

(1) Failure to establish the debt as a valid claim against the assets of the estate of any deceased obligor, provided no lien for the guaranteed debt is thereby impaired or destroyed; or

(2) An election and appropriate prosecution of legally available effective remedies with respect to the repossession or the liquidation of the security in any case, irrespective of the identity or the survival of the original or of any subsequent debtor, if holder shall have given such notice as required by § 36.4280 and if, after receiving such notice, the Secretary shall have failed to notify the holder within 15 days to proceed in such manner as to effectively preserve the personal liability of the parties liable, or such of them as the Secretary indicates is such notice to the holder; or

(3) The release of an obligor, or obligors, from liability on an obligation secured by a lien on property, which release is an incident of and contemporaneous with the sale of such property to an eligible veteran who assumed such obligation, which assumed obligation is guaranteed on his or her account pursuant to 38 U.S.C. 3712; or

(4) The release of an obligor or obligors as provided in § 36.4279.

(5) The release of an obligor, or obligors, incident to the sale of property which the holder is authorized to approve under the provisions of 38 U.S.C. 3714.

(Authority: 38 U.S.C. 3714)

[36 FR 1253, Jan. 27, 1971, as amended at 53 FR 34295, Sept. 6, 1988; 55 FR 37474, Sept. 12, 1990]

**§ 36.4278 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 provi-

sions specified in paragraphs (b) through (l) 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.* Within 60 days after the end 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 should 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) A written delinquency notice to the borrower(s) requesting immediate payment if a loan installment has not been received within 17 days after the due date. This notice must be mailed no later than the 20th day of the delinquency and state the amount of the payment and of any late charges that are due.

(ii) An effort, concurrent with the written delinquency 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.

(iii) 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.

(iv) 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.

(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 38 CFR 36.4216.

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

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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 facts:

- (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 inspection.* (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:

(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 a property securing a 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 30 days delinquent, a property abandonment must be reported to the Secretary and appropriate action initiated under 36.4280(e) within 15 days after the holder confirms the property is abandoned.

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

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) *Reporting to the Secretary.* A summary of collection efforts, the information obtained through such efforts and the holder's evaluation of the reason for the default and prospects for resolution of the default must be included in any notice provided to the Secretary pursuant to § 36.4280.

(1) *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 the effectiveness of its collection efforts;

(2) Determine how its VA delinquency and foreclosure rates compare with rates in various 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.

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

(Approved by the Office of Management and Budget under Control Number 2900-0530)

[58 FR 29114, May 19, 1993]