

Auction Service for the Termination of VA Loans

1. Purpose. This Circular provides guidance to mortgage servicers of Department of Veterans Affairs (VA) guaranteed loans electing to use an auction service as a means to terminate a loan. VA authorizes mortgage servicers and holders to employ an auction service in lieu of completing a traditional foreclosure sale, where feasible. The process must comply with VA requirements, federal, state, county, and local foreclosure laws.

2. Background. Per Title 38, Code of Federal Regulations (CFR), section 36.4322, VA has delegated the loan termination process to mortgage servicers. When a delinquency cannot be resolved and the loan has been deemed insoluble, the servicer refers the loan to foreclosure. The servicer is required to complete a valid foreclosure sale following VA requirements and complying with all federal, state, county, and local foreclosure laws. VA requires the servicer to obtain a VA liquidation appraisal to establish the fair market value of a property and calculate the Net Value. VA's Net Value is the fair market value of real property, minus the calculated amount representing the costs VA will incur in acquiring and disposing of the property. The resulting "Net Value Bid" is the minimum credit to the indebtedness applied for claim computation under 38 CFR 36.4324. If the sale proceeds are greater than the Net Value, the actual proceeds of the sale will be credited to the indebtedness. The cost factor used will be the most recent percentage of the fair market value that VA calculated and published in the Notices section of the Federal Register.

3. Issue. Traditional foreclosure methods hinder the opportunity for servicers to obtain greater proceeds at sale, which are applied to reduce the Veteran's debt. This may result in VA paying a higher guaranty claim payment and VA to assume the liability of managing and marketing a conveyed property in Real Estate Owned (REO) inventory. The state and county foreclosure process limits the number of potential third-party bidders, and additional costs are incurred by VA as a result of properties conveyed to VA after the completion of a traditional foreclosure sale. The overwhelming majority of winning bidders of foreclosure sales are the mortgage holders, who routinely elect to convey properties to VA instead of incurring the costs of managing and marketing the properties in their own REO portfolios. Upon accepting conveyance, VA pays an up-front property preservation and management fee, plus additional costs associated with maintaining, preserving, and marketing the property.

4. Auction sales may improve awareness among potential bidders and increases marketability, competition, and sale proceeds, when a mortgage servicer terminates a loan through an auction service. Increase to sale proceeds benefit the Veteran by potentially reducing the Veteran's debt. Auctions generally shorten the amount of time the property remains on the market, thereby decreasing the risk of damage or vandalism. Such third-party sales at auction would save VA the costs of managing and marketing a property. Potential increases in sale proceeds are especially

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advantageous to servicers in situations where the total loan indebtedness exceeds the Net Value and VA pays the maximum guaranty. Holders may find it advantageous to pursue termination through an auction service, rather than having to waive a greater amount at foreclosure.

5. New. VA authorizes servicers to use an auction service in localities where available to complete the termination of a VA-guaranteed loan as opposed to a traditional foreclosure sale. The servicer must comply with VA regulations and determine the likelihood of increased sale proceeds. VA cannot recommend or advise which auction service to use. However, mortgage holders are accountable for the “selected auction service’s” failures to follow all federal, state, and local laws in addition to errors invalidating an auction sale.

6. As always, VA encourages servicers of VA-guaranteed home loans to explore all reasonable options to help Veterans retain their homes or avoid foreclosure. Once the mortgage servicer has exhausted all home retention and alternative to foreclosure options and determined foreclosure is unavoidable, the servicer may use an auction service to terminate the loan. The results of the auction must be equal to or higher than Net Value, as VA will only apply proceeds of sale equal to or greater than Net Value to the guaranty claim. All properties will be sold “AS IS” in accordance with financial matters pursuant to the terms set forth by the auction service to all bidders. VA does not provide financing for properties sold by foreclosure sale or auction.

7. Guidance to Servicers.

a. Priority of Review. VA expects servicers to exert all reasonable efforts to assist Veteran borrowers in retaining ownership of their homes or mitigating losses when retention is not possible. If the servicer has exhausted all loss mitigation efforts and determines the loan insoluble, they may use the traditional method of foreclosure or an auction service to terminate the loan.

b. Appraisal. Mortgage servicers must obtain a VA appraisal to determine the “Net Value.” At least 30 days prior to an auction sale, the holder must request that VA assign an appraiser to conduct a liquidation appraisal to establish fair market value. The “Net Value Factor” is applied to the fair market value to determine a Net Value bid.

c. Marketing. In order for auction expenses to be eligible for reimbursement on a VA claim, properties selected for an auction sale will be marketed for a minimum of 15 days prior to the scheduled sale and sold for an amount equal to, or greater than, the “Net Value Bid.” Mortgage servicers must ensure they employ a non-affiliated auction service to market properties to the greatest number of potential bidders possible. Auction services may use all marketing tools available including advertisement through television, radio, newspaper, and the internet to expose properties to potential buyers in multiple geographic regions. Marketing of the property should be designed to alert the largest number of potential buyers and provide those potential buyers a means to participate in the auction process. A mortgage servicer that employs an auction service meeting all VA auction marketing requirements will be eligible for reimbursement of auction fees on a successful sale without the actual calling or crying the sale.

d. Servicer Reporting Sale Results to VA. Servicers will continue to report bid results to VA through the VA Loan Electronic Report Interface (VALERI). Servicers will report the amount of the highest bidder to VA on the “Results of Sale” event in the VALERI application. The credit to indebtedness must equal or exceed the Net Value of the property securing the loan.

e. Servicer Claiming Fees Related to Termination Through an Auction Service. When a property is successfully sold at auction, VA will reimburse an “auction fee” up to 5 percent of the sales price at the time of claim submission. The “auction fee” will be reviewed by VA and considered payable up to the maximum guaranty amount of the loan. When submitting the claim under guaranty, the fee incurred must be included as a line item expense. VA will not pay an “auction fee” for homes offered at an auction sale, but not actually sold to a third party. If a property is conveyed to VA in error after a completed auction sale, the property will be reconveyed to the mortgage servicer and any acquisition paid, plus the costs associated with accepting and maintaining property in the VA REO portfolio, will be collected from the mortgage servicer.

f. VA foreclosure timeframes will not be extended to accommodate an auction sale. Mortgage servicers are expected to terminate insoluble loans in accordance with the “State Foreclosure Process and Statutory Bid Information” listed at http://www.benefits.va.gov/homeloans/servicers_valeri.asp and not increase the liability of the Secretary when liquidation is the most prudent course of action. The decision whether to pursue a second auction sale or to proceed with a traditional foreclosure to terminate a loan is not mandated by VA.

8. Guidance to VA Staff.

a. VA Claim Review. VA will review the auction fee as a line item at the time of guaranty claim submission to ensure the fee does not exceed 5 percent of the auction sale price.

b. Special Considerations. Regional Loan Center (RLC) management may contact VA Central Office (VACO) for guidance in unusual situations.

8. Rescission: This Circular is rescinded July 1, 2016.

By Direction of the Under Secretary for Benefits

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