

## VA Assumption Updates

1. Purpose. The Department of Veterans Affairs (VA) is publishing this Circular to clarify assumption procedures and republish the stacking order for Assumptions with VA-Prior Approval, Assumptions without Substitution of Entitlement, Assumptions with Substitution of Entitlement, and Assumption Appeals.

2. Background. VA statute and regulations require an assumption be approved if:

- a. The loan is current, and
- b. The assumer is contractually obligated to purchase the property and to assume full liability, and
- c. The assumer is creditworthy under VA's credit and underwriting standards.<sup>1</sup>

(1) Assumption Processing: Assumptions are a fundamental feature of a VA-guaranteed loan and are to be processed by the current holder or their authorized servicing agent as follows:

(a) Holders or Servicers with Automatic Authority<sup>2</sup>: Loan holders, or their authorized servicing agents, with automatic authority shall process and decide assumption applications for loans they hold or service within 45 calendar days of receipt of a complete application. If both the loan holder and their authorized servicing agent have automatic authority, they must decide who will process the assumption.

Assumption applications disapproved by the holder, or its authorized servicing agent, may be appealed to VA within 30 calendar days. The appeal may be requested by the seller or assumer.

(b) Holders or Servicers without Automatic Authority<sup>3</sup>: If neither the loan holder nor its authorized servicing agent has automatic authority, the assumption application and credit package must be submitted to VA for prior approval within 35 calendar days of receipt of a complete application.

(c) Assumption Types: An assumption involves the transfer of ownership and release of liability of a VA-guaranteed loan. An assumption may be processed with or without a substitution of entitlement.

(d) Assumption without a Substitution of Entitlement: The original Veteran's entitlement remains encumbered by the loan until the loan is paid in full. The seller would not receive a restoration of entitlement.

(e) Assumption with a Substitution of Entitlement: If the assumer is an eligible Veteran who intends to occupy the property as their home and has sufficient entitlement, they may agree to substitute their entitlement for the seller's entitlement. The seller would receive a restoration of entitlement.

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<sup>1</sup> See 38 U.S.C. § 3714. See also 38 C.F.R. §§ 36.4303(l) and 36.4340.

<sup>2</sup> 38 C.F.R. § 36.4303(l)(1)(i).

<sup>3</sup> 38 C.F.R. § 36.4340(l)(1)(ii).

(f) Assumption Fees: The holder or servicer may charge an assumption processing fee not to exceed \$300 on assumptions processed by holders or servicers with automatic authority, or \$250 on assumptions that require VA prior approval. This fee is intended to cover all costs of underwriting, processing and closing the assumption. If the loan is disapproved, and the assumption fee was collected previously, the portion attributable to changing the loan records, \$50, must be returned to the party who paid the fee if the loan remains disapproved after 60 calendar days (to allow time for processing requested appeals).<sup>4</sup>

The following charges, if incident to the loan, may be charged to the assumer of a VA-guaranteed loan:<sup>5</sup>

- (i) Assumption processing fee (as described above),
- (ii) VA funding fee<sup>6</sup> (unless the assumer is exempt, or the transaction is the result of an unrestricted transfer),
- (iii) Credit report,
- (iv) Recording fees and recording taxes incident to recordation,
- (v) Applicable taxes, hazard insurance, flood insurance and assessments,
- (vi) Title examination and title insurance, if any, and
- (vii) Fees approved in advance as local deviations.

It is permissible for the seller to pay for real estate commission or brokerage fees.

d. Unrestricted Transfers of Ownership: Certain transfers of ownership, referred to as Unrestricted Transfers,<sup>7</sup> are permitted without the approval of the holder or VA. These transfers convey ownership but not liability. These transactions are not considered assumptions or releases of liability but must be reported to VA by the servicer through VALERI. A list of such transfers is available in VA Lenders Handbook, Chapter 5, Topic 6 section, *Unrestricted Transfers*. The holder or its authorized servicing agent may charge a fee, not to exceed \$50, to update the loan records. The VA funding fee is not assessed on unrestricted transfers. If the transferee wishes to become liable for the loan, the holder or servicer must evaluate their creditworthiness under VA's credit underwriting standards and complete an assumption.

e. Spousal Releases: VA does not require the servicer to complete an assumption to release a spouse, whose entitlement is not encumbered by the VA-guaranteed loan, from liability to a loan if the request is made due to a decree to dissolve the marriage or a legal separation agreement awarding the property to the Veteran whose entitlement is encumbered by the VA-guaranteed loan. The servicer may proceed with the spousal release, and update VALERI with the obligors as appropriate, if the Veteran or ex-spouse provides the following documentation to the servicer:

(1) A copy of the decree to dissolve the marriage or legal separation agreement verifying the property was awarded to the Veteran whose entitlement is encumbered by the VA-guaranteed loan; and,

(2) A recorded copy of the legal document (ex. quit claim deed) transferring ownership to the Veteran whose entitlement is encumbered by the VA-guaranteed loan.

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<sup>4</sup> 38 C.F.R. § 36.4303(l)(1)(ii)(D).

<sup>5</sup> See 38 C.F.R. § 36.4313.

<sup>6</sup> 38 U.S.C. §3729.

<sup>7</sup> 38 C.F.R. § 36.4309(c)(1).

3. Assumption Procedures: As indicated above, assumption processing procedures differ based on the authority held by the loan holder or its authorized servicing agent.

Loan holders and servicers are reminded that repayment of partial claim assistance, provided as part of VA's COVID-19 National Emergency recovery measures, must be repaid in full immediately upon the Veteran's transfer of ownership of the property.<sup>8</sup>

a. Holders or Servicers with Automatic Authority: Loan holders or servicers with automatic authority must process and report closed assumptions to VA. The following is intended to provide information on assumption processing:

(1) Application: The seller and buyer will submit an application for an assumption, through which the assumer is agreeing to assume full liability to the loan.

(2) Process and Underwrite: The documentation required to underwrite an assumption is the same as for a VA purchase transaction. The underwriter should apply the underwriting standards outlined in the VA Lenders Handbook Chapter 4. The servicer must also ensure the loan is current or will be made current at or before the close of the assumption. It is permissible for the loan to be brought current through cash at close. It is not permissible to bring the loan current through a loan modification at the time of the assumption unless the assumption is required due to a decree to dissolve the marriage or a legal separation agreement, or the assumer is obtaining the property by operation of law on the death of the borrower.

If the assumption request includes a substitution of entitlement, request a Certificate of Eligibility for the assumer to ensure they have enough entitlement to substitute for the seller's entitlement. Apply the occupancy standards in VA Lenders Handbook Chapter 3 Topic 5.

(3) Notify the buyer and seller: The holder or servicer must complete its examination and notify the seller and buyer of its decision to approve or disapprove the assumption within 45 calendar days of receipt of a complete underwriting package.

If the assumption application is disapproved, the notification must advise the assumer and seller that the decision may be appealed to VA within 30 calendar days, and provide a servicer point of contact (including name, address, and email address) for VA to request the credit package if the assumption is appealed. The notice must also include the reason(s) for disapproval, and if the application was disapproved for credit reasons, the assumer must be informed on the basis of which the adverse decision was made in accordance with the Fair Credit Reporting Act.<sup>9</sup> Additionally, if the assumption fee was previously collected, the holder, or its authorized servicing agent, must refund \$50 of the previously collected assumption fee if the assumption remains disapproved after 60 days.

(4) Close the loan: Charges incident to the loan, described above in 2.c, may be charged in conjunction with the loan closing.

(5) Create an assumption funding fee record in the Funding Fee Payment System (FFPS): Unless the assumer is eligible for a fee waiver,<sup>10</sup> a funding fee of 0.5% of the loan balance must be paid on an assumption. Please note, this must be collected at close and may not be financed into the loan balance. The funding fee must be remitted to VA within 15 calendar

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<sup>8</sup> 38 C.F.R. § 36.4806(b)(2)(i).

<sup>9</sup> 15 U.S.C. §§ 1681-1681x

<sup>10</sup> 38 USC § 3729(c)

days of closing.<sup>11</sup> If the assumer is eligible for a fee waiver, the assumption record should still be created in FFPS. In these cases, select the 'Funding Fee Exempt' option.

(6) Report the assumption events VALERI: After an assumption is closed, the servicer must report the *Transfer of Ownership* and *Release of Liability* events to VALERI as outlined in the VA Servicer Handbook M26-4 Chapter 3.04.

(7) Submit the assumption package to VA: After an assumption is closed, the holder, or its authorized servicing agent, must submit the credit package and a copy of the executed deed and/or assumption agreement to VA within 45 calendar days of loan closing.<sup>12</sup> A stacking order is provided in Exhibit A. The assumption package should be uploaded as a Portable Document Format (PDF) into VALERI under Documents, as Document Type: 'Release of Liability'.

(8) Notify VA: Notify the [LGY.LPNATIONAL@va.gov](mailto:LGY.LPNATIONAL@va.gov) that a holder or servicer-approved assumption package has been uploaded.

b. Assumption Appeals: If the holder, or its authorized servicing agent, disapproves an assumption application, the assumer or seller may appeal the decision to VA within 30 calendar days from the notification of disapproval.<sup>13</sup> VA will notify the servicer upon receipt of an assumption appeal, requesting the assumption package. If the assumer or seller request an appeal through the holder, or its authorized servicing agent, they do not need to wait for VA to request the assumption package. In these cases, follow the submission instructions below.

(1) Submit the assumption package to VA: The assumption package should be uploaded as a PDF into VALERI under Documents, as Document Type: 'Release of Liability' within 7 calendar days. A stacking order is provided in Exhibit B.

(2) Notify VA: The VA assumption package request letter will contain a VA point of contact (POC) and email address. Notify the POC and [LGY.LPNATIONAL@va.gov](mailto:LGY.LPNATIONAL@va.gov) that the assumption appeal package has been uploaded.

(3) VA Decision: VA will notify the holder or its authorized servicing agent, the seller, and assumer of its decision to approve or disapprove the assumption application within 10 business days of receipt of a complete assumption package. It is imperative to provide the necessary documents to avoid underwriting delays.

If the assumption fee was previously collected, the holder or its authorized servicing agent, must refund \$50 of the previously collected assumption fee if the assumption remains disapproved after 60 calendar days.

(4) Close the loan: If VA approves the assumption, the holder or its authorized servicing agent, should close the assumption within 30 calendar days of VA's decision. Charges incident to the loan, described above in 2.c, may be charged in conjunction with the loan closing.

(5) Create the funding fee record in the Funding Fee Payment System: Unless the assumer is eligible for a fee waiver, a funding fee of 0.5% of the loan balance must be paid on an

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<sup>11</sup> 38 C.F.R. § 36.4313(e)(2)

<sup>12</sup> 38 C.F.R. § 36.4303(l)(1)(i)(A)

<sup>13</sup> 38 U.S. Code § 3714(a)(4)

assumption. Please note, this must be collected at close and may not be financed into the loan balance. The funding fee must be remitted to VA within 15 calendar days of closing. If the assumer is eligible for a fee waiver, the assumption record should still be created in FFPS. In these cases, select the 'Funding Fee Exempt' option.

(6) Report the loan events to VALERI: After an assumption is closed, the servicer must report the Transfer of Ownership and Release of Liability events to VALERI as outlined in the VA Servicer Handbook M26-4 Chapter 3.04.

(7) Submit the assumption closing package to VA: After an assumption is closed, the holder, or its authorized servicing agent, must submit the closing package to VA within 45 calendar days of loan closing. A stacking order is provided in Exhibit B. The assumption package should be uploaded as a PDF into VALERI under Documents, as Document Type: 'Release of Liability'.

(8) Notify VA: Notify the VA POC and [LGY.LPNATIONAL@va.gov](mailto:LGY.LPNATIONAL@va.gov) that the assumption closing package has been uploaded.

c.  Holders or Servicers without Automatic Authority: If neither the loan holder nor their authorized servicing agent has automatic authority, the assumption must be submitted to VA for prior approval. The following is intended to provide information on prior-approval assumption processing:

(1) Application: The seller and buyer will submit an application for an assumption, through which the assumer is agreeing to assume full liability to the loan.

(2) Process: The holder or their authorized servicing agent must develop a credit package to be used by the Secretary for determining the creditworthiness of the borrower. The documentation required to underwrite an assumption is the same as for a VA purchase transaction.

(3) Submit to VA for Prior-Approval: The holder or their authorized servicing agent must submit a request for prior-approval of an assumption request within 35 calendar days of receipt of a complete application package. The assumption package should be uploaded as a PDF into VALERI under Documents, as Document Type: 'Release of Liability'. A stacking order is provided in Exhibit B.

(4) Notify VA: Notify [LGY.LPNATIONAL@va.gov](mailto:LGY.LPNATIONAL@va.gov) that a prior approval assumption package has been uploaded.

(5) VA Decision: VA will notify the holder or its authorized servicing agent, the seller, and assumer of its decision to approve or disapprove the assumption application within 10 business days of receipt of a complete assumption package. It is imperative to provide the necessary documents to avoid underwriting delays.

If the assumption application is disapproved by VA, the holder, or its authorized servicing agent, must refund \$50 if the assumption processing fee was previously collected.

(6) Close the loan: If VA approved the assumption, the holder or its authorized servicing agent, should close the assumption within 30 calendar days of VA's decision. Charges incident to the loan, described above in 2.c, may be charged in conjunction with the loan closing.

(7) Create the funding fee record in the Funding Fee Payment System: Unless the assumer is eligible for a fee waiver, a funding fee of 0.5% of the loan balance must be paid in cash on an assumption. The funding fee must be remitted to VA within 15 calendar days of closing. If the assumer is eligible for a fee waiver, the assumption record should still be created in FFPS. In these cases, select the 'Funding Fee Exempt' option.

(8) Report the loan events to VALERI: After an assumption is closed, the servicer must report the *Transfer of Ownership* and *Release of Liability* events to VALERI as outlined in the VA Servicer Handbook M26-4 Chapter 3.04.

(9) Submit the assumption closing package to VA: After an assumption is closed, the holder, or its authorized servicing agent, must submit the closing package to VA within 45 calendar days of loan closing.<sup>14</sup> A stacking order is provided in Exhibit C. The assumption package should be uploaded as a PDF into VALERI under Documents, as Document Type: 'Release of Liability'.

(10) Notify VA: The VA assumption approval letter will contain a VA point of contact (POC) and email address. Notify the POC and [LGY.LPNATIONAL@va.gov](mailto:LGY.LPNATIONAL@va.gov) that the assumption closing package has been uploaded.

4. Questions. For questions or comments please contact VA at 1-877-827-3702, between the hours of 8:00 AM and 6:00 PM Eastern time.

5. 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, 2900-0110, 2900-0111, 2900-0474, 2900-0909, and 2900-0515. 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.

6. Effective Date. This Circular is effective immediately.

7. Rescission: This Circular is valid until rescinded.

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<sup>14</sup> 38 C.F.R. § 36.4303(l)(1)(i)(A)

By Direction of the Under Secretary for Benefits

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