

Comment: VA should consider the time needed to adapt industry servicing systems and carefully test all aspects of the proposed electronic reporting requirements. This could also include special circumstances such as recent acquisitions, changes in servicing platforms, or other unforeseen situations.
VA Response: VA has carefully considered the factors that are essential to the success of its new electronic reporting environment, and determined that a phased implementation by industry segment offers the best chance for success. Accordingly, VA has established nine industry segments for program participants, with each segment “going live” on VA’s new computer-based tracking system over an approximately 11-month timeframe.

Comment:: VA should provide its definitions of “repayment plans” and “special forbearances.”

VA Response: The VA has added detailed definitions of “repayment plan” and “special forbearance” in this final rule in § 36.4801 to avoid any confusion as to what is required for each of these types of loss mitigation actions. VA is also clarifying the role of the servicer by adding a definition to state that the servicer is the entity which will be assigned a tier ranking based on its performance and will receive any incentive payment on a loan it services for the loan holder. The definitions are only minor clarifications of basic concepts customary in the loan servicing industry and do not impose any new requirements or take away any substantive rights of program participants

Comment: VA should clarify the payment of incentives for successful loss mitigation efforts.

VA Response: VA concurs. The holder is the entity ultimately responsible for compliance with VA regulations and under § 36.4801 “Holder” includes “the authorized servicing agent of the lender or assignee or transferee.” However, for purposes of tier ranking (§ 36.4818) and loss mitigation options and incentives (§ 36.4819), VA’s intent is to measure performance of the actual loan servicer and reward it accordingly. In order to make this distinction clearer, we provide a definition in § 36.4801 of “servicer.” The authorized servicer is either the servicing agent of a holder; or the holder itself, if the holder is performing all servicing functions on a loan. The servicer is typically the entity reporting all loan activity to VA and filing claims under the guaranty on behalf of the holder.

Comment: VA should clarify the procedures and implications of debt reductions used to ensure a property is eligible for conveyance to VA.

VA Response: In § 36.4823, we clarify the procedures to be followed to reduce debts in order to gain the right to convey to VA properties acquired at liquidation sales. However, to avoid confusion with multiple definitions of similar terms, we do not use the terms “Indebtedness”, “Specified amount” and “Unguaranteed portion of the indebtedness” in this final rule in § 36.4801; that section will instead use the term “Total indebtedness.”

Comment: VA should review its proposed foreclosure attorney fee schedule, which is very similar to those published by HUD, Fannie Mae, and Freddie Mac in 2001, to account for reasonable increases in living costs over the past several years, as well as other cost increases since that time due to increased labor and operational expenses for attorneys.

VA Response: VA concurs. VA has carefully reviewed the proposed foreclosure attorney fee schedule and has adjusted the amounts in accordance with the information provided in the comments, as well as updated information obtained from other sources.

In addition, VA has slightly modified the proposed language in new final rules to allow additional trustee fees, above those allowed for legal services, when the trustee conducting the sale must be a Government official under local law, or if an individual other than the foreclosing attorney (or any employee of that attorney) is appointed as part of judicial proceedings, and local law also establishes the fees payable for the services of the public or judicially appointed trustee. VA intends to reimburse only for attorney fees for services related to foreclosure of loans. Most of the attorneys commenting on the proposed rule reported that over the past five years many servicers have been outsourcing the foreclosure oversight process (i.e., hiring third parties to perform functions previously handled as part of the servicer's routine duties), and firms providing such outsourcing services are charging attorney firms a fee for providing the file needed to initiate the foreclosure action. While VA understands that servicers may find efficiencies in outsourcing certain functions, the cost for such outsourcing must be considered as an operating expense of the firm contracting for the outsourcing; i.e., the servicer. VA cannot consider outsourcing fees to be part of the cost of an attorney fee for completing a foreclosure.

Comment: VA should allow a fee to cover the costs of restarting a foreclosure that has been postponed, for example, by the filing of a bankruptcy petition. This would be in addition to the reimbursement for obtaining relief from the bankruptcy stay.

VA Response: VA concurs. VA recognizes that this is occurring more frequently, and is a true cost of doing business. Therefore, VA has allowed in an additional \$350 "foreclosure restart" fee when a foreclosure sale is postponed or cancelled through no fault of the servicer or its foreclosure attorney. This includes but is not limited to bankruptcy, VA requested delay, property damage, hazardous conditions, condemnation, natural disaster, property seizure, or relief under the Servicemembers Civil Relief Act.

Comment: VA should consider increasing its maximum allowable bankruptcy fees, for reasons similar to those suggested for foreclosure fees.

VA Response: VA concurs. VA believes that a modest adjustment is appropriate at this time and is revising the table to allow attorney fees of \$650 (Chapter 7) or \$850 (initial Chapter 13) for obtaining bankruptcy releases directly related to loan termination. For additional relief filed under either chapter, VA will allow an additional \$250.

Comment: VA should publish a single national reimbursable fee schedule so that servicers will be able to accurately calculate total indebtedness. VA should provide at least 30 days advance notice of changes in fees to allow for system updates and procedural modifications.

VA Response: VA does not concur at this time because this information is maintained at the Regional Loan Center (RLC) level in order to be updated as quickly as possible when local changes occur, so that holders may be reimbursed for actual expenses as they occur, rather than experiencing a lag time

Comment: VA should not require holders to reduce the interest rate on a loan modification where market interest rates have decreased since the date of loan origination.

VA Response: VA does not concur, but is changing the new final rule in an effort to make it easier for servicers to administer. The existing VA regulation dealing with loan

modifications allows no change to the interest rate on the loan. In fact, another regulation

specifically states that interest in excess of the rate reported by the lender when requesting evidence of guaranty shall not be payable. VA is, however, removing the one percent cap on interest rate increases that had been contained in the proposed rule so that

modifications will become a more widely used tool to help veterans retain their homes.

Comment: VA should increase the guaranty on a modified loan to match the percentage guaranteed at loan origination, rather than only allowing an increase in the amount of guaranty if it would otherwise provide less than 25% guaranty of the modified loan amount.

VA Response: VA does not concur. The proposal to increase the guaranty on a modified loan to 25% of the loan amount was another effort to help modified VA-guaranteed loans

qualify for resecuritization. Under the existing § 36.4314, the amount of the guaranty does not increase upon loan modification, which means that the percentage of guaranty, in effect, will decrease if the modified loan amount is greater than the original loan amount. This is important because all VA guaranteed loans greater than \$144,000

at origination have a maximum 25% guaranty, and the average new loan is often well above that amount.

This final rule in § 36.4815(h) (due to minor realignment of the section paragraphs) allows the guaranty amount on the modified loan to increase up to 25% of the modified loan amount, subject to the maximum amount of guaranty allowable under the law. This should be sufficient to allow repooling in a new GNMA-insured security, and provide adequate risk sharing for the modified loan among VA, the holder, and GNMA.

Comment: VA should not require the same underwriting standards for loan modifications as those used at loan origination.

VA Response: VA does not concur. VA's existing § 36.4314(a) governing loan modifications requires that the holder determine that the borrower is a satisfactory credit risk, and the proposed rule did the same by referencing the criteria in § 36.4337.

Comment: VA should make provision for other expenses of modification not being rolled into the new loan.

VA Response: VA concurs. The existing § 36.4314 makes no provision for inclusion of any expenses in the modified loan amount. The proposed rule provided that only certain items could be included in the modified indebtedness. VA carefully reviewed the comments on this subject and is clarifying § 36.4815(e) so that it addresses all possible expenses of modification.

Comment: VA should not require that all current owners occupy the property and should pay for a title insurance policy covering the modified loan.

VA Response: VA agrees that occupancy should not be a requirement because the basic program requirements do not require continued occupancy in order for the guaranty to remain in effect (i.e., at some point a veteran borrower may move from the home securing the VA-guaranteed loan, but that does not invalidate the guaranty). Hence,

§ 36.4815(a) will not require that all current owners occupy the property. As for title insurance policies, existing VA regulation § 36.4828(b) does require that holders obtain and retain a lien of proper dignity against the security property, and title insurance is often used at loan origination to satisfy this requirement. If a holder decides to require title insurance in connection with a loan modification to ensure its lien status, then VA would not object to a reasonable expense to the buyer for this service. Since in most cases a title insurance policy was obtained at loan origination, any insurance obtained at modification would only need to cover the period from loan origination to the date of modification, and it is expected that the cost for a title endorsement, or other form of insurance "update," would be considerably less than the amount paid at loan origination. The final rule in § 36.4815(f) slightly revises the proposed rule to provide this clarification.

Comment: VA should not require that all current owners agree to the modification.

VA Response: VA does not concur. VA is retaining the provision in the new final rule in § 36.4815(a)(5) that all current owners must be obligated on the loan and participate in any modification, because it would not be fair to allow a change in the terms of a loan secured by a property without first notifying all parties with an ownership interest in that property and obtaining their agreement to the change. If a holder encounters unusual circumstances that lead it to believe a modification not meeting the requirements in § 36.4815(a)(1)–(6) would be beneficial to a veteran, then the case may be submitted to VA for prior approval.

Comment: VA should not restrict the number of times that a loan may be modified because other agencies/ investors have no such limits.

VA Response: Under § 36.4314, we permit three modifications to any one loan without prior VA approval, but also may allow unlimited modifications with prior VA approval. However, to the extent that the comment requests unlimited modifications without VA review, VA does not concur because VA has a responsibility to ensure that loan modifications are fair to the borrower, and to protect the interests of the Government.

In order to avoid any misunderstandings about the authorizations granted, the final rule is modified by adding paragraph (j), which advises that the authority contained in § 36.4815 does not create a right of a borrower to have a loan modified but simply authorizes the loan holder to modify a loan in certain situations without the prior approval of the Secretary.

Comment:: VA should include the words “or default is imminent” in § 36.4815(a)(1).

VA Response: VA does not concur. As stated in the second supplemental notice, because VA is proposing a hierarchy of loss mitigation options for consideration within the new regulatory package, it would not be appropriate for a holder to consider modification of a loan until after first considering a repayment plan or a period of forbearance in order to allow loan reinstatement. Therefore, it would not normally be feasible for a holder to consider modification of a loan where default is only imminent, because that would not allow for prior consideration of a repayment plan or a period of forbearance. However, if an unusual circumstance arises, a holder may seek direct approval from VA for approval of a case that does not fit the general criteria.

Comment: VA should review its need for the requested data (Servicer Reporting Requirements), should reduce the number of reportable items, and should eliminate the expedited, event specific reporting.

VA Response: VA concurs for the most part. VA has carefully reviewed the report timing and the required items in the proposed rule in § 36.4315a in

light of industry comments, consultation with information technology specialists, and review of the goals and operating procedures in VA's new loan servicing environment, as well as the reporting requirements of HUD, Fannie Mae, and Freddie Mac. In

conducting this review, VA identified and retained only those items for reporting that VA determined absolutely necessary to conduct proper oversight of servicer actions. That oversight must include review of servicer actions that are being newly delegated by VA,

servicer actions that were previously reviewed by VA utilizing extensive paper reports provided by servicers, and servicer actions that in the past were reviewed only upon submission of various documentation from servicers. Providing this information

electronically should greatly reduce the time required for interaction between VA and servicers via telephone and written communications that occurs under the present operating procedures. VA has determined that a number of items (including escrow disbursements and legal actions other than terminations) will not be included in the list of what must be reported to VA.

We discuss these items later in this document, responding to specific comments.

In addition, remaining items for loans not in default may all be reported on a monthly basis (i.e., no later than the seventh calendar day of the month following the month in which the event occurred), while most of the items related to loan defaults will also be required on a monthly basis, rather than within five business days of an event. VA is changing these events and most of the remaining events that must be reported expeditiously to

require reporting within 7 calendar days, rather than 5 business days because most tracking systems are not equipped to calculate business days, but can easily handle computation of calendar days. As suggested by the comments, one item previously proposed to be reported on all loans, bankruptcy filing information, will only be required on loans reported in default. Only events denoting significant action on loans reported in default (such as referral to an attorney to initiate foreclosure, establishment of a liquidation sale date, advice that a sale has been held, etc.) will still need to be reported within seven calendar days of the event. As in the past, holders will need to notify VA within 15 calendar days of a liquidation sale when they desire to convey a property to VA.

Comment:: Information on the Servicemembers Civil Relief Act should only be required if that is a reason for delay of a foreclosure sale.

VA Response: VA concurs with deleting the requirement to report this event. If the event causes delay in loan termination, then information about it may be reported as part of the claim event reporting.

Comment: VA should allow reporting of multiple events occurring on a single loan during a monthly reporting period.

VA Response: VA agrees with this comment and the file reporting format will allow for multiple events to be reported on each loan.

Comment: The requirement to report substantial equity (25% or more) will necessitate a special title search and should be deleted, as it could require servicers to upgrade their systems to load junior lien information and to calculate the equity.

VA Response: VA concurs with deleting this requirement. VA proposed this requirement in § 36.4315a(f) in order to ensure review of cases where substantial equity could exist. However, after reviewing the other data requested and the computing capabilities offered by its new computer system, VA decided it can instead use the other reported data to calculate its own estimate of equity and take appropriate action to ensure that veterans receive every reasonable opportunity to salvage that equity prior to loss through foreclosure.

Comment: VA should consider using the HUD Single Family Default Monitoring System (SFDMS) file layout or reporting information, rather than requesting data that may not presently be available in many loan servicing systems.

VA Response: VA considered this possibility, but decided it was not feasible

Comment: VA should consider the potential cost to servicers of the additional reporting requirements, the time needed to implement those changes, and the security risks of transmitting additional information.

VA Response: VA has carefully considered all of those issues in developing its final reporting rule in § 36.4817.

VA realizes that there will be some expenses, but the result will be data that is available electronically rather than manually. While there may be some programming costs incurred by servicers due to the additional reporting requirements in § 36.4817, VA expects that servicers will benefit in a number of ways.

VA is well aware that considerable lead time is needed in order to change loan servicing systems to capture additional data. VA has worked with its contractor and subcontractor to develop a phased approach to implementation of its new, computer-based tracking

system, the VA Loan Electronic Reporting Interface (VALERI).

Data security is of the utmost importance to VA. Servicer suggestions to delete requests or sensitive information, such as Social Security Numbers (SSNs), have been honored as much as possible.

Comment: In developing its tier rankings, VA should consider a methodology that is publicly disseminated and can easily be determined by servicers based on information available to them. VA should also incorporate some allowance for the purchase of delinquent loans from other servicers.

VA Response: VA concurs to an extent. In our development of a proposed rule to implement the tier ranking system, we will consider the negative impact of the

purchase of delinquent loans from other servicers. In the preamble to this proposed rule, VA indicated an intent to model its tier ranking system after that used by the

Federal Home Loan Mortgage Corporation (FHLMC), also known as Freddie Mac. After VA has collected data under its new reporting requirements for six months, VA intends to review the data and develop the criteria for ranking servicers. Those criteria will then be published in the Federal Register for notice and comment.

Comment:: VA should consider paying incentives at higher than the Tier II ranking during the first year, either due to some assessment of higher performance, or else based on a servicer's participation in VA's current Server Loss Mitigation Program (SLMP).
VA Response: VA does not concur. The proposed rule § 36.4316(a) provided for four levels of tier rankings of servicers, with all servicers in Tier II for the initial ranking period as of the effective date of this rule. Because VA will have no published methodology for rating servicer performance during the first year of the new program, it would not be fair to attempt to determine which servicers should be paid at the Tier I or any other level, other than the initial Tier II rating for all servicers.

Comment: VA should simply adopt HUD (Department of Housing and Urban Development) loss mitigation procedures, fees, and reimbursement schedules, including incentive payment upon execution of a repayment plan, rather than waiting for final or partial completion of the plan to pay for the additional work required in analyzing data and establishing a plan.

VA Response: VA does not concur. VA carefully considered loss mitigation programs developed by HUD, Fannie Mae, Freddie Mac, and private mortgage insurers as part of its BPR project. Although most had attractive features, no one program by itself addressed all the issues of loss mitigation in the manner VA felt was necessary to ensure proper assistance to veterans, while also rewarding loan servicers in an appropriate fashion for success in mitigating potential losses.

As for the comment suggesting that incentives be paid upon execution of a repayment plan or special forbearance agreement because of the work involved in developing the plan, VA believes this is part of the normal activity of servicing a delinquent loan in order to determine whether it may be reinstated or whether the default is insoluble.

Comment: VA should provide a partial claim loss mitigation benefit similar to that offered by HUD.

VA Response: VA does not concur. Under the HUD Partial Claim option, a mortgagee will advance funds on behalf of a mortgagor in an amount necessary to reinstate a delinquent loan (not to exceed the equivalent of 12 months PITI).

The mortgagor will execute a promissory note and subordinate mortgage payable to HUD. Currently, these promissory or “Partial Claim” notes assess no interest and are not due and payable until the mortgagor either pays off the first mortgage or no longer owns the property.

The issue of a similar VA partial claim program has been discussed for many years within Congress and at VA. However, Congress has not specifically authorized VA to develop such a program.

Comment: VA should establish a process to extend the deadline to allow for recording of documents.

VA Response: VA does not concur. VA proposed in § 36.4318(c) to establish a deadline for submission of title documents on refunded loans, and to allow VA to impose a penalty for continued failure to comply with that deadline. VA must retain the option to take appropriate action when a holder has demonstrated a continued pattern of non-compliance with VA requests for timely delivery of documents that should be readily available, given the routine nature of loan transfers within the industry. VA has slightly modified the language to clarify that in accordance with the general rule, as

applied throughout VA’s regulations, notice to VA is deemed to be effective as of the date that VA receives such notice; notice from VA to others is deemed effective as of the date that VA sends or transmits such notice.

Comment: VA should make the title document requirements for refunding conform to the liquidation title package requirements.

VA Response: VA does not concur. The proposed rule § 36.4318 required provision of all legal documents required to evidence proper loan transfer. Refunding of a loan is simply an assignment, rather than a liquidation, and therefore does not involve documents establishing ownership of a property. Accordingly, the title document requirements for refunding review and conveyance of properties must be different.

Comment: VA should define “procedural papers” in more detail—for example, does this include pleadings, claim back up, etc.?

VA Response: VA does not concur. The existing rule § 36.4319(a) requires that all “procedural papers” be provided to VA whenever a loan holder institutes suit or otherwise becomes a party in any legal or equitable proceeding brought on or in connection with the guaranteed or insured loan indebtedness, or involving title to, or other lien on, the security. The final rule § 36.4821(a) requires only that VA and the United States Attorney be provided with process when the Secretary of Veterans Affairs is actually named as a party to a legal action, which is effectively the definition of “procedural papers” that must be delivered to VA.

Comment: VA should adjust the timeframes for foreclosure and also establish automatic extensions for many different types of delays.

VA Response: VA has reviewed all of the individual State timeframes for foreclosure in the proposed rule § 36.4319a(a), has taken into consideration the specific information provided in the comments on the processes, and is adjusting the timeframes in the final rule. In addition, VA is slightly revising the final § 36.4814(f)(2) and § 36.4824(a)(3)(ii), which describe the calculation of the maximum interest payable on a foreclosure, so that the calculation of the date to which interest will be paid shall include 210 calendar days from the due date of the last paid installment, in addition to the State calendar day timeframe for foreclosure. The timeframes will be reviewed as appropriate and changes published in the Federal Register, and maintained throughout the year on a Web site under VA's control, such as at <http://www.homeloans.va.gov>.

Comment: VA should eliminate the requirement for a promissory note in connection with deeds-in-lieu of foreclosure and compromise sales.
VA Response: VA concurs. VA reviewed the proposed rule, § 36.4319a(f)(v), (g)(vi), and (h), which required a promissory note in connection with certain deeds-in-lieu of foreclosure and compromise sales, as well as the comments concerning the additional work required in calculating whether a promissory note would be required, and the work necessary to actually obtain such a note. Because the purpose in authorizing deeds and compromise sales is to expedite the processing of such alternatives, and because VA has the authority in § 36.4826(e)(1) to approve a complete release of the Secretary's right to collect a debt related to payment of a claim under the loan guaranty, and the law governing the program provides in 38 U.S.C. 3703(e) that the majority of veterans will not be liable for such indebtedness following loan default, VA has decided to automatically determine that the cooperation of the borrower in completing a deed-in-lieu of foreclosure or a compromise sale is sufficient to justify VA waiver of collection of any indebtedness.

Comment: VA should clarify the procedures and implications of debt reductions used to ensure that a property is eligible for conveyance to VA.
VA Response: VA has revised the applicable portions of the new final rule in § 36.4823 to clarify the procedures to be followed to reduce debts in order to gain the right to convey to VA properties acquired at liquidation sales.

Comment:: VA should withdraw the proposal to require three year warranties when conveying property to VA, due to the additional burden this would place on servicers and foreclosure attorneys, who would bear the cost of insuring title to the property without receiving adequate compensation.
VA Response: VA concurs. VA's goal in the proposed § 36.4320(c) was to standardize and reduce the documentation required as evidence of acceptable title on properties conveyed to the Secretary. The comments received to the proposed rule provided

additional insight on many aspects of the present processes that were not clearly evident to VA previously.

Comment: VA should require and pay for a title insurance policy in connection with a deed-in-lieu of foreclosure.

VA Response: VA concurs. VA agrees that requiring a title policy in connection with a deed-in-lieu of foreclosure is necessary and would expedite the process of conveying a property to VA and the subsequent marketing of that property.

Comment: VA should incorporate in its rule that any errors found in post claim audits will not be extrapolated over a servicer's prior claim submissions in an effort to recover claim payments that have not been actually identified.

VA Response: VA does not concur, as VA does not believe that such a restrictive rule in § 36.4824 would be in the best interests of the taxpayers supporting the VA home loan program.

Extrapolation is basically the practice of reviewing a small sample of cases, determining an error rate, and then applying that error rate across an entire population of claims. While VA does not expect to routinely extrapolate in such a manner, this is a generally accepted tool of auditing that must be preserved.

Comment: VA should not impose a one-year deadline for filing claims, or should at least make the penalty more reasonable, because the penalty far outweighs the impact of late filing. In addition, VA should wait until the end of any redemption period before starting the one-year deadline.

VA Response: VA does not concur. The proposed rule § 36.4321(d) required submission of a claim under guaranty no later than one year after the liquidation sale. To ensure accuracy in the Federal budget process, VA needs to know within a reasonable time that specific loans for particular cohort years have been terminated and that costs will be incurred. With the highly automated processes that are being implemented, VA believes that holders should be able to ascertain all necessary information and submit a claim within one year of the completion of the loan termination process, even if a redemption period exists in the particular jurisdiction.

Comment: The proposed rules did not discuss any plans to implement penalties for late or faulty reporting.

VA Response: The ability to impose penalties already exists. Final rule § 36.4828, based on current § 36.4325, allows VA to adjust claims to the extent that any failure to comply with a regulation increases the ultimate liability of the Secretary.

Comment: Servicers should not be required to submit audit documentation to VA in a particular imaged format as a condition of doing business with VA.

VA Response: VA concurs. VA did not intend to require a specific imaging format, but inadvertently did so by citing only three specific formats in the proposed rule. This has been changed in the final § 36.4833 to provide that required documents sent to VA electronically be in .jpg, .gif, .pdf, or a similarly widely accepted format.

Comment: Servicers should not be required to provide imaged documents for audits, as this will greatly increase their costs.

VA Response: VA does not concur. Servicers are presently required by VA policy and the authority in § 36.4330 to submit paper documentation with all claims under the guaranty. That involves copying all documents related to payments received on a loan, disbursements chargeable thereto, and the dates thereof, including copies of bills and receipts for such disbursements, which may require conversion of electronic documents to paper form. VA proposed instead in § 36.4321(d) that servicers submit the information in those documents in an electronic format when filing a claim, while retaining the supporting documents in the event of a post-claim audit by VA. Post-claim audits by VA will typically involve only a percentage sampling of submitted claims, so the number of cases for which documentation will eventually be submitted to VA will be greatly reduced.

Comment: The proposed exception to allow submission of paper documents based on size of servicing portfolio is confusing.

VA Response: VA concurs and has deleted this exception in the final rule § 36.4833. The fast-paced growth in technology has resulted in its wider availability at ever decreasing costs, so the requirement for electronic submission of documents to VA will not create a significant burden for a servicer of any size.

Comment: Servicers expressed concern about accepting the risk that VA might later determine that values rendered by the Servicer Appraisal Processing Program (SAPP) were too high and then adjust claims or even reconvey properties. Servicers also expressed concern that they would be unable to employ sufficient numbers of staff review appraisers, and instead want to rely only on values provided by VA-approved appraisers.

VA Response: VA believes that servicers should not be concerned about these matters. VA presently prescribes uniform qualifications for appraisers in accordance with 38 U.S.C. 3731. However, that same section requires review by VA of appraisal reports prior to determining the reasonable value of a property that is the security for a VA guaranteed loan. Public Law 100-198, enacted December 21, 1987, authorized the Lender Appraisal Processing Program (LAPP), which enables VA to permit qualified lenders to review loan origination appraisals, ensure adherence to VA-published minimum property requirements, and set the reasonable value of properties for purposes of determining the maximum loan VA could guarantee.

Servicers should have no concerns about VA reconveying properties due to value increases made by staff appraisal reviewers, as VA regulations do not provide for such a practice. As contained in the proposed rule, the final rule in §§ 36.4344a(d) and 36.4848(d) does retain the right for VA to be indemnified for additional loss caused by an increase in value made by the servicer that was unwarranted, or arbitrary and capricious.

Comment: VA should adjust the timeframe for reporting abandoned properties in relation to the date on which inspections will be required. VA should also retain the 15-day reporting schedule rather than the proposed 5-day rule.

VA Response: VA concurs. In the proposed § 36.4346(i) VA intended simply to ensure prompt notice when a holder learns of an abandoned property, which could occur prior to verification through a required property inspection. However, VA agrees that the majority of notices about abandoned property will be the result of property inspections, which will not typically be received until a loan is at least 60 days delinquent, and is therefore changing the final rule accordingly. Reporting of this event will fall under the provisions of the final rule in 38 CFR 36.4817(c)(10), which will require reporting no later than the 7th calendar day of the month following the month the occupancy status change was verified.

Comment: VA should reconsider the requirements related to abandonment and extraordinary waste or hazard.

VA Response: VA concurs. Since the time of the proposed rule change to § 36.4346(i)(2), events such as Hurricane Katrina have demonstrated the difficulty in mandating loan termination due to the appearance of the potential for extraordinary waste. VA has even issued guidance to holders following Katrina to exercise additional caution before deciding that a property in a major disaster area could be subject to additional waste because of an apparent lack of care, since many people were displaced without the resources to quickly return and attempt repairs to their homes. Therefore, VA is deleting that part of the proposed rule that would have added “extraordinary waste or hazard”. The first two sentences of the existing rule § 36.4346(i)(2) describe actions to be taken when a holder obtains information that “indicates” a property may be abandoned, and the proposed rule change was primarily to conform reporting requirements to the proposed rule § 36.4315a. VA believes that while the term abandoned may be somewhat subjective, there are obvious situations, such as when the borrower mails in the keys and advises the holder that no further payments will be made, in which a holder will have no doubt that the property is abandoned. The existing rule calls for action that should lead to confirmation of whether or not a property is actually abandoned. Thus, the final rule in § 36.4850(i)(2) will retain the mandate to report abandonment in accordance with § 36.4817(c)(10) as a change in

occupancy status and initiate termination when abandonment has been confirmed.

Comment: In changing the requirement for provision of an annual statement for income tax purposes, VA should be consistent with Internal Revenue Service (IRS) requirements.

VA Response: VA concurs. It was VA's intent in the proposed revision to § 36.4346(c) to change from 60 days to 30 days to achieve that consistency. However, the comment pointed out that IRS requires annual statements be sent no later than January 31st of each year, so VA's requirement of 30 days would be different. Accordingly, the final rule § 36.4850(c) has been changed to require an annual statement be provided before February 1st of each calendar year.