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4.01 DELINQUENT LOAN SERVICING

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

1. A Veteran contacts VA for assistance.

2. VA determines additional assistance is required.

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

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

4.02 SERVICER REPORTING REQUIREMENTS (38 C.F.R. 36.4317)

a. Loan events reported on delinquent loans provide a snapshot of how each loan is performing and allows VA to forecast future liabilities. The following events are required to be reported by the servicer throughout the delinquency period on VA-guaranteed loans:

1. Electronic Default Notification (EDN). The servicer must electronically report the

EDN event in the VA Loan Electronic Reporting Interface (VALERI) when a loan becomes 61-days delinquent. Once the EDN event is processed, the case will be assigned to a VA-technician until the loan is brought current, terminated, or paid in full.

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

c. When a loan becomes delinquent and VA is notified, additional oversight is provided to ensure adequate servicing is provided to the borrower. The following delinquent loan activities may require additional review by the VA-assigned technician.

1. Loss Mitigation Letter Sent. The servicer may notify VA when a loss mitigation

letter has been mailed to the borrower regarding their delinquent loan status.

2. Delinquency Status. VA requires servicers to report a Delinquency Status for all

loans that are past due and an EDN has previously been submitted on the loan. Each update includes the unpaid principal balance and the payment due date.

3. Default Cured/Loan Reinstated. Servicers must notify VA once a borrower

reinstates the loan. A loan is considered to be reinstated when the loan status changes from a delinquent to current state, and the loan has a due date in the future.

4. Default Reported to Credit Bureau. VA requires servicers to report all delinquent

VA-guaranteed loans to the credit bureau. Servicers must report this event to VA to validate the reporting to the credit bureau.

5. Partial Payment Returned. Servicers must return all partial payments within 10

days to the borrower and notify VA of any return of funds.

6. Foreclosure Attorney Contact Information. When servicers refer a loan to an

attorney to begin foreclosure proceedings, they submit the event to notify VA that the loan has been referred.

7. Contact Information Change. VA requires servicers to report the Contact

Information Change event, regardless of the loan status; for all VA loans they become aware of changes with the borrower’s contact information.

8. Occupancy Status Change. VA requires servicers to report the Occupancy Status

Change event, regardless of the loan status, for all VA loans when they become aware of any change in occupancy of the property.

### 4.03 ADEQUACY OF SERVICING (AOS)

a. During the delinquency, VALERI will initiate AOS processes for oversight to ensure the servicer is attempting to contact the borrower and service delinquent loans in accordance with VA regulations. The initial AOS process will open at day 120 of delinquency, and the review must be completed. Additional AOS processes will open throughout the delinquency to ensure the loan is being adequately serviced.

b. The purpose of the AOS process is to ensure the Veteran has been given every opportunity to pursue all possible loss mitigation options in order to avoid foreclosure.  Before completing the AOS, the VA-assigned technician must review the following:

1. VALERI case notes.

2. Servicer uploaded case notes, if available, or information received from the

servicer.

3. Any issues on the loan.

4. All reported events (overriding any failed business rules within these events).

c. Technicians should determine if contact with a borrower is required during the AOS process. If contact information in VALERI is no longer valid or numbers provided are not in service, the loan technician must attempt to locate a working number using an online search engine or other available search options and document the case notes. If a borrower is in active bankruptcy or was active in bankruptcy during the default, no contact should be initiated with the borrower. If the borrower initiates contact with VA, the technician should only discuss general information regarding the loan and the VA Home Loan Program and document a summary of the conversation in the case notes.

d. If the technician determines the servicer has not provided adequate servicing, annotate the AOS case notes accordingly and pursue loss mitigation or alternatives to foreclosure directly with the borrower.

e. Additional AOS processes will open during the delinquency for VA to perform periodic reviews to ensure the servicer continues to provide adequate servicing on delinquent loans. If follow-up is warranted to monitor activity between AOS processes, the VA-assigned technician must document the case notes, and establish a task to monitor the servicer’s activities. If follow up is not warranted, the VA-assigned technician must document the case notes and complete the AOS process within the allowable timeframe established in VALERI.

f. VA services loans on an exception basis when the borrower is in need of VA’s involvement, or VA determines the servicer has not adequately assisted the borrower to retain home ownership or avoid foreclosure. VA’s involvement may require collection of financial, and/or other pertinent information and discussion as to what options are available to ensure the Veteran has every opportunity to retain his or her home, or avoid foreclosure. The VA Loss Mitigation Tool in VALERI retains financial information obtained, and provides guidance as to what options may be beneficial to the borrower. The VA-assigned technician will document all communication and determinations in the case notes.

4.04 SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

a. In order to ensure Veterans receive appropriate relief under the Servicemembers Civil Relief Act (SCRA), VA conducts a review during the AOS process to identify if a servicer has determined a borrower is protected under SCRA, or VA may be notified of a borrower’s protection at any time during the life of the loan. If the Veteran is identified as eligible, the VA-assigned technician documents the case notes and adds the SCRA indicator in VALERI. This indicator will identify the loan for any future pre-foreclosure review or claim payment to ensure the borrower was afforded all available protections under the Act.

b. To be considered eligible, the loan must have originated prior to the military member’s current period of active military service, and meet the following requirements:

1. The servicemember was called to active duty.

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

military service.

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

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

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

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

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

4.05 REVIEW OF SUBSTANTIAL EQUITY

a. VALERI calculates potential substantial equity by comparing the reported appraised value from WebLGY to the servicer reported unpaid principal balance (UPB). A Review of Substantial Equity process will open when VALERI determines that the loan-to-value is equal to or greater than 120 percent of the UPB.

b. The VA-assigned technician must review the process to determine if the appraised value is greater than or equal to 1.2 times the total indebtedness, including review of any lien/judgment amounts. Lien and judgment information will be obtained from the servicer. If the information from the servicer is not received timely, the technician will move forward in completing their review based on the information of record at the time. The technician will record their decision in VALERI notes and complete the process.

c. If the review decision indicates substantial equity exists, the Notify Veteran of Substantial Equity process will then open. The technician must attempt communication with the borrower by telephone and letter. The letter should notify the borrower of the potential equity and encourage them to contact the servicer to explore any loss mitigation options or sell the property to avoid foreclosure. VALERI case notes must be thoroughly documented with the technician’s actions and a copy of the letter must be uploaded to the loan documents in VALERI. A template for this letter is available on the VALERI intranet site at <http://vbaw.vba.va.gov/bl/26/valeri_intranet.htm>.

d. When warranted, the VA-assigned technician may request the servicer consider postponement of pending liquidation proceedings, if there is evidence the borrower desires to maintain home ownership to allow extra time for the borrower to explore other options. If postponement is not feasible based on the circumstances of the loan, the technician must document the case notes and complete the process in VALERI. If the determination is made to request postponement, the technician must document the case notes and complete the process. The Postpone Loan Termination Action process will then open for technician review. The VA-assigned technician must contact the servicer to confirm if they agree to postpone the loan termination action. If the servicer agrees to postpone loan termination, the technician will notify the Veteran by telephone and letter. All actions must be clearly documented and supported in the VALERI case notes.

4.06 REVIEW EARLY PAYMENT DEFAULT

a. VA reviews early payment defaults any time a servicer reports an EDN and the loan becomes delinquent within 6-months from the first payment due date on the modification agreement.

b. An EPD process will open for the VA-assigned technician’s review to determine if the modification was the result of an improper decision by the servicer. The VA-assigned technician will complete an analysis of the loan modification underwriting package provided by the servicer to ensure compliance with 38 C.F.R. 36.4340 and Chapter 4 of the VA Lender’s Handbook. If the review determines the loan modification was not in compliance with regulations, a regulatory infraction will be automatically added to the loan upon completion of this process. There may be a claim adjustment, if a loan terminates and there was an increase to VA’s liability.

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

d. Loan modification is discussed in more detail in Chapter 5, Loss Mitigation, of this manual.

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

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

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

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

servicer to be applied to the loan.

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

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

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

payment amount has been agreed to under a documented agreement.

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

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

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

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

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

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

under local law.

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

payment.

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

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

4.08 BANKRUPTCY

a. When a borrower files for bankruptcy protection, servicers are typically prevented from making contact. Servicers must report the bankruptcy events in VALERI to include the type of bankruptcy (Chapter 7, 11 or 13 filing) and provide updates such as relief filed, relief granted, dismissed, or discharged. VA will not attempt contact with Veterans who have filed bankruptcy; however, if the borrower reaches out to VA, VA will discuss the Veteran’s options and the loss of entitlement should the loan terminate and VA pays a claim.

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

### 4.09 PROPERTY PRESERVATION

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

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

c. The VA-assigned technician will add a regulatory infraction during post-audit review if the servicer failed to complete all required property inspections per 38 C.F.R. 36.4350(i).

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