

## Department of Veterans Affairs

## § 36.4350

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. 3703(c)(1), 3731 and 3732)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0045 and 2900-0513)

### § 36.4349 Waivers, consents, and approvals; when effective.

No waiver, consent, or approval required or authorized by the regulations concerning guaranty or insurance of loans to veterans shall be valid unless in writing signed by the Secretary or the subordinate officer to whom au-

thority has been delegated by the Secretary.

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

### § 36.4350 Servicing procedures for holders.

(a) *Establishment of loan servicing program.* The holder of a loan guaranteed or insured by the Secretary shall develop and maintain a loan servicing program which follows accepted industry standards for servicing of similar type conventional loans. The loan servicing program established pursuant to this section may employ different servicing approaches to fit individual borrower circumstances and avoid establishing a fixed routine. However, it must incorporate each of the provisions specified in paragraphs (b) through (1) of this section.

(b) *Procedures for providing information.* (1) Loan holders shall establish procedures to provide loan information to borrowers, arrange for individual loan consultations upon request and maintain controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required.

(i) An office staffed with trained servicing personnel with access to loan account information located within 200 miles of the property.

(ii) Toll-free telephone service or acceptance of collect telephone calls at an office capable of providing needed information.

(2) All borrowers must be informed of the system available for obtaining answers to loan inquiries, the office from which the needed information may be obtained, and reminded of the system at least annually.

(c) *Statement for income tax purposes.* Before February 1st of each calendar year, the holder shall furnish to the borrower a statement of the interest paid and, if applicable, a statement of the taxes disbursed from the escrow account during the preceding year. At the borrower's request, the holder shall furnish a statement of the escrow account sufficient to enable the borrower to reconcile the account.

(d) *Change of servicing.* Whenever servicing of a loan guaranteed or insured by the Secretary is transferred

from one holder to another, notice of such transfer by both the transferor and transferee, the form and content of such notice, the timing of such notice, the treatment of payments during the period of such transfer, and damages and costs for failure to comply with these requirements shall be governed by the pertinent provisions of the Real Estate Settlement Procedures Act as administered by the Department of Housing and Urban Development.

(e) *Escrow accounts.* A holder of a loan guaranteed or insured by the Secretary may collect periodic deposits from the borrower for taxes and/or insurance on the security and maintain a tax and insurance escrow account provided such a requirement is authorized under the terms of the security instruments. In maintaining such accounts, the holder shall comply with the pertinent provisions of the Real Estate Settlement Procedures Act.

(f) *System for servicing delinquent loans.* In addition to the requirements of the Real Estate Settlement Procedures Act, concerning the duties of the loan servicer to respond to borrower inquiries, to protect the borrower's credit rating during a payment dispute period, and to pay damages and costs for noncompliance, holders shall establish a system for servicing delinquent loans which ensures that prompt action is taken to collect amounts due from borrowers and minimize the number of loans in a default status. The holder's servicing system must include the following:

(1) An accounting system which promptly alerts servicing personnel when a loan becomes delinquent;

(2) A collection staff which is trained in techniques of loan servicing and counseling delinquent borrowers to advise borrowers how to cure delinquencies, protect their equity and credit rating and, if the default is insoluble, pursue alternatives to foreclosure;

(3) Procedural guidelines for individual analysis of each delinquency;

(4) Instructions and appropriate controls for sending delinquent notices, assessing late charges, handling partial payments, maintaining servicing histories and evaluating repayment proposals;

(5) Management review procedures for evaluating efforts made to collect the delinquency and the response from the borrower before a decision is made to initiate action to liquidate a loan;

(6) Procedures for reporting delinquencies of 90 days or more and loan terminations to major consumer credit bureaus as specified by the Secretary and for informing borrowers that such action will be taken; and

(7) Controls to ensure that all notices required to be given to the Secretary on delinquent loans are provided timely and in such form as the Secretary shall require.

(g) *Collection actions.* (1) Holders shall employ collection techniques which provide flexibility to adapt to the individual needs and circumstances of each borrower. A variety of collection techniques may be used based on the holder's determination of the most effective means of contact with borrowers during various stages of delinquency. However, at a minimum the holder's collection procedures must include the following actions:

(i) An effort, concurrent with the initial late payment notice to establish contact with the borrower(s) by telephone. When talking with the borrower(s), the holder should attempt to determine why payment was not made and emphasize the importance of remitting loan installments as they come due.

(ii) A letter to the borrower(s) if payment has not been received within 30 days after it is due and telephone contact could not be made. This letter should emphasize the seriousness of the delinquency and the importance of taking prompt action to resolve the default. It should also notify the borrower(s) that the loan is in default, state the total amount due and advise the borrower(s) how to contact the holder to make arrangements for curing the default.

(iii) In the event the holder has not established contact with the borrower(s) and has not determined the financial circumstances of the borrower(s) or established a reason for the default or obtained agreement to a repayment plan from the borrower(s), then a face-to-face interview with the

borrower(s) or a reasonable effort to arrange such a meeting is required.

(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 §36.4815, within 45 calendar days after such payment was due; or

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

(B) The letter required by paragraph (g)(1)(iv)(A) must be mailed no later than 7 calendar 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; and

(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 [www.va.gov](http://www.va.gov). You may also learn where to speak to a VA Loan Administration representative by calling 1-800-827-1000.

(2) The holder must provide a valid explanation of any failure to perform these collection actions when reporting loan defaults to the Secretary. A pattern of such failure may be a basis for sanctions under 2 CFR parts 180 and 801.

(h) *Conducting interviews with delinquent borrowers.* When personal contact with the borrower(s) is established, the

holder shall solicit sufficient information to properly evaluate the prospects for curing the default and whether the granting of forbearance or other relief assistance would be appropriate. At a minimum, the holder must make a reasonable effort to establish the following:

(1) The reason for the default and whether the reason is a temporary or permanent condition;

(2) The present income and employment of the borrower(s);

(3) The current monthly expenses of the borrower(s) including household and debt obligations;

(4) The current mailing address and telephone number of the borrower(s); and

(5) A realistic and mutually satisfactory arrangement for curing the default.

(i) *Property inspections.* (1) The holder shall make an inspection of the property securing the loan whenever it becomes aware that the physical condition of the security may be in jeopardy. Unless a repayment agreement is in effect, a property inspection shall also be made at the following times:

(i) Before the 60th day of delinquency or before initiating action to liquidate a loan, whichever is earlier; and

(ii) At least once each month after liquidation proceedings have been started unless servicing information shows the property remains owner-occupied.

(2) Whenever a holder obtains information which indicates that the property securing the loan is abandoned, it shall make appropriate arrangements to protect the property from vandalism and the elements. Thereafter, the holder shall schedule inspections at least monthly to prevent unnecessary deterioration due to vandalism, or neglect. With respect to any loan more than 60 calendar days delinquent, if the property is abandoned, this fact must be reported to the Secretary as required in §36.4817(c)(10) and immediate action should be initiated by the servicer to terminate the loan once the abandonment has been confirmed.

(j) *Collection records.* The holder shall maintain individual file records of collection action on delinquent loans and make such records available to the

**§ 36.4351**

**38 CFR Ch. I (7-1-10 Edition)**

Secretary for inspection on request. Such collection records shall show:

(1) The dates and content of letters and notices which were mailed to the borrower(s);

(2) Dated summaries of each personal servicing contact and the result of same;

(3) The indicated reason(s) for default; and

(4) The date and result of each property inspection.

(k) *Quality control procedures.* No later than 180 days after the effective date of this regulation, each loan holder shall establish internal controls to periodically assess the quality of the servicing performed on loans guaranteed by the Secretary and assure that all requirements of this section are being met. Those procedures must provide for a review of the holder's servicing activities at least annually and include an evaluation of delinquency and foreclosure rates on loans in its portfolio which are guaranteed by the Secretary. As part of its evaluation of delinquency and foreclosure rates, the holder shall:

(1) Collect and maintain appropriate data on delinquency and foreclosure rates to enable the holder to evaluate effectiveness of its collection efforts;

(2) Determine how its VA delinquency and foreclosure rates compare with rates in reports published by the industry, investors and others; and,

(3) Analyze significant variances between its foreclosure and delinquency rates and those found in available reports and publications and take appropriate corrective action.

(1) *Provision of Data.* Holders shall provide available statistical data on delinquency and foreclosure rates and their analysis of such data to the Secretary upon request.

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

(The Office of Management and Budget has approved the information collection requirements in this section under Control Number 2900-0530)

**§ 36.4351 Minimum property and construction requirements.**

No loan for the purchase or construction of residential property shall be eligible for guaranty or insurance unless such property complies or conforms

with those standards of planning, construction, and general acceptability that may be applicable thereto and prescribed by the Secretary pursuant to 38 U.S.C. 3704(a).

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

**§ 36.4352 Authority to close loans on the automatic basis.**

(a) *Supervised lender authority.* Supervised lenders of the classes described in 38 U.S.C. 3702(d)(1) and (2) are authorized by statute to process VA guaranteed home loans on the automatic basis. This category of lenders includes any Federal land bank, national bank, State bank, private bank, building and loan association, insurance company, credit union or mortgage and loan company that is subject to examination and supervision by an agency of the United States or of any State or by any State.

(b) *Non-supervised lender authority.* Non-supervised lenders of the class described in 38 U.S.C. 3702(d)(3) must apply to the Secretary for authority to process loans on the automatic basis. Each of the minimum requirements listed below must be met by applicant lenders.

(1) *Experience.* The applicant lender must meet one of the following experience requirements:

(i) The applicant lender must have been actively engaged in originating VA loans for at least two years, have a VA Lender ID number and have originated and closed a minimum of ten VA loans within the past two years, excluding interest rate reduction refinancing loans (IRRRRLs), that have been properly documented and submitted in compliance with VA requirements and procedures; or

(ii) The applicant lender must have a VA ID number and, if active for less than two years, have originated and closed at least 25 VA loans, excluding IRRRLs, that have been properly documented and submitted in compliance with VA requirements and procedures; or

(iii) Each principal officer of the applicant lender, who is actively involved in managing origination functions, must have a minimum of two recent years' management experience in the