

Department of Veterans Affairs

§ 36.4822

shall be made no less frequently than monthly. For all other successful loss-mitigation options, incentives shall be paid in the final claim payment.

(e) The Secretary shall reserve the right to stop an incentive payment to a servicer if the servicer fails to perform adequate servicing.

(Authority: 38 U.S.C. 3703(c), 3720, 3722)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0021.)

§ 36.4820 Refunding of loans in default.

(a) Upon receiving a notice of default or a notice under § 36.4817, the Secretary may require the holder upon penalty of otherwise losing the guaranty or insurance to transfer and assign the loan and the security therefore to the Secretary or to another designated by the Secretary upon receipt of payment in full of the balance of the indebtedness remaining unpaid to the date of such assignment. Such assignment may be made without recourse but the transferor shall not thereby be relieved from the provisions of § 36.4828.

(b) If the obligation is assigned or transferred to a third party pursuant to paragraph (a) of this section the Secretary may continue in effect the guaranty or insurance issued with respect to the previous loan in such manner as to cover the assignee or transferee.

(c) Servicers must deliver to the Secretary all legal documents, including but not limited to proper loan assignments, required as evidence of proper loan transfer within 60 calendar days from the date that VA sends notice to the servicer 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 following advance 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))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0362.)

§ 36.4821 Service of process.

(a) In any legal or equitable proceeding to which the Secretary is a party (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, original process and any other process prior to appearance that may be served on the Secretary must be delivered to the VA Regional Counsel located in the jurisdiction in which the proceeding is docketed. 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))

(b) After appearance of the Secretary by attorney all process and notice otherwise proper to serve on the Secretary before or after judgment, if served on the attorney of record, shall have the same effect as if the Secretary were personally served within the jurisdiction of the court.

(Authority: 38 U.S.C. 3720, 3732)

§ 36.4822 Loan termination.

(a) For purposes of this part, a holder, using reasonable diligence must complete a foreclosure within the timeframe and in the manner determined by the Secretary. In determining what constitutes allowable time and method for foreclosure, the Secretary shall review allowances for time and method in connection with the foreclosure of single-family housing loans issued by HUD, Fannie Mae, and Freddie Mac, as well as State statutory requirements. The Secretary will review such timeframes annually and,

as the Secretary deems necessary, publish in the FEDERAL REGISTER a table setting forth the timeframes and methods the Secretary determines to be reasonable. The schedule will reflect the timeframe allowed for the standard, acceptable method for foreclosure proceedings in each State. The use of another method will require prior approval from VA. VA will maintain the loan termination time allowable timeframes on a Web site under VA's control, such as at <http://www.homeloans.va.gov>.

(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.

(2) If the holder (or its authorized servicing agent) has been approved by the Secretary to process liquidation appraisals under 38 CFR 36.4848, 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 §36.4848.

(3) If the holder (or its authorized servicing agent) has not been approved by the Secretary to process liquidations appraisals under 38 CFR 36.4848, 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 section, a liquidation appraisal or statement of fair market value issued pursuant to paragraph (b)(3) of this section will be valid for 180 calendar days.

(ii) The Secretary may specify in writing a shorter validity period, not less than 90 calendar 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 deter-

mined 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 §36.4801.

(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) 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 credit to the indebtedness (consisting of the net proceeds from the compromise sale and any waiver of indebtedness by the holder) must equal or exceed the net value of the property securing the loan; and

(iii) The current owner of the property securing the loan will not receive any proceeds from the sale of the property.

(2) A holder may request advance approval from the Secretary for a compromise sale notwithstanding that all of the conditions specified in paragraph (e)(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.

(f)(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 (e) of this section and determined such compromise sale is not practical; and,

(iv) 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 (d)(5) of §36.4823.

(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 (f)(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.

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

§ 36.4823 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 calendar days after the date of liquidation sale (*i.e.*, the event which fixes the rights of the parties in the property, such as the date of foreclosure sale, date of recordation of a deed-in-lieu of foreclosure, or confirmation/ratification of sale date when required under local practice) 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 calendar days. In computing the eligible indebtedness under 38 U.S.C. 3732(c), the holder may follow the alternative procedure described in paragraph (b) of this section.

(b) If the calculation by the holder shows that the net value is equal to or less than the unguaranteed portion of the loan (*i.e.*, the total indebtedness minus VA's maximum claim payable under the guaranty), this would preclude conveyance under 38 U.S.C. 3732(c). However, the holder may desire to convey the property to VA and may decide to waive a portion of the indebtedness to the extent that the property may be conveyed under 38 U.S.C. 3732(c). In such a case, the holder must provide the notice described in paragraph (a) of this section, and must subsequently waive that portion of the total indebtedness remaining after application of the net value amount and VA's guaranty claim payment. The holder must send the borrower(s) a notice describing the amount of indebtedness that has been waived no later than

15 calendar days after receipt of the guaranty claim.

(c) 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 §36.4814. 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 expenditures in connection with the property which are approved by the Secretary, including, but not limited to, the cost of a title policy insuring title in the name of the Secretary of Veterans Affairs.

(d) 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