

either a final Report of Examination or other written communication from the OCC;³

- Enforcement-related actions or decisions, including decisions to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o);
- Formal and informal rulemakings pursuant to the Administrative Procedure Act, 5 U.S.C. 500 *et seq.*; and
- Requests for agency records or information under, and submissions of information to the OCC that are governed by, the Freedom of Information Act, 5 U.S.C. 552 or 12 CFR Part 4.

An enforcement-related action or decision commences, and therefore becomes unappealable, when the national bank receives notice from the OCC indicating its intention to pursue available remedies under applicable statutes or published enforcement-related policies of the OCC. Such policies include OCC's Policy for Corrective Action (PPM 5310-3)(REV), Civil Money Penalty Policy (PPM 5000-7)(REV), and Securities Enforcement Policy (PPM 5310-5). These policies are available on request from the OCC's Communications Division, 250 E. Street, SW., Washington DC 20219-0001; phone—(202) 874-4700, fax—(202) 874-5263. For purposes of these guidelines only, remarks in a Report of Examination do not constitute notice of intent to pursue enforcement remedies.

III. Effect of Filing An Appeal

As a general rule, the filing of an appeal concerning an appealable matter with either the national bank's immediate supervisory office or with the Ombudsman serves to stay all agency decisions and actions until the appeal is resolved. A stay does not allow a corporate matter subject to an appeal to be approved simply by the passage of time. In the appropriate circumstances, however, the Ombudsman or the appropriate OCC official may put the disputed agency decision or action into effect while the appeal is still pending.

IV. Other OCC Appeals Processes

The appeals process established by these guidelines does not supersede any other existing appeals procedures available under current law. Matters that are subject to an OCC appeals process designed specifically for the issue in dispute, such as review of Shared National Credit findings and fair

lending-related decisions, are appealable to the Ombudsman when the OCC decision is final under the specifically designed appeals procedures.

These final appeals guidelines, the process to appeal Shared National Credit decisions, and the appeals process for fair lending-related decisions are consolidated in OCC Bulletin 96-18, available through the OCC's Communications Division, 250 E. Street, SW., Washington DC 20219-0001; phone—(202) 874-4700, fax—(202) 874-5263.

V. Liaison Activity of Ombudsman

In addition to hearing and deciding appeals brought by national banks, the Ombudsman is available to act as a liaison between the OCC and any affected person with respect to any problem or question the party may have in dealing with the OCC resulting from the OCC's regulatory activities.⁴ The Ombudsman will either provide the requested information or direct the person to the appropriate point of contact. In so doing, the Ombudsman will ensure that safeguards exist to encourage persons to come forward and to preserve the confidentiality of those seeking information or identifying a concern.

Dated: February 15, 1996.
Eugene A. Ludwig,
Comptroller of the Currency.
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DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Percentage to Determine Net Value

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This notice provides information to participants in the Department of Veterans Affairs (VA) Loan Guaranty Program concerning the percentage to be used in determining whether the Secretary will accept conveyance of a foreclosed property. The new percentage is 15.11 percent.

⁴ Interested parties may also contact the OCC's Customer Assistance Unit, located in the OCC's Washington office, to report any problems or concerns they may have regarding national banks. The Unit's telephone number is 800-613-6743. In addition, interested persons may also comment on proposed OCC rulemakings published in the Federal Register for notice and comment by filing written comments with the OCC, as described in the rulemaking.

EFFECTIVE DATE: The new percentage is effective January 22, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan and Property Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273-7344.

SUPPLEMENTARY INFORMATION: VA regulations concerning the payment of loan guaranty claims are set forth at 38 CFR 36.4300, *et seq.* The formulas for determining whether VA will offer the lender an election to convey the property to VA are set forth at 38 CFR 36.4320. A key component of this is the "net value" of the property to the Government, as defined in 38 CFR 36.4301. Essentially, "net value" is the fair market value of the property, minus the total of the costs the Secretary estimates would be incurred by VA resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, administration, and resale. Each year VA reviews the average operating expenses incurred for properties acquired under 38 CFR 36.4320 which were sold during the preceding three fiscal years and the average administrative cost to the Government associated with the property management activity. Administrative cost is based on the average holding time for properties sold during the preceding fiscal year. Property improvement expenses are estimated on an individual case basis at the time the net value is estimated. VA also includes in the net value calculation an amount equal to the gain or loss experienced by VA on the resale of acquired properties during the prior fiscal year. VA annually updates the net value percentage and publishes a notice of the new percentage in the Federal Register. For Fiscal Year 1995, the percentage was 11.18 percent. For Fiscal Year 1996, the percentage will be 15.11 percent, based upon the operating expenses incurred, exclusive of estimated property improvement expenses which are accounted for separately in each case, for Fiscal Years 1993, 1994, and 1995, and property resale experience for Fiscal Year 1995. Accordingly, VA will subtract 15.11 percent from the fair market value of the property to be foreclosed in order to arrive at the "net value" of the property to VA. This new percentage will be used in "net value" calculations made by VA on and after January 22, 1996. This is the date the new percentage was issued to VA filed stations for use in these calculations.

³ A national bank is encouraged to discuss any concerns or disagreements regarding preliminary examination conclusions with its examiner-in-charge or its supervisory office.

Approved: February 12, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

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