes such deed-in-lieu would be in the best interests of the veteran and the Secretary.

(h)(1) For purposes of this paragraph and paragraphs (f)(1)(v) and (g)(1)(vi) of this section, the term ''liable obligor'' means:

(i) A veteran whose entitlement was used to obtain or assume the loan, if the loan was closed or assumed on or before December 31, 1989;

(ii) An individual who is obligated by contract to assume all of the obligations of a veteran who was released from liability on the loan pursuant to 38 U.S.C. 3713; or

(iii) An individual who the Secretary approved to assume the loan pursuant to 38 U.S.C. 3714.

(2)(i) Each liable obligor who disposes of the property by a compromise sale or deed-in-lieu of foreclosure must execute an agreement to repay to the Secretary 50 percent of the amount that would otherwise be due to the Secretary pursuant to § 36.4323.

(ii) The repayment agreement shall require the first payment to be made on the first day of the first month which is more than one year from the date of the deed-in-lieu or the closing of the compromise sale. The agreement shall require equal monthly payments sufficient to repay the entire balance due within 5 years after the first payment is due.

(iii) The obligation shall bear interest at the rate determined by the Secretary pursuant to 38 U.S.C. 5315(b)(2) in effect on the date of the notice described in paragraph (h)(2)(iv) of this section. Interest shall accrue from the date the first payment is due.

(iv) Upon payment of the guaranty claim to the holder, the Secretary shall send by certified mail, return receipt

requested, a notice to the liable obligor of the amount of the debt due under this paragraph, the date the first payment will be due, the amount of the required monthly payments, and the applicable interest rate.

(v) The execution of the repayment agreement will not preclude a veteran from seeking waiver of the debt pursuant to 38 U.S.C. 5302. The notice required by paragraph (h)(2)(iv) of this section shall include a statement of the right of the veteran to seek waiver and a description of the procedures for submitting an application for waiver.

(Authority: 38 U.S.C. 3703(c), 5302, 5315)

13. Section 36.4320 is revised to read as follows:

§ 36.4320 Election to convey security.

(a) If the holder acquires the property that secured the guaranteed loan at the liquidation sale or through acceptance of a deed-in-lieu of foreclosure and if, under 38 U.S.C. 3732(c), the Secretary may accept conveyance of the property, the holder must notify the Secretary by electronic means no later than 15 days after the date of liquidation sale or execution of the deed to the holder by the homeowners that the holder elects to convey the property to the Secretary. The Secretary will not accept conveyance of the property if the holder fails to notify the Secretary of its election within such 15 days.

(b) The holder, in accounting to the Secretary in connection with the conveyance of any property pursuant to this section, may include as a part of the indebtedness all actual expenses or costs of the proceedings, paid by the holder, within the limits defined in § 36.4313. In connection with the conveyance or transfer of property to the Secretary the holder may include in accounting to the Secretary the following expense items if actually paid by the holder, in addition to the consideration payable for the property under 38 U.S.C. 3732(c):

(1) State and documentary stamp taxes as may be required.

(2) Amount expended for taxes, special assessments, including such payments which are specified in paragraph (d)(4) of this section.

(3) Recording fees.

(4) Any other expenditure in connection with the property which are approved by the Secretary.

(c) The conveyance or transfer of any property to the Secretary pursuant to this section shall be subject to the following provisions:

(1) The notice of the holder's election to convey the property to the Secretary shall state the amount of the holder's successful bid and shall state the insurance coverage then in force, specifying for each policy, the name of the insurance company, the hazard covered, the amount, and the expiration date. With respect to a voluntary conveyance to the holder in lieu of foreclosure, the amount of the holder's successful bid shall be deemed to be the lesser of the net value of the property or the total indebtedness.

(2) Coincident with the notice of election to convey or transfer the property to the Secretary or with the acquisition of the property by the holder, following such notice, whichever is later, the holder shall request endorsements on all insurance policies naming the Secretary as an assured, as his/her interest may appear. Such insurance policies shall be forwarded to the Secretary at the time of the conveyance or transfer of the property to the Secretary or as soon after that time as feasible. If insurers cancel policies, holders must properly account for any unearned premiums refunded by the insurer.

(3) Occupancy of the property by anyone properly in possession by virtue of and during a period of redemption, or by anyone else unless under a claim of title which makes the title sought to be conveyed by the holder of less dignity or quality than that required by this section, shall not preclude the holder from conveying or transferring the property to the Secretary. Except with the prior approval of the Secretary, the holder shall not rent the property to a new tenant, nor extend the term of an existing tenancy on other than a month-to-month basis.

(4) The notice shall provide property tax information to include all taxing authority property identification numbers. Any taxes, special assessments or ground rents due and payable within 30 days after date of conveyance or transfer to the Secretary must be paid by the holder.

(5)(i) Each conveyance or transfer of real property to the Secretary pursuant to this section shall be acceptable if:

(A) The holder thereby covenants or warrants against the acts of the holder and those claiming under the holder (*e.g.*, by special warranty deed); and

(B) It vests in the Secretary or will entitle the Secretary to such title as is or would be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated.

(ii) Any title will not be unacceptable to the Secretary by reason of any of the limitations on the quantum or quality of the property or title stated in § 36.4350(b) of this part: Provided, That

(A) At the time of conveyance or transfer to the Secretary there has been no breach of any conditions affording a right to the exercise of any reverter.

(B) With respect to any such limitations which came into existence subsequent to the making of the loan, full compliance was had with the requirements of § 36.4324. The acceptability of a conveyance or transfer pursuant to the requirements of this paragraph will be established by delivery to the Secretary of the following evidence of title showing that title to the property of the quality specified in this paragraph is or will be vested in the Secretary:

(*1*) A copy of the deed or document evidencing transfer of interest and title at the liquidation sale;

(*2*) A copy of the deed conveying the property to the Secretary; and

(*3*) A copy of the mortgage, deed of trust, or other security instrument for the guaranteed loan which was terminated.

(6)(i) The holder will be deemed to warrant to the Secretary that the Secretary has received the quality of title specified in paragraph (c)(5)(i)(B) of this section. Such warranty shall be limited to any defect identified by the Secretary to the holder within 36 months after the acceptance by the Secretary of a conveyance or transfer by the holder.

(ii) The Secretary may make a claim against a holder with regard to the warranty specified in paragraph (c)(5)(i)(A) of this section or any other express warranty provided by the holder without any time limit.

(7) As between the holder and the Secretary, the responsibility for any loss due to damage to or destruction of the property or due to personal injury sustained in respect to such property shall be governed by the provisions of this paragraph and paragraph (c)(11) of this section. Ordinary wear and tear excepted, the holder shall bear such risk of loss from the date of acquisition by the holder to the date such risk of loss is assumed by the Secretary. Such risk of loss is assumed by the Secretary from the date of receipt of the holder's election to convey or transfer the property to the Secretary. The amount of any loss chargeable to the holder may be deducted from the amount payable by the Secretary at the time the property is transferred. In any case where pursuant to the VA regulations rejection of the title is legally proper, the Secretary may surrender custody of the property as of the date specified in the Secretary's notice to the holder. The Secretary's

assumption of such risk shall terminate upon such surrender.

(8) The conveyance should be made to ''Secretary of Veterans Affairs, an Officer of the United States.'' The name of the incumbent Secretary should not be included unless State law requires naming a real person.

(9) The holder shall not be liable to the Secretary for any portion of the paid or unpaid taxes, special assessments, ground rents, insurance premiums, or other similar items. The holder shall be liable to the Secretary for all penalties and interest associated with taxes not timely paid by the holder prior to conveyance.

(10) The Secretary shall be entitled to all rentals and other income collected from the property and to any insurance proceeds or refunds subsequent to the date of acquisition by the holder.

(11) In respect to a property which was the security for a condominium loan guaranteed or insured under 38 U.S.C. 3710(a)(6) the responsibility for any loss due to damage to or destruction of the property or due to personal injury sustained in respect to such property shall in no event pass to the Secretary until the Secretary expressly assumes such responsibility or until conveyance of the property to the Secretary, whichever first occurs. The holder shall have the right to convey such property to the Secretary only if the property (including elements of the development or project owned in common with other unit owners) is undamaged by fire, earthquake, windstorm, flooding or boiler explosion. The absence of a right in the holder to convey such property which is so damaged shall not preclude a conveyance, if the Secretary agrees in a given case to such a conveyance upon completion of repairs within a specified period of time and such repairs are so completed and the conveyance is otherwise in order.

(d) Except as provided in paragraph (c)(6) of this section, the provisions of this section shall not be in derogation of any rights which the Secretary may have under § 36.4325. The Under Secretary for Benefits, or the Director, Loan Guaranty Service, may authorize any deviation from the provisions of this section, within the limitations prescribed in 38 U.S.C. Chapter 37, which may be necessary or desirable to accomplish the objectives of this section if such deviation is made necessary by reason of any laws or practice in any State or Territory or the District of Columbia:

Provided, That no such deviation shall impair the rights of any holder not consenting to the deviation with respect to loans made or approved prior to the date the holder is notified of such action.

(Authority: 38 U.S.C. 3732, Pub. L. 100–527)

14. Section 36.4321 is revised to read as follows:

§ 36.4321 Guaranty claims; subsequent accounting.

(a) Subject to the limitation that the total amounts payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the sum of:

(1) The unpaid principal as of the date of the liquidation sale;

(2) Allowable expenses/advances; and

(3) The lesser of:

(i) The unpaid interest as of the date of the liquidation sale; or,

(ii) The unpaid interest for the reasonable period that the Secretary has determined, pursuant to § 36.4319a(a), it should have taken to complete the foreclosure, plus 180 days.

(iii) The unpaid interest allowed pursuant to paragraph (a)(2)(ii) of this section shall be increased if the Secretary determines the holder was unable to complete the foreclosure within the time specified in such paragraph due to Bankruptcy proceedings, appeal of the foreclosure by the debtor, the holder granting forbearance in excess of 30 days at the request of the Secretary, or other factors beyond the control of the holder.

(b) Deposits or other credits or setoffs legally applicable to the indebtedness shall be applied in reduction of the indebtedness on which the claim is based. Any escrowed or earmarked funds not subject to superior claims of third persons must likewise be so applied.

(c)(1) Credits accruing from the proceeds of a liquidation sale shall be reported to the Secretary incident to claim submission, and the amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.

(2) The amount payable under the guaranty shall be computed applying the formulae in 38 U.S.C. 3732(c). With respect to a voluntary conveyance to the holder in lieu of foreclosure, the holder shall be deemed to have acquired the property at the liquidation sale for the lesser of the net value of the property or the total indebtedness.

(d)(1)(i) Except as provided in paragraph (d)(1)(ii) of this section, holders shall file a claim for payment under the guaranty electronically no later than 1 year after the completion of the liquidation sale. For purposes of this section, the liquidation sale will be considered completed when:

(A) The last act required under State law is taken to either make the liquidation sale final, or obtain a judgment, a confirmation, or an approval of the sale, but excluding any redemption period permitted under State law;

(B) If a holder accepts a voluntary conveyance of the property in lieu of foreclosure, the date of execution of the deed to the holder or the holder's designee; or

(C) In the case of a sale of the property to a third party for an amount less than is sufficient to repay the unpaid balance on the loan where the holder has agreed in advance to release the lien in exchange for the proceeds of such sale, the date of settlement of such sale.

(ii) With respect to any liquidation sale completed prior to [*effective date of final rule to be inserted*], all claims must be submitted no later than 1 year following [*effective date of final rule to be inserted*].

(2) If additional information becomes known to a holder after the filing of a guaranty claim, the holder may file a supplemental claim provided that such supplemental claim is filed within the time period specified in paragraph (d)(1) of this section.

(3) No claim under a guaranty shall be payable unless it is submitted within the time period specified in paragraph (d)(1) of this section.

(4) A claim shall be submitted to VA electronically on the VA Loan Electronic Reporting Interface system. The following information must be included in the claim:

(i) Total payments received on the loan;

(ii) Amount applied to interest;

(iii) Prepayments and other amounts applied to principal,

(iv) Itemized liquidation expenses;

(v) Itemized advances;

(vi) Remaining balance in the tax and insurance escrow account; and

(vii) Any additional unapplied credits.

(5) Supporting documents will not be submitted with the claim, but must be retained by the servicer and are subject to inspection as provided in § 36.4330 of this title.

(e) In the event that VA does not approve payment of any item submitted under a guaranty claim, VA shall notify the holder electronically what items are being denied and the reasons for such denial. The holder may, within 30 days after the date of such denial notification, submit an electronic request to VA that one or more items that were denied be reconsidered. The holder must present

any additional information justifying payment of items denied.

(f) Determinations under paragraphs (a)(3) and (e) of this section and paragraph (f)(2) of § 36.4313 may be made by any employee designated by § 36.4342(b). Authority is hereby granted to the Loan Guaranty Officer to redelegate authority to make such determinations.

(Authority: 38 U.S.C. 3703(c))

15. Section 36.4323 is amended by adding paragraph (i) immediately after the authority citation at the end of paragraph (h) to read as follows:

§ 36.4323 Subrogation and indemnity.

* * * * *

(i) If a veteran requests a release of liability under paragraph (f) of this section, or if a borrower requests a release of liability pursuant to § 36.4308(c)(1)(vii), a holder or its authorized servicing agent described in the first sentence of § 36.4303(l)(1)(i) of this part is authorized to and must make all decisions regarding the credit-worthiness of the transferee, subject to the right of a transferee to appeal any denial to the Secretary within 30 days of being notified in writing of the denial by the holder or servicer. The procedures and fees specified in §§ 36.4303(l)(1)(i) and 36.4312(d)(8) applicable to decisions under 38 U.S.C. 3714 shall also apply to decisions specified in this paragraph.

(Authority: 38 U.S.C. 3703(c) and 3713)

16. Section 36.4324 is amended by:

A. Revising paragraph (a).

B. Removing paragraphs (c) and (e).

C. Redesignating paragraphs (d) and (f) as paragraphs (c) and (d), respectively.

D. In newly redesignated paragraph (d), removing ''§ 36.4317'' and adding, in its place, ''§ 36.4315a''.

The revision reads as follows:

§ 36.4324 Release of security.

(a)(1) Except upon full payment of the indebtedness, or except as provided in paragraph (a)(2) of this section or in paragraphs (f) and (g) of § 36.4319a, the holder shall not release a lien or other right in or to real property held as security for a guaranteed or insured loan, or grant a fee or other interest in such property, without prior approval of the Secretary.

(2) The holder may, without the prior approval of the Secretary, release the lien on a portion of the property securing the loan provided:

(i) The holder has obtained an appraisal from the Secretary showing the value of the security prior to the partial release of the lien and the value of the security on which the lien will remain;

(ii) The portion of the property still subject to the lien is fit for dwelling purposes; and

(iii) The loan-to-value ratio after the partial release of the lien:

(A) Will be not more than 80 percent; or

(B) If the loan-to-value ratio after the partial release of the lien is 80 percent or higher, any proceeds received as consideration from the partial release of the lien shall be applied to the unpaid loan balance.

* * * * *

17. Section 36.4325 is amended by:

A. Revising paragraph (b)(5).

B. Removing paragraph (b)(6).

C. Redesignating paragraphs (b)(7) through (b)(11) as paragraphs (b)(6) through (b)(10), respectively.

The revision reads as follows:

§ 36.4325 Partial or total loss of guaranty or insurance.

* * * * *

(b) * * *

(5) Any notice required by § 36.4315a,

* * * * *

18. In § 36.4330, paragraph (a) is revised to read as follows:

§ 36.4330 Maintenance of records.

(a)(1) The holder shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto and the dates thereof, including copies of bills and receipts for such disbursements. These records shall be maintained until the Secretary ceases to be liable as guarantor or insurer of the loan, or, if the Secretary has paid a claim on the guaranty, until 3 years after such claim was paid. For the purpose of any accounting with the Secretary or computation of a claim, any holder who fails to maintain such record and, upon request, make it available to the Secretary for review shall be presumed to have received on the dates due all sums which by the terms of the contract are payable prior to date of claim for default, or to have not made the disbursement for which reimbursement is claimed, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such holder.

(2) The holder shall maintain records supporting their decision to approve any loss mitigation option specified in § 36.4317(a). Such records shall be retained a minimum of 3 years from the date of such decision and shall include, but not be limited to, credit reports, verifications of income, employment, assets, liabilities, and other factors affecting the obligor's credit worthiness, work sheets, and other documents supporting the holder's decision.

(3) For any loan where the claim on the guaranty was paid on or after October 1, 2005, or action described in paragraph (a)(2) of this section taken after October 1, 2004, holders shall submit any documents described in paragraph (a)(1) or (a)(2) of this section to the Secretary in electronic form. For purposes of this paragraph, electronic form shall mean an image of the original document in .jpg, .gif, or .pdf format. Notwithstanding the foregoing, any holder whose total loan portfolio has an average outstanding principal balance of less than $10,000,000 per year may submit copies of documents in paper form.

* * * * *

19. Section 36.4344a is added to read as follows:

§ 36.4344a Servicer appraisal processing program.

(a) Delegation of authority to servicers to review liquidation appraisals and determine net value. (1) To be eligible for delegation of authority to review VA liquidation appraisals and determine the reasonable value for liquidation purposes on properties secured by VA guaranteed or insured loans, a lender must—

(i) Have automatic processing authority under 38 U.S.C. 3702(d), and

(ii) Employ one or more Staff Appraisal Reviewers (SAR) acceptable to the Secretary.

(2) To qualify as a servicer's staff appraisal reviewer an applicant must be a full-time member of the servicer's permanent staff and may not be employed by, or perform services for, any other mortgagee. The individual must not engage in any private pursuits in which there will be, or appear to be, any conflict of interest between those pursuits and his/her duties, responsibilities, and performance as a Servicer Appraisal Processing Program (SAPP) staff appraisal reviewer. Three years of appraisal related experience is necessary to qualify as a servicer's staff appraisal reviewer. That experience must demonstrate knowledge of, and the ability to apply industry-accepted principles, methods, practices and techniques of appraising, and the ability to competently determine the value of property. The individual must demonstrate the ability to review the work of others and to recognize deviations from accepted appraisal principle, practices, and techniques, error in computations, and unjustifiable and unsupportable conclusions.

(3) Servicers that have a staff appraisal reviewer determined acceptable to VA, will be authorized to review liquidation appraisals and make reasonable value determinations for liquidation purposes on properties that are the security for VA guaranteed or insured loans. Additionally, servicers must satisfy initial VA office case review requirements prior to being allowed to determine reasonable value without VA involvement. The initial office case review requirement must be satisfied in the VA regional loan center in whose jurisdiction the servicer's staff appraisal reviewer is located before the SAPP authority may be utilized by that servicer in any other VA office's jurisdiction. To satisfy the initial office case review requirement, the first five cases of each servicer staff appraisal reviewer involving properties in the regional office location where the staff appraisal reviewer is located will be processed by him or her up to the point where he or she has made a reasonable value determination and fully drafted, but not issued, the servicer's notice of value. At that point, and prior to loan termination, each of the five cases will be submitted to the VA regional loan center having jurisdiction over the property. After a staff review of each case, VA will issue a notice of value which the servicer may use to compute the net value of the property for liquidation purposes. If these five cases are found to be acceptable by VA, the servicer's staff appraisal reviewer will be allowed to fully process subsequent appraisals for properties regardless of jurisdictional location without prior submission to VA and issuance by VA of a notice of value. Where the servicer's reviewer cannot readily meet the jurisdictional review requirement, the SAR applicant may request that VA expand the geographic area of consideration. VA will accommodate such requests if practicable. The initial office case review requirement may be expanded by VA if acceptable performance has not been demonstrated. After satisfaction of the initial office case review requirement, routine reviews of SAPP cases will be made by VA staff based upon quality control procedures established by the Undersecretary for Benefits. Such review will be made on a random sampling or performance related basis.

(4) Certifications required from the servicer will be specified with particularity in the separate instructions issued by the Secretary, as noted in § 36.4344a(b).

(b) *Instructions for SAPP Procedures.* The Secretary will publish separate instructions for processing appraisals under the Servicer Appraisal Processing Program. Compliance with these regulations and the separate instructions issued by the Secretary is deemed by VA to be the minimum exercise of due diligence in processing SAPP cases. Due diligence is considered by VA to represent that care, as is to be properly expected from, and ordinarily exercised by, a reasonable and prudent servicer who would be dependent on the property as security to protect its investment.

(c) *Adjustment of value recommendations.* The amount of authority to upwardly adjust the fee appraiser's estimated market value during the servicer staff appraisal reviewer's initial review of the appraisal report or to subsequently process an appeal of the servicer's established reasonable value will be specified in the separate instructions issued by VA as noted in § 36.4344a(b). The amount specified must not in any way be considered an administrative adjustment figure which may be applied indiscriminately and without valid basis or justification.

(1) *Adjustment during initial review.* Any adjustment during the staff appraisal reviewer's initial review of the appraisal report must be fully and clearly justified in writing on the appraisal report form or, if necessary, on an addendum. The basis for the adjustment must be adequate and reasonable by professional appraisal standards. If real estate market or other valid data was utilized in arriving at the decision to make the adjustment, such data must be attached to the appraisal report. All adjustments, comments, corrections, justifications, etc., to the appraisal report must be made in a contrasting color, be clearly legible, and signed and dated by the staff appraisal reviewer.

(2) *Processing appeals.* The authority provided under 38 U.S.C. 3731(d) which permits a lender to obtain a VA fee panel appraiser's report which VA is obligated to consider in an appeal of the established reasonable value shall not apply to cases processed under the authority provided by this section. All appeals of VA fee appraiser's estimated market values or servicer's reasonable value determinations above the amount specified in the separate instructions issued by VA must be submitted, along with the servicer's recommendations, if any, to VA for processing and final determination. Unless otherwise authorized in the separate instructions servicers must also submit appeals, regardless of the amount, to VA in all cases where the staff appraisal reviewer has made an adjustment during their initial review of the appraisal report to the fee appraiser's market value estimate. The fee appraiser's estimated market value or servicer's reasonable value determination may be increased only when such increase is clearly warranted and fully supported by real estate market or other valid data considered adequate and reasonable by professional appraisal standards and the servicer's staff appraisal reviewer clearly and fully justifies the reasoning and basis for the increase in writing on the appraisal report form or an addendum. The staff appraisal reviewer must date and sign the written justification and must cite within it the data used in arriving at the decision to make the increase. All such data shall be attached to the appraisal report form and any addendum.

(d) *Indemnification.* When the Secretary has incurred a loss as a result of a payment of claim under guaranty and in which the Secretary determines an increase made by the servicer under § 36.4344a(c) was unwarranted, or arbitrary and capricious, the lender shall indemnify the Secretary to the extent the Secretary determines such loss was caused or increased, by the increase in value.

(e) *Affiliations.* A servicer affiliated with a real estate firm, builder, land developer or escrow agent as a subsidiary division, or in any other entity in which it has a financial interest or which it owns may not use the authority for any cases involving the affiliate unless the servicer demonstrates to the Secretary's satisfaction that the servicer and its affiliate(s) are essentially separate entities that operate independently of each other, free of all cross-influences (*e.g.*, a formal corporate agreement exists which specifically sets forth this fact).

(f) *Quality control plans.* The servicer must have an effective self-policing or quality control system to ensure the adequacy and quality of their SAPP staff appraisal reviewer's processing and, that its activities do not deviate from high standards of integrity. The quality control system must include frequent, periodic audits that specifically address the appraisal review activity. These audits may be performed by an independent party, or by the servicer's independent internal audit division which reports directly to the firm's chief executive officer. The servicer must agree to furnish findings and information under this system to VA on demand. While the quality control personnel need not be appraisers, they should have basic familiarity with appraisal theory and techniques and the

ability to prescribe appropriate corrective action(s) in the appraisal review process when discrepancies or problems are identified. The basic elements of the system will be described in separate instructions issued by the Secretary. Copies of the lender's quality control plan or self-policing system evidencing appraisal related matters must be provided to the VA office of jurisdiction with the servicer's application of SAPP authority.

(g) *Fees.* The Secretary will require servicers to pay a $100.00 application fee for each SAR the servicer nominates for approval. The application fee will also apply if the SAR begins work for another servicer.

(h) *Withdrawal of servicer authority.* The authority for a servicer to determine reasonable value may be withdrawn by the Loan Guaranty Officer when proper cause exists. A servicer's authority to make reasonable value determinations shall be withdrawn when the servicer no longer meets the basic requirements for delegating the authority, or when it can be shown that the servicer's reasonable value determinations have not been made in accordance with VA regulations, requirements, guidelines, instructions or applicable laws, or when there is adequate evidence to support reasonable belief by VA that a particular unacceptable act, practice, or performance by the servicer or the servicer's staff has occurred. Such acts, practices, or performance include, but are not limited to: Demonstrated technical incompetence (*i.e.*, conduct which demonstrates an insufficient knowledge of industry accepted appraisal principles, techniques and practices; or the lack of technical competence to review appraisal reports and make value determinations in accordance with those requirements); substantive or repetitive errors (*i.e.*, any error(s) of a nature that would materially or significantly affect the determination of reasonable value or condition of the property; or a number or series of errors that, considered individually, may not significantly impact the determination of reasonable value or property condition, but which when considered in the aggregate would establish that appraisal reviews or SAPP case processing are being performed in a careless or negligent manner), or continued instances of disregard for VA requirements after they have been called to the servicer's attention.

(1) Withdrawal of authority by the Loan Guaranty Officer may be either for an indefinite or a specified period of time. For any withdrawal longer than 90 days a reapplication for servicer authority to process appraisals under these regulations will be required. Written notice will be provided at least 30 days in advance of withdrawal unless the Government's interests are exposed to immediate risk from the servicer's activities in which case the withdrawal will be effected immediately. The notice will clearly and specifically set forth the basis and grounds for the action. There is no right to a formal hearing to contest the withdrawal of SAPP processing privileges. However, if within 15 days after receiving notice the servicer requests an opportunity to contest the withdrawal, the servicer may submit, in person, in writing, or through a representative, information and argument to the Loan Guaranty Officer in opposition to the withdrawal. The Loan Guaranty Officer will make a recommendation to the Regional Loan Center Director who shall make the determination as to whether the action should be sustained, modified or rescinded. The servicer will be informed in writing of the decision.

(2) The servicer has the right to appeal the Regional Loan Center Director's decision to the Undersecretary for Benefits. In the event of such an appeal, the Undersecretary for Benefits will review all relevant material concerning the matter and make a determination that shall constitute final agency action. If the servicer's submission of opposition raises a genuine dispute over facts material to the withdrawal of SAPP authority, the servicer will be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses and confront any witness the Veterans Benefits Administration presents. The Undersecretary for Benefits will appoint a hearing officer or panel to conduct the hearing. When such additional proceedings are necessary, the Undersecretary for Benefits shall base the determination on the facts as found, together with any information and argument submitted by the servicer.

(3) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Undersecretary for Benefits shall make a decision on the basis of all the information in the administrative record, including any submission made by the servicer.

(4) Withdrawal of the SAPP authority will require that VA make subsequent determinations of reasonable value for the servicer. Consequently, VA staff will review each appraisal report and issue a Notice of Value which can then be used by the servicer to compute the net value of properties for liquidation purposes.

(5) Withdrawal by VA of the servicer's SAPP authority does not prevent VA from also withdrawing automatic processing authority or taking debarment or suspension action based upon the same conduct of the servicer.

(Authority: 38 U.S.C. 3732)

20. Section 36.4346 is amended by:

A. In paragraph (c), removing ''60 days'' and adding, in its place, ''30 days'.

B. Removing paragraph (g)(1)(i).

C. Redesignating paragraphs (g)(1) (ii) through (iv) as paragraphs (g)(1) (i) through (iii), respectively.

D. In newly redesignated paragraph (g)(1)(i), removing ''the written delinquency notice'' and adding, in its place, ''the initial late payment notice''.

E. Adding new paragraph (g)(1)(iv).

F. Adding a sentence at the end of paragraph (i)(2).

G. Removing paragraph (k); and redesignating paragraphs (l) and (m) as paragraphs (k) and (l), respectively.

The additions read as follows:

§ 36.4346 Servicing procedures for holders.

* * * * *

(g) * * *

(1) * * *

(iv)(A) A letter to the borrower if payment has not been received—

(*1*) In the case of a default occurring within the first 6 months following loan closing or the execution of a modification agreement pursuant to § 36.4314, within 45 days after such payment was due; or

(*2*) In the case of any other default, within 75 days after such payment was due.

(B) The letter required by paragraph (g)(1)(iv)(A) must be mailed no later than 5 business days after the payment is delinquent for the time period stated in paragraph (g)(1)(iv)(A) and shall—

(*1*) Provide the borrower with a toll-free telephone number and, if available, an e-mail address for contacting the servicer.

(*2*) Explain loss mitigation options available to the borrower.

(*3*) Emphasize that the intent of servicing is to retain home ownership whenever possible;

(*4*) Contain the following language:

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.

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 *http://www.va.gov*. You may also learn where to speak to a VA Loan Administration representative by calling 1–800–827–1000.

* * * * *

(i) * * *

(2) * * * With respect to any loan more than 30 days delinquent, if the property is abandoned or has been or may be subjected to extraordinary waste or hazard, these facts must be reported to the Secretary within 5 business days and immediate action should be initiated by the servicer to protect the property and terminate the loan once the abandonment or waste or hazard has been confirmed.

* * * * *

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