

Noncompliance in Processing Assumptions

1. Purpose. The Department of Veterans Affairs (VA) is publishing this Circular to remind holders and servicers of their obligation to process assumptions and to outline for holders and servicers how VA will address failure to comply with assumption requirements.

2. Effective Date. This Circular is effective immediately.

3. Background. Holders, lenders, servicers, and agents of such entities, (hereinafter referred to as holders) are responsible for complying with VA's statutory and regulatory program requirements regarding loan assumptions.¹ In cases where a holder fails to comply with applicable requirements, such action(s) constitute a defense against VA's liability on account of VA's guaranty.²

a. In May 2023, VA published Circular 26-23-10 clarifying assumption procedures.³ As discussed in that Circular, assumptions are a fundamental feature of a VA-guaranteed loan and are to be processed according to applicable statutes and regulations.⁴

b. Recently, certain holders have questioned whether they are required to process an assumption that meets VA's requirements and can instead deny approval due to holder-imposed criteria (overlays) or other reasons. Examples include, but are not limited to, cases where:

(i) a holder refuses to accept an assumption package;

(ii) a servicer with automatic authority accepts an assumption package but does not make a decision within 45 days;⁵

(iii) a holder without automatic authority accepts an assumption package but does not forward to VA within 35 days;⁶

(iv) a holder denies an assumptor's application due to a holder overlay; and

(v) a holder denies an assumptor's application, VA approves the assumption on appeal, and the holder refuses to complete the assumption due to a holder overlay or other reason.⁷

¹ See 38 C.F.R. § 36.4301.

² See 38 C.F.R. § 36.4328.

³ VA Circular 26-23-10, *VA Assumption Updates*, May 22, 2023, https://www.benefits.va.gov/HOMELOANS/resources_circulars.asp.

⁴ See 38 U.S.C. § 3714; 38 C.F.R. §§ 36.4303(l) and 36.4340.

⁵ See 38 C.F.R. § 36.4303(l)(1)(i)(C).

⁶ See 38 C.F.R. § 36.4303(l)(1)(ii)(D).

⁷ See 38 C.F.R. § 36.4303(l)(1)(i)(B).

4. Noncompliance and the Effect on a VA-Guaranteed Loan. When a holder willfully refuses to process an assumption package in accordance with 38 U.S.C. chapter 37 and associated regulations, such actions negatively affect Veterans' ability to use their earned VA-guaranteed home loan benefits, including selling their home through an assumption. Moreover, such a willful failure to comply with applicable law regarding assumptions constitutes a defense against VA's liability on the guaranty.

5. VA Procedures for Noncompliance. If VA determines a holder failed to process an assumption package in accordance with applicable statutory and regulatory requirements, VA will notify the holder as to their failure to comply and VA's expectation that the holder must timely remediate the failure. Holders should refer to 38 C.F.R. § 36.4303(l) and VA Circular 26-23-10 for the applicable processing timeframes. If, after 7 calendar days, VA is not satisfied that the holder is taking appropriate steps to process the assumption, or VA determines at any time that the servicer's inaction may result in irreparable harm to the Veteran, VA will take the following steps:

a. Insert a notation in the loan file that VA has asserted a defense against liability and will not pay any guaranty claim for the loan.

b. Notify the Government National Mortgage Association (GNMA) that VA has asserted a defense against liability and, as such, the guaranty payable on the loan has been effectively reduced to \$0.

c. If, after taking the steps described in a. and b., VA receives sufficient notice and evidence that the servicer completed the assumption, VA will remove the notation in the loan file and notify GNMA that VA has readjusted the guaranty payable on the loan back to the original amount.

6. Repeated Noncompliance. Repeatedly refusing to process assumptions for VA-guaranteed loans may subject holders to additional measures such as—

a. additional examination and audit;

b. referral to VA's Office of Inspector General for further investigation;

c. various penalties associated with false claims,⁸ program fraud civil liability,⁹ and other legal or administrative sanctions;¹⁰

d. action pursuant to 38 U.S.C. § 3704(d), including VA's refusal either temporarily or permanently to guarantee any loans made by such holder or barring such holder from servicing or acquiring guaranteed loans;¹¹ and

⁸ 31 U.S.C. §§ 3729-3722.

⁹ 31 U.S.C. §§ 3801-3812.

¹⁰ See, e.g., 2 C.F.R. part 801.

¹¹ See also 38 C.F.R. § 36.4336.

e. notification to the public that VA has found the holder responsible for repeated, willful noncompliance with VA's statutes and regulations.

7. Paperwork Reduction Act. The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501-3520) and assigned OMB control numbers 2900-0021, 2900-0111 and 2900-0909. In accordance with the Paperwork Reduction Act, VA may not conduct or sponsor, and a person is not required to respond, to a collection of information unless the collection displays a currently valid OMB control number.

8. Questions. Any questions regarding this Circular should be submitted via ServiceNow at <https://www.benefits.va.gov/HOMELOANS/contact.asp>.

9. Rescission. This Circular is effective until rescinded.

By Direction of the Under Secretary for Benefits

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