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**Department of
Veterans Affairs**

Information Bulletin

June 15, 2004

Loan Guaranty Letter 04-08
261-1

SUBJ: Foreclosure, Property Preservation and Servicing Fees

Purpose

The Denver Regional Loan Center (RLC) has jurisdiction for properties located in Colorado, Wyoming, Alaska, Idaho, Montana, New Mexico, Utah, Oregon and Washington. This release provides program participants with guidelines for determining which foreclosure, property preservation and servicing fees, and the maximum reimbursable amounts of those fees, may be reimbursed on a Claim Under Guaranty in these states. All claims for reimbursement must be reasonable and customary and lenders must always obtain quality service at the least expense to them and VA. Copies of bills and receipts, or other evidence of payment, must be submitted with the claim.

Effective Date

The fees and expenses set out in this release are effective for VA loan foreclosures conducted on or after June 15, 2004. Please be aware that several changes were made for both property preservation as well as allowable fees and expenses from last year's information bulletin.

Legal and Trustee Fees

All Claims Under Guaranty are subject to Title 38 Code of Federal Regulations (CFR) 36.4276(b) and 36.4313(b) which stipulate the combined total of the amounts claimed for trustee's fees and legal services may not exceed \$850. In those states where a non-judicial foreclosure is the most common procedure used, payment of additional amounts will be considered on a case-by-case basis when a judicial foreclosure must be conducted subject to the regulatory limitation previously mentioned. The maximum fees for each state under the jurisdiction of this RLC are specified on the attachment to this release.

Title Insurance

Title insurance policy costs will be reimbursed in those instances where the property is conveyed to VA, or when a title policy is obtained instead of a foreclosure certificate. In the event VA returns title of a property to the holder, the cost of the title policy will not be reimbursed. It is the holder's responsibility to ensure that their attorneys use the correct language on billings requesting reimbursement for title policies.

Required Notices

VA will allow \$10.00 for each notice of intention to foreclose sent to the original veteran and/or liable obligor as required by 38 CFR 36.4317(c).

General information concerning property preservation expenses

- Front entry door lock changes will be reimbursed one time only. All other doors should be rekeyed.
- Winterization of plumbing and heating systems should be done year-around. Utilities should be turned off except for those properties that require them to remain on due to local weather conditions, HOA requirements, or safety concerns. Documentation must be submitted with the request for payment evidencing the need for specific utilities to remain on. VA will reimburse for transfer of utilities to the holder's name, as well as actual utility costs when the property is vacant.
- When a property is vacant, apparently abandoned and subject to vandalism, appropriate steps must be taken to protect the security. VA will reimburse actual costs, if reasonable and customary, for boarding of windows and doors if the holder determines the action is necessary. This does not mean every vacant property should be screened and/or boarded. In fact, boarding of properties in well-maintained neighborhoods can invite break-ins. In locations where vandalism is high, all ground floors should be secured. The material suggested for boarding windows and doors is plywood secured with nails; however, the holder should use judgment in selecting the most economical method of securing without jeopardizing the effectiveness.
- Actual cost, if reasonable and customary, will be paid for removal of debris to eliminate health or safety hazards. Documentation must be submitted with the request for payment evidencing the nature and the extent of the hazard. A fee for dumping will be reimbursed if documented by a receipt; however mileage will not be reimbursed.
- Pursuant to VA Regulations 36.4278 and 36.4346, holders are required to conduct property inspections before the 60th day of delinquency and at least once each month after liquidation proceedings have been started unless servicing information shows the property continues to be owner-occupied. An abandoned property must be inspected at least monthly to prevent unnecessary deterioration due to vandalism or neglect.

- Grass should be cut as needed but no more than twice per month between April and October. Mowing once per month may prove sufficient depending on the amount of rainfall. Snow removal should be performed as required by local codes.

Prior Approval

Prior approval for property preservation is not required and will not be given. It is the holder's responsibility to protect and preserve properties when they become vacant and abandoned. Holders are to ensure compliance with all city, county or other ordinances in accordance with the terms of the mortgage loan agreement. A holder may advance any reasonable amount necessary and proper for the maintenance or repair of the security and such advance may be added to the guaranteed indebtedness. Most security instruments have a provision to protect the property securing the loan. The removal of hazardous materials, the correction of hazardous conditions, and the avoidance of liens are primary concerns. Failure to protect and preserve the security can result in additional losses to the holder. A diminution in value can cause VA not to specify an amount for credit to the indebtedness in the event of foreclosure (no bid). If the holder's failure to protect and preserve the property increases VA's liability, the holder's claim payment will be adjusted (reduced).

If an item is not covered by this bulletin or there are unusual circumstances which support additional expense, the holder may submit complete information to justify the additional expense with the Claim Under Loan Guaranty and request reimbursement at that time. The holder is responsible for taking appropriate measures to protect and preserve the security for the loan. The decision as to what action to take to preserve and protect the property is the holder's decision, and it is independent of the amount of the costs which VA will reimburse.

Hazard Insurance

Under 38 CFR 36.4326, it is the holder's responsibility to procure and maintain insurance policies in an amount sufficient to protect the security against risks or hazards to which it may be subjected. All moneys received under such policies covering payment of insured losses shall be applied to restoration of the security or to the loan balance. Holders should consult VA in total or near total loss cases before consenting to an insurance adjustment if it appears the settlement proceeds will not be sufficient to pay off the loan balance or restore the security. In certain cases when a loan is in the process of being terminated and existing coverage has been canceled or renewal has been refused, premiums actually paid for high cost coverage will be eligible for reimbursement in part, as evidenced by copies of premium notices and paid receipts. VA must receive prior notification if hazard insurance is not obtainable, or obtainable only at prohibitive cost, in order to prevent a claim adjustment under 38 CFR 36.4325(b)(3). Upon receipt and review of the notification, VA will provide assurance in writing that there will not be an adjustment due to the holder's failure to procure and maintain an insurance policy. Please contact a VA Loan Administration Representative if you have any questions.

Mortgage Loan Servicing Fees

Although VA does not encourage nor endorse fees related to mortgage loan servicing, the fees and charges listed below are not prohibited if they are reasonable in amount and agreed to by the parties or permissible under the loan agreement. These items are not eligible for reimbursement on the Claim under Loan Guaranty.

- Recording a change of ownership of the mortgage property on the books of the servicer. VA would consider a charge in excess of \$50 for such service to be unreasonable, regardless of whether or not there is also a substitution of liability on the mortgage.
- Processing and reprocessing checks of the borrower which are returned to the servicer for insufficiency.
- Substitution of hazard insurance policies during the term of a previously furnished policy (at a time other than the normal renewal period) when substitution is made at the request of the mortgagor. A charge in excess of \$10 for such service will be considered unreasonable. Any charge for policy renewal or replacement at the normal renewal period will be considered inappropriate.
- Processing partial releases of the mortgaged property.
- Processing subordination agreements.
- Modification of the mortgage by a formal written extension or reamortization agreement.
- Marking the mortgage satisfied regardless of allowability by local law or loan documents.

If You Have Questions

Questions regarding allowable fees and charges should be directed to Loan Administration at 1-800-319-9446. This information bulletin, the allowable fees and expenses, and a list of Regional Loan Center key personnel is located on our website at www.vba.va.gov/ro/denver/index.htm.

GRACE COOPER
Loan Guaranty Officer

Attachment: Itemized List of Allowable Fees

Distribution: Holders and Servicers of VA Guaranteed Loans

Recission: Loan Guaranty Letter No. 03-07