CHAPTER 4. DELINQUENT LOAN SERVICING

CONTENTS

PARAGRAPH PAGE

4.01 Delinquent Loan Servicing……….……………………………………4-2

4.02 Adequacy of Servicing (AOS)...………………………………………....4-2

4.03 Servicemembers Civil Relief Act (SCRA)…………...……..................4-3

4.04 Review of Equity……………………………...………....................4-3

4.05 Review of Early Payment Default…….………………...……................4-4

4.06 Partial Payment (38 C.F.R. §36.4316)…………………...…………….4-4

4.07 Bankruptcy……………………………………...……...................4-5

4.08 Property Preservation……………………………...……..................4-5

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 servicer compliance with VA regulations and to protect the interests of Veterans and the government. In addition to AOS, VA may become involved on an exception basis when:

1. A Veteran contacts VA for assistance.

2. VA determines additional assistance is required.

b. A default episode is created in the VALERI application when the servicer reports the Electronic Default Notification (EDN). For more information on reporting the EDN, refer to chapter 2 of this manual.

c. VA regulations require servicers to attempt contact with the borrower by telephone. The servicer must send the loss mitigation letter within 45-days of delinquency for Early Payment Defaults (EPDs) and within 75-days of delinquency for non-EPDs. An EPD is defined as a delinquency within six months following loan origination or the execution of a modification agreement. VA sends an automated loss mitigation letter to borrowers on all loans at 120-days of delinquency.

d. 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 ADEQUACY OF SERVICING (AOS)

a. At 120 days of delinquency, VALERI will initiate AOS processes to ensure the servicer is servicing delinquent loans in accordance with VA regulations.

b. Technicians will determine to contact the borrower during the AOS process. If contact information in VALERI is no longer valid (ex. 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 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.

c. 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 to determine appropriate options to ensure the borrower has every opportunity to retain the home or avoid foreclosure. The VALERI Financial Analysis tool retains financial information obtained and provides options that may be beneficial to the borrower. The VA-assigned technician will document all communication and determinations in the case notes.

4.03 SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

a. During the AOS process, VA reviews the case to determine servicer compliance with the Servicemembers Civil Relief Act (SCRA). If the Veteran is 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 SCRA.

b. Eligibility for SCRA:

1. The service member was called to active duty.

2. The service member's loan originated prior to his or her current period of active military service.

3. Active-duty military service affects the service member's ability to make payments.

4. The service member 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.)

4.04 REVIEW OF EQUITY

a. VALERI calculates potential equity by comparing the reported appraised value from WebLGY to the servicer reported unpaid principal balance (UPB), delinquent interest and delinquent escrow. A Review of Equity process will open when there appears to be equity based on the comparison.

b. More information on the Review of Equity process can be found in the VALERI Technician User Guide located at https://vbaw.vba.va.gov/homeloans/valeri.asp.

4.05 REVIEW EARLY PAYMENT DEFAULT

a. The EPD review process opens when a loan becomes delinquent within six months from the first payment due date on the modification agreement.

b. The VA-assigned technician will complete an analysis of the loan modification underwriting package. If the review non-compliance with regulations, a regulatory infraction will be automatically added to the loan which may include 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 Loan Production (LP) staff.

d. Loan modification is discussed in more detail in chapter 5 of this manual.

4.06 PARTIAL PAYMENT (38 C.F.R. §36.4316)

a. VA will review and determine the circumstances in all cases where a borrower reports their payment was returned by the servicer.

b. In the event the servicer returns a payment(s), it must be sent back to the borrower within ten 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 one 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% 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 six months since the account first became delinquent, and a retention agreement is not documented.

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 Servicer Web Portal (SWP).

4.07 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.

4.08 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 will take appropriate measures to protect the property from vandalism, weather, etc. If a property is 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 E – Property Preservation Requirements and Fees.