

## **PROCEDURES FOR OBTAINING “BIDDING INSTRUCTIONS” FROM VA**

1. **PURPOSE:** This circular clarifies existing guidance on information that must be provided to obtain specified amount advice (“bidding instructions”) from VA, including cases involving reductions of loan indebtedness in order to avoid “no-bids”.

### 2. BACKGROUND

Specified Amount or No-Bid: VA is required by law to determine the net value of a property securing a loan that is about to be terminated. By regulation (Title 38, Code of Federal Regulations (CFR), part 36, section 36.4319(b)), a loan holder is required to provide a copy of the notice of sale at least 30 days prior to the scheduled liquidation sale, and the notice must be accompanied with a statement of the account indebtedness and a copy of the liquidation appraisal request. VA then calculates the property net value by reducing the appraised fair market value by a percentage estimate for acquisition, management and resale costs that would be incurred should VA acquire the property. The net value is compared to the loan indebtedness and VA’s maximum guaranty liability to decide whether to specify a minimum amount for credit to the loan account. When VA specifies an amount and the holder acquires the property at sale, the property may be conveyed to VA for the specified amount. If VA does not specify an amount, the holder cannot convey the property (this is typically called a VA no-bid).

No-Bid Buydown: Upon receipt of a no-bid, a holder may decide to waive or satisfy a portion of the loan in order to reduce the indebtedness to an amount which would require VA to provide a specified amount and acquire the property under Title 38 CFR 36.4320. This is often called a no-bid buydown, and may take the form of a reduction of the principal balance, credit to the escrow or unapplied funds account, forgiveness of unpaid accrued interest or a combination of these credits. In most cases a holder does not have time to buy down the debt prior to a cutoff date established by VA, unless the cutoff date is moved. It has been the policy of VA to advise holders when issuing no-bids that a cutoff date may be rescinded and replaced with the date of a buydown, if the holder completes the buydown within 30 days of the no-bid letter. VA will consider allowing an additional 30 days for completing a buydown if requested by the holder in order to obtain investor approval, or if local law prevents rescheduling a sale within 30 days. A buydown must not affect the validity of the liquidation sale (or liability of the obligors), and must be binding on all parties to the loan agreement and documented by appropriate entries to the account ledgers.

Notice of Buydown: VA Form Letter 26-567, Status of Loan Account - Foreclosure or Other Liquidation, was modified in order to allow a holder to show a reduction in the indebtedness and request a specified amount. Some VA offices routinely required that a copy of the loan account ledger be attached to VA Form Letter 26-567 when there was a buydown. Other VA offices did not, but reported that discrepancies often arose upon receipt of claims under loan guaranty. In

some cases, the VA reviews disclosed that buydowns did not meet VA's requirements and properties were reconveyed.

3. STANDARDIZATION OF BUYDOWN POLICY: Effective October 1, 2001, it will be the policy of all VA offices to require written verification of a buydown in the form of a copy of a payment history which reflects the date and amount of the actual buydown. VA will not provide new bidding instructions based on a VA Form Letter 26-567 showing a buydown until such time as written verification is received. Holders should make certain that the history which accompanies the VA Form Letter 26-567 shows the reduction taking place on the same date reported on VA Form Letter 26-567.

4. ARM ADVICE: VA has distributed VA Form 26-1874a, Claim Form Addendum – Adjustable Rate Mortgages, for use by holders and servicers in providing information required to compute the interest paid and accrued on an adjustable rate mortgage (ARM). However, this information is actually needed by VA when reviewing the account indebtedness in order to decide what bidding instructions to issue. Therefore, whenever holders or servicers provide VA Form Letter 26-567 on an ARM loan, they should also provide VA Form 26-1874a. In addition, it will be helpful to VA if the column labeled “YEAR” actually contains the month, day and year of each adjustment in interest rate.

5. OTHER ISSUES: It may be necessary for a holder to postpone a foreclosure sale in order to complete a buydown and provide verification. If no earlier cutoff date is in effect, the date of the first scheduled foreclosure sale will become the cutoff date under Title 38 CFR 36.4319(f). That cutoff date, or an earlier existing cutoff date, will be moved forward by VA to coincide with the actual buydown date if the reduction occurs after an earlier cutoff date. Additional expenses incurred as a result of the postponement, including but not limited to additional attorney’s fees, a new appraisal, and advances for insurance premiums, will not be reimbursed by VA.

6. STATION RELEASES: Field stations with Loan Guaranty activities will reproduce paragraphs 1 through 5 of this circular for immediate release to program participants in their jurisdiction. Copies of these releases need not be submitted to Central Office. Questions may be directed to Carl Wasson at 202-273-7345.

7. RESCISSION: This circular is rescinded April 1, 2003.

By Direction of the Under Secretary for Benefits

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Loan Guaranty Service

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