Veterans Benefits Administration
Department of Veterans Affairs
Washington, D.C. 20420

Circular 26-08-6
April 22, 2008

GUIDELINES FOR PROCESSING SHARE LOANS FOR COOPERATIVE DWELLINGS

1. PURPOSE. Public Law 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, authorized the Department of Veterans Affairs (VA) to guarantee loans made to veterans for the purchase of stock or membership in cooperative housing corporations ("co-ops") to enable veterans to occupy such co-ops as their residence. VA's authorization for this program expires in December 2011. The purpose of this circular is to provide guidance on share loans for co-ops.

2. CO-OP PROJECT APPROVAL. If a co-op project is currently approved by Fannie Mae, a veteran may obtain a VA share loan to purchase in that co-op project (https://www.efanniemae.com/sf/refmaterials/approvedprojects/index.jsp). Co-op projects with Fannie Mae approval must provide a copy of the approval documentation with each share loan application. If the co-op project is not approved by Fannie Mae, the lender must obtain VA approval. Co-op project approvals issued by VA are valid for a 3-year period and subject to verification of a project's satisfactory in-force insurance coverage at the time of share loan application. To obtain the requirements for initial approval of a co-op project, refer to

- Fannie Mae's 2007 Selling Guide, Part XII, Chapters 1 – 5 (http://www.allregs.com/efnma/) and
- Fannie Mae's Announcement 07-18 (https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2007/0718.pdf).

In addition to the Fannie Mae guidelines, the following VA requirements must be met:

a. The share loan must be secured by the assignment (in pledge or trust) of the leasehold estate; a pledge or trust of the corporation stock, shares, or membership certificate; and any other documents that are appropriate under individual state or local laws and practices. The share loan must be a first lien, except that, where custom dictates to the contrary, VA will consider partial subordination of its lien to that portion of the co-op corporation's lien against the veteran's shares for unpaid assessments that represents the pro rata share of the corporation's payments for the blanket mortgage, current year's real estate taxes, and special assessments.

b. Any share loan financed with a VA-guaranteed loan shall be located only within the United States, which includes the several States, Territories, and possessions, including the District of Columbia, Guam, American Samoa, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and any other area over which the United States may, at some future date, acquire sovereignty.

(LOCAL REPRODUCTION AUTHORIZED)

c. VA share loans shall not be available in any area where federal, state, and/or local law expressly prohibits the Government from providing financial assistance.

d. All project approval documents must be forwarded to VA Central Office (262), 810 Vermont Avenue, NW, Washington, DC 20420. Upon receipt of all the documents, VA will perform a complete review and then notify the appropriate project personnel in writing of the final decision.

3. SHARE LOAN PROCESSING AND SERVICING

WHO MAY PROCESS SHARE LOANS? Lenders who desire to process co-op loans under the VA program should provide a statement to VA Central Office (262) indicating their relevant experience and expertise. Such statement should include, at a minimum, qualifications of any individuals who will be processing and underwriting share loans; information regarding the number and specific location of share loans processed within the preceding year; default rate data for closed share loans; and information regarding servicing and foreclosure procedures. VA Central Office staff will review the submitted information and notify the lender as to whether it may process share loans. VA expects approved lenders to have the ability to both originate and service VA share loans.

WHAT LOAN PRODUCTS ARE ELIGIBLE? Lenders may use any of the loan products presently authorized by VA, including Adjustable Rate Mortgages (ARMs), Hybrid Adjustable Rate Mortgages (HARMs), and fixed rate loans. Lenders will be responsible for ensuring that share loans meet applicable secondary market requirements.

HOW ARE VA SHARE LOANS PROCESSED?

a. Appraisal requests: Lenders must complete VA Form 26-1805, Request for Determination of Reasonable Value, and fax or e-mail it to the RLC of jurisdiction to request an appraisal for a co-op unit. E-mail and fax information may be found at http://www.homeloans.va.gov/rlcweb.htm. VA personnel will identify an experienced co-op appraiser and notify the lender. The Notice of Value (NOV) will be a VA-issued NOV. At this time, lender Staff Appraisal Reviewers (SAR) will not be issuing NOVs for share loans.

b. Underwriting: When reviewing share loan applications, lenders must follow the underwriting guidelines found in chapter 4 of the VA Lender's Handbook (http://www.warms.vba.va.gov/pam26_7.html). Lenders must be sure to include any monthly maintenance obligation when performing their credit analysis.

c. Documentation: VA will not publish national standard co-op share loan instruments because of the significant variations in state laws pertaining to the co-op form of ownership. A lender should consult with its legal department and with VA Central Office (262) to ensure that state-specific co-op share loan documentation requirements are met, especially in states that treat co-ops as both real and personal property. In addition, in states in which the co-op lien expires in 5 years (for example, California, Maryland, New Jersey, and the District of Columbia), the lender is responsible for filing the necessary documents in order to override that expiration. Explanations of some of the most commonly used instruments are located in the definitions section of this circular.

d. VA Funding Fee Payment: The fee will be based on the amount of the share loan. Procedures for paying the funding fee will be unchanged. Guidance can be found in chapter 8 of the VA Lender's Handbook (http://www.warms.vba.va.gov/pam26_7.html). Lenders are reminded that even in cases where the veteran is exempt from the funding fee, the information must be entered into the VA Funding Fee Payment System.

e. Guaranty: Lenders may submit co-op loans for guaranty via webLGY in the same manner as other loans. Lenders must submit a copy of the origination package, including a copy of the proprietary lease, to the RLC of jurisdiction for post-closing review by both loan production and construction and valuation staff. Lenders must be sure that item 13, Estate in Property, on VA Form 26-1820, Report and Certification of Loan Disbursement, is marked "Other."

MAY SHARE LOANS BE ASSUMED? Share loans are subject to the same assumption restrictions as loans secured by real estate, with one significant distinction. The Board of Directors of a co-op must approve the prospective transferee, subject to the terms of the Recognition Agreement.

HOW ARE SHARE LOANS SERVICED? Share loans are serviced in the same manner as all other VA-guaranteed loans; however, servicers will need to identify share loans within their system to adequately service them. While considering the alternatives to foreclosure, servicers need to keep in mind that the co-op board must approve a prospective buyer if they are considering forbearance to allow the veteran time to sell his/her interest in the co-op; therefore, slightly longer forbearance periods may be required. Servicers needing assistance should contact Shawn Walkey, Central Office Loan Management, at shawn.walkey@va.gov.

4. DEFINITIONS

a. Housing Cooperative (Co-Op): A housing co-op is a corporation that is formed to provide housing for its members, who own and operate the corporation. All housing co-op property is owned in the name of the corporation. Individual members, also known as owners or stockholders, hold an ownership interest in the corporation and have the right to occupy their dwelling unit and participate in the operation of the co-op corporation. There are two primary types of housing co-ops:

(1) Market Value Co-Op: In market value co-ops, shareholders buy and sell their shares (subject to the approval of the co-op board, if applicable) for full market value. An individual seller may realize gains from the sale of his or her shares, where such gains exist. Purchase prices and equity accumulation are very similar to condominium or single-family ownership. **This is the only type of co-op interest for which VA will guarantee financing**.

(2) Limited Equity Housing Co-op (LEHC): Limited equity co-ops limit the resale value of shares. Because of the resale restrictions, VA will **NOT** guarantee financing for LEHCs.

b. Share Loan: A share loan, like a mortgage, provides the borrower with funds to buy stock or membership in co-op housing corporations. For the VA program, the shares must entitle the borrower to an occupancy interest in his or her co-op unit. The borrower then makes monthly payments on the share loan to the lender and monthly maintenance payments to the co-op.

c. Blanket or Underlying Mortgage: A blanket or underlying mortgage is a loan that covers the building and/or property owned by the corporation. This obligation is in the corporation's name, and the payment is allocated pro rata among the members/shareholders. **VA does not guarantee loans for blanket mortgages.**

d. Recognition Agreement: A recognition agreement is a legal document wherein the co-op recognizes the lender as having a security interest in the borrower's unit. It also establishes the steps that either the lender or the co-op will take in the event that the member/borrower defaults to the lender or the association.

e. Uniform Commercial Code (UCC) –1: The UCC-1 is a document that records and protects a secured party's interest in the collateral offered by a debtor for a loan. In essence, the UCC-1 gives public notice relative to the debtor-secured party relationship and the collateral involved. Since co-op shares are considered personal property rather than real property, the filing of the UCC-1 is functionally equivalent to the recording of the deed.

f. Proprietary Lease: The proprietary lease is a contract between the co-op corporation and the member that sets the conditions for the right to occupy a particular unit. Some co-ops call this contract an occupancy agreement. It sets forth the rights and obligations of the member and the co-op to each other. Legally, it is viewed as a lease between the member and the co-op. In cases where a lease specifies a time period, the time period must extend at least through the maturity date of the proposed share loan.

g. Public Offering Statement: The public offering statement (referred to as the Offering Plan or Public Report in some states) is a document provided by the developer that contains numerous statements, including, but not limited to, the form of ownership of all real and personal property to be owned or leased by the co-op; whether and under what conditions units may be sublet or co-op interests sold; a description of the voting and other rights which attach to a co-op interest;

the rights and responsibilities of members regarding the blanket mortgage; the fees and charges which may be levied against a member; the co-op interest associated with each unit and the underlying debt responsibility associated with each unit on a pro rata basis; whether the co-op corporation has or will obtain insurance coverage, and if so, in what amounts; and/or the physical condition and state of repair of the major structural, mechanical, electrical, and plumbing components (for co-ops that are not newly constructed).

h. Board of Directors: Also known as the co-op board, the Board of Directors is typically elected from amongst the shareholders at a general meeting, usually the annual general meeting. In smaller co-ops, all members sit on the co-op board. The co-op board typically elects its own officers, such as a president, vice-president, etc. The co-op board may then establish standing committees from among the shareholders to either handle the business affairs of the co-op or make recommendations to the full co-op board on such issues as finances, membership, and maintenance.

i. Bylaws: The bylaws are a written set of provisions and directions that the co-op corporation follows in governing operations. Generally, changes to the bylaws require a vote by the entire membership at a duly called meeting upon proper notice. Bylaws typically cover topics such as how the co-op board is elected, when membership meetings shall be held, and other issues related to the governance of the co-op.

j. Membership Committee: Many co-ops have a membership committee that reviews incoming members and approves or rejects their application based upon specific criteria set forth by the co-op board. Often, incoming members will need to have an interview with the membership committee before they will be approved for membership. In some co-ops, the co-op board will screen incoming members.

k. Monthly Carrying Charges or Monthly Maintenance Fee: The monthly carrying charges or monthly maintenance fee is the members/shareholders' pro rata share of the co-op's operating expenses, reserve funding, and the underlying mortgage payments.

l. Right of First Approval: Most co-ops have a process to review and approve new members/shareholders. Purchase of a membership/share is conditioned on the co-op’s review and approval of one’s application and abilities to meet obligations under the proprietary lease. Co-ops may not discriminate against any protected class under local, state, and federal law.

m. Right of First Refusal: If a co-op's bylaws contain a right of first refusal clause, the co-op has the first option to purchase or refuse to purchase the outgoing member's share at an agreed upon price.

n. Default: Default can occur when the borrower fails to meet a financial obligation (usually the monthly share loan payment) to the lender. Co-op members/shareholders can also be in default to the co-op corporation, usually for violating a house rule (which will vary from co-op to co-op) that puts them in imminent danger of eviction.

5. STATION PROCEDURES: At this stage in the co-op program, the primary roles of the RLCs are to identify experienced co-op appraisers, to issue NOVs, and to generally ensure that the appraisal ordering process runs smoothly. Additional guidelines for VA field stations about these specific responsibilities will be released separately.

6. QUESTIONS: Please e-mail any questions regarding this circular to Katherine Faliski, Assistant Director for Loan Policy and Valuation, at Katherine.Faliski@va.gov.

7. STATION RELEASES: Stations should disseminate this information to program participants using their local websites. It is not necessary to prepare "hard copy" local releases, although, stations may do so at their discretion. Central Office will be placing this information on the Loan Guaranty website.

8. RESCISSION. This circular is rescinded April 1, 2010.

By Direction of the Under Secretary for Benefits

Judith A. Caden
Director, Loan Guaranty Service

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