

PROCESSING TRANSFERS OF OWNERSHIP UNDER VALERI

1. **Purpose.** The purpose of this circular is to explain how to process transfers of ownership under new VA regulations, specifically subpart F of part 36 of Title 38 of the Code of Federal Regulations (CFR), which establishes the VA Loan Electronic Reporting Interface (VALERI) environment. While many of the processes will be identical to pre-VALERI methods, there will be some changes. Specifically, servicers will process almost all ownership transfer approval requests for VA-guaranteed loans, including those where the commitment was issued prior to March 1, 1988, and certain divorce cases. Servicers will also be responsible for electronically reporting authorized ownership transfers and releases of liability (refer to www.homeloans.va.gov/valeri.htm for information on the new reporting process). Please note that this circular **only** applies to servicers operating under VALERI, which will be applicable to different segments of the servicing industry over a phased, eleven-month implementation period. Servicers should continue to process assumption approval requests as they have been in the past until they are subject to the new VALERI regulations.

2. **Background.** Under certain circumstances, properties that are security for VA-guaranteed loans may be sold even though the loans are not paid in full. Borrowers who sell their properties under these conditions remain liable to VA for any loss that may occur as a result of a future default and subsequent claim payment, unless the property is sold to a creditworthy purchaser who agrees to assume the payment obligation. VA or its authorized agent is the party responsible for completing such a determination of creditworthiness. If the purchaser is determined to be creditworthy, the seller may be released of further liability on the loan. While procedures for processing requests for assumption approvals previously depended on the date of loan (commitment made on or after March 1, 1988), the new VALERI regulations authorize loan holders or servicers with automatic authority to determine creditworthiness on **all** assumption approval requests processed by their servicers. After original veteran borrowers are released of liability, they may request a substitution of entitlement (SOE) from VA when the purchaser-assumer is an eligible veteran with sufficient entitlement.

3. **Servicer Authority**

a. **Servicers with automatic authority.** Servicers with automatic authority are authorized to process and determine creditworthiness on assumption approval requests on behalf of VA. Servicers must follow VA underwriting guidelines (VA Lender's Handbook, chapter 4) when processing and determining creditworthiness on these cases.

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VA suggests that servicers consider using one of the VA-approved automatic underwriting systems. Servicers must notify VA electronically of authorized ownership transfers and approved releases of liability. Refer to www.homeloans.va.gov/valeri.htm for information on the new reporting process.

b. **Servicers without automatic authority.** Servicers without automatic authority that are servicing loans for holders with automatic authority must advise the holders of any assumption approval requests, and the holders will be responsible for determining creditworthiness. When neither the servicer nor the holder has automatic authority, the servicer must develop a complete credit package and submit it, along with a copy of the purchase contract and the status of the loan, to the Loan Production section at the VA Regional Loan Center (RLC) of jurisdiction for underwriting.

4. **Commitments made on or after March 1, 1988.** Transfers of ownership on properties securing loans for which commitments were made on or after March 1, 1988, **must** have the prior approval of the loan holder or its authorized servicing agent if either of them have automatic authority. If neither the holder nor the servicer has automatic authority, the servicer must submit a credit package to VA for underwriting. The following subparagraphs describe processing details.

a. **Procedures for reviewing transfer of ownership requests.** A seller must apply for approval of the transfer prior to completing the sale. As discussed in paragraphs 3 and 4, servicers and holders with automatic authority must examine the application to assess compliance with the provisions of 38 U.S.C. 3714. VA will make the determination in a case where neither the servicer nor the holder has automatic authority, following receipt of a complete application package from the servicer.

(1) **Approval requirements.** To approve the transfer of ownership:

(a) The loan must be current or will be brought current at the closing of the sales transaction; and

(b) The prospective purchaser of the property is creditworthy, as determined in accordance with 38 CFR 36.4840 and VA Pamphlet 26-7, Lenders Handbook; and

(c) The prospective purchaser has agreed to assume all of the loan obligations, including the obligation to indemnify VA if a claim is paid.

(2) **Processing fee.** A processing fee may be collected in advance, including a reasonable estimate for the cost of the credit report. The maximum fee for processing a request for assumption approval and changing the loan records is the lesser of:

- (a) Automatic authority—\$300 plus the actual cost of a credit report; or
- (b) No automatic authority—\$250 plus the actual cost of a credit report; or
- (c) Any maximum prescribed by applicable state law.

VA does not specifically regulate when the processing fee may be assessed. However, when the processing fee is collected prior to signing the sales contract, the portion of the fee attributable to changing the servicer's records (usually \$50) must be returned to the seller if the application is denied or the process is not completed. Therefore, VA recommends that the processing charge accompany the complete package.

(3) Notifications. Servicers or holders with automatic authority must complete the examination and notify the seller of the decision within 30 days after receiving a complete ownership transfer approval application package. Servicers without automatic authority (where the holder also does not have automatic authority) must submit documents to VA within 21 days after receiving a complete application package. VA has 14 days to complete its underwriting review and notify the servicer of its decision. Servicers have 7 days to notify all parties of VA's decision. These time periods may be extended by the time lost if delays are beyond the servicer's control, such as employers or financial institutions not responding to requests for verification or follow-up requests.

(a) Approval notices. If the application for ownership transfer is approved, the servicer must notify the seller and include instructions for the assumption of liability by the purchaser, the amount of funding fee that must be paid, and documentation needed to complete the process.

(b) Disapproval notices. If the application is disapproved, the seller and purchaser must be notified. The disapproval notice must include the reason for the decision and a notice that the decision may be appealed to VA within 30 days. The notice must also include the VA address to which the appeal should be sent, which will be the RLC that has jurisdiction over the state where the property is located. If the application was disapproved for credit reasons, the purchaser must be informed of the basis on which the adverse decision was made in accordance with the Fair Credit Reporting Act. As described in subparagraph a(2) above, if the application remains disapproved after 45 days (to allow time for appeal and review by VA), the \$50 fee for changing the account records, if previously collected, must be refunded.

(4) Appeals to VA. The seller and purchaser may appeal a disapproval decision to VA within 30 days. When VA receives an appeal of a denied request, VA will request that the servicer send a copy of the application package used in making the decision. The

loan package must be provided to VA within 7 days. Once received, VA will review and either approve the assumption on appeal or uphold the decision to deny the application. If the appeal is not approved, VA's notice will advise the seller of the right to request "special approval" within 15 days of receipt of the disapproval notice.

(5) Special VA approval. Following appeal to VA, the seller may request special approval within 15 days of receipt of the disapproval notice. VA has 7 days from receipt of the seller's request to make this determination. If approved, VA will notify the servicer and seller that the assumption has been approved and that he or she will not be released from liability to VA. VA's special approval does not release any obligor from liability. If an obligor is released without proper approval, VA may be released from further liability on the guaranty. VA may determine that special approval of the assumption is in the best interest of the Government if:

(a) The seller agrees to remain secondarily liable on the loan following assumption; and

(b) The seller is unable to otherwise continue payments on the loan; and

(c) Reasonable efforts have been made to find a creditworthy borrower for the property.

b. Procedures for executing transfer of ownership requests

(1) VA approved assumption clauses. Once approved, the servicer will advise the seller that he or she may complete the transfer. The servicer must provide the seller with the exact language for the VA approved assumption clause that must be included in the deed conveying the property to the purchaser. (In the past, RLCs have provided servicers with examples of assumption clauses that are both acceptable to VA and compliant with state and local requirements. This information will continue to be maintained at the regional level; servicers should contact the RLC of jurisdiction to obtain sample language/documents.) Contact information can be found at the following website <http://www.homeloans.va.gov/rlcweb.htm>. The seller must return a copy of the recorded deed containing the assumption clause showing the date and place of recordation to the servicer. Once received, the servicer is responsible for reviewing the document to establish that it contains the approved assumption clause and recording data and that it has the legal effect intended.

(2) Agreement creating liability. If the seller and purchaser have satisfied all the requirements of 38 U.S.C. 3714(a)(1), but the seller has not produced a copy of a transfer deed containing an acceptable assumption clause, the servicer must prepare an

“Agreement Creating Liability to Holder and to United States” to execute the release. The servicer will send three copies to the veteran with instructions for execution. (In the past, RLCs have provided servicers with examples of agreements that are both acceptable to VA and compliant with state and local requirements. This information will continue to be maintained at the regional level; servicers should contact the RLC of jurisdiction to obtain sample language/documents.) Contact information can be found at the following website <http://www.homeloans.va.gov/rlcweb.htm>. The veteran must return all copies of the executed agreement to the servicer. Once received, the servicer is responsible for reviewing the document to establish that it was properly completed and that it has the legal effect intended. The holder or its authorized servicing agent will then execute the release portion of the form. In those states where recording the assumption and/or the release instrument is necessary, the veteran may be asked to forward funds to pay recording fees.

(3) Funding fee. At loan transfer, the transferee is required to pay a funding fee to the servicer equal to one-half of one percent of the loan balance as of the date of transfer. The fee must be paid to VA within 15 days of the date of assumption using the VA Funding Fee Payment System – VA FFPS (www.pay.gov). Refer to VA Pamphlet 26-7, Lender’s Handbook, chapter 8 for more information on exemptions from the funding fee, how to verify exemption status, and how and when to send the funding fee to VA. Generally the following individuals are exempt from paying the funding fee as an assumer:

- (a) A veteran receiving VA compensation for a service-connected disability.
- (b) A veteran who, but for receipt of military retirement pay, would be entitled to receive compensation.
- (c) A veteran who is rated eligible to receive compensation as a result of a pre-discharge disability examination and rating.
- (d) A surviving spouse of a veteran who died in service or from a service-connected disability.

(4) Notification to VA. Servicers must notify VA after ownership has been transferred and release of liability has been granted in accordance with the information at www.homeloans.va.gov/valeri.htm.

c. Transfers without prior approval from the Servicer or VA. Servicers must notify VA (outside the VALERI system) within 60 days after learning of a transfer that did not receive prior approval by the servicer or VA. The notice must advise VA whether the servicer intends to exercise the option to immediately refer the case to foreclosure or to give the transferor and transferee the opportunity to apply for “retroactive approval” of

the assumption. Upon learning of an unapproved transfer, the servicer may decide to demand immediate payment of the one-half of one percent VA funding fee and request a copy of the instrument of transfer to determine the liability of the purchaser.

(1) Liability assumed. The purchaser should be afforded an opportunity for retroactive approval of the transfer if:

- (a) The purchaser pays the funding fee; and
- (b) The purchaser has assumed all of the seller's obligations in the transfer deed; and
- (c) The assumption language is legally binding; and
- (d) It appears that the purchaser intends to satisfy those obligations.

(2) Liability not assumed. If prior approval of a transfer was not obtained and the title was transferred "subject to" the mortgage or deed of trust, then the purchaser usually has no liability on the loan and no liability for the funding fee. Such a purchaser may have no incentive to maintain the payments. It may still be advisable to extend the opportunity to apply for retroactive approval of the transfer, with the expectation that the purchaser will assume liability for repayment of the loan.

(3) Process for retroactive approval. If the veteran and current owner will be permitted to apply for retroactive approval, the assumption process should be completed in the same manner as if the application had been received prior to the transfer. This includes the right of appeal to VA, as described in subparagraph a(4) above, if the request is denied. Should a purchaser fail to cooperate in the retroactive approval process, a servicer has the option of accelerating the loan. When making this decision, the servicer should consider the implications of state law when delaying acceleration as compared to the prospect of accelerating a current loan that has the potential for future timely payments. Any decision must be reported to VA outside the VALERI system.

5. **Commitments prior to March 1, 1988**. Loans for which a commitment was made prior to March 1, 1988, are commonly known as freely assumable loans. Owners have the right to sell the property securing these loans under any terms; servicers may not impose a restriction, charge, or fee that would limit or nullify this right. An exception applies when the loan was made by a state, territorial, or local governmental agency and the law requires acceleration of maturity of the loan upon sale or transfer of the property to a person not eligible for assistance under the special program. VA has approved due-on-sale clauses to allow veterans to participate in these programs and take advantage of below-market interest rates and benefits. The original mortgagor remains liable on the loan unless he or she is released from personal liability. The veteran and transferee must

specifically apply for a release of liability under 38 U.S.C. 3713. Furthermore, a release of liability does not restore the original veteran's VA home loan entitlement and does not affect the guaranty on the loan. Servicers are responsible for providing the veteran seller with this information.

a. Procedures for reviewing release of liability requests. Since VA guaranteed loans dated prior to March 1, 1988, can be transferred without VA's prior approval, borrowers and transferees **may** apply for a release of liability before or after the closing of the transaction. Servicers with automatic authority must process releases of liability when the borrower and transferee specifically apply for a release. Servicers without automatic authority that are servicing loans for holders with automatic authority must advise the holders of any assumption approval requests, and the holders will be responsible for determining creditworthiness. When neither the servicer nor the holder has automatic authority, the servicer must develop the complete credit package for VA to determine the creditworthiness of the purchaser. Servicers should follow the same review procedures described in paragraph 4a for loans where the commitment was made on or after March 1, 1988. A processing charge may be assessed for reviewing a request for release of liability just as on a request for approval of ownership change on a later loan. Furthermore, when a borrower sells his or her home to transfer ownership **without** requesting a release of liability, the servicer may charge up to \$50 for amending its records to reflect a change in ownership, if the parties involved agree and it is permissible under the loan agreement.

b. Procedures for executing release of liability requests. Servicers should follow the same execution procedures described in paragraph 4b for loans where the commitment was made after March 1, 1988. **However, no funding fee may be assessed on assumptions of loans where the commitment was made prior to March 1, 1988.**

6. Divorce cases. In certain instances, a veteran may seek release from personal liability when his or her former spouse acquires the property as the outcome of divorce proceedings and the ex-spouse was jointly liable on the loan with the veteran prior to the divorce. In other cases, the veteran may be awarded the property and the ex-spouse may seek release of liability.

a. Veteran transfers home to former spouse. Servicers may process requests for release of liability from divorced veterans using the same general procedures outlined in paragraph 5. When processing a release of liability in divorce cases in which the veteran's former spouse receives the property, the servicer is authorized to charge the normal processing fee to complete the credit underwriting. **However, no funding fee may be assessed.** Prior to processing such requests, the following requirements must be met:

(1) The divorce is final and absolute, and it is determined that no appeal will be taken; and

(2) The entire estate encumbered for the VA-guaranteed loan has become vested in the name of the veteran's former spouse; and

(3) There is no knowledge of any property settlement that would make the veteran liable between the parties to pay the guaranteed loan.

b. Veteran retains home. Requests for release of liability from an ex-spouse in cases where the veteran retains the property should be referred to the appropriate VA Regional Loan Center. In such cases, the servicer may only charge a fee of \$50 for amending its records to reflect the change in ownership.

7. **Substitutions of entitlement (SOE)**. Occasionally, a veteran may allow an assumption of his or her VA-guaranteed loan with the expectation of being able to obtain another VA-guaranteed loan in the future. VA makes determinations of eligibility for new loans and handles SOE processing for veterans who have allowed assumptions of their existing VA loans. VA can usually complete the process after a servicer issues a release of liability. Questions about SOE should be directed to the VA RLC with jurisdiction over the loan.

a. Requirements for SOE. When a veteran requests approval for a transfer of ownership, he or she may request to have entitlement restored for use on another VA loan. For VA to approve such a request:

(1) The purchaser must be an eligible veteran who has sufficient entitlement to substitute for that of the original veteran; and

(2) The purchaser must certify that the property securing the loan will be occupied as his or her home; and

(3) The purchasing veteran must agree to the substitution of entitlement.

b. Processing a SOE. Whenever two veterans intend to follow the SOE process, servicers should advise the veteran purchaser to complete VA Form 26-8106, Statement of Veteran Assuming GI Loan, for transmittal to VA following completion of the ownership transfer approval process. It would be helpful if the servicer included a Certificate of Eligibility for each veteran or, if not available, VA Form 26-1880, Request for a Certificate of Eligibility. These items should accompany a copy of the credit package used to approve the transfer of ownership.

8. **Unrestricted transfers.** Certain transfers of ownership, otherwise subject to 38 U.S.C. 3714, do not require prior approval by a holder or VA. Loans may not be accelerated due to these types of transfers, a release of liability will not be processed, and no processing charge or funding fee may be assessed. However, it is permissible to charge a reasonable fee up to \$50 for changing the account records, provided that there is an agreement with the borrower and it is permissible under the loan agreement. Servicers must report unrestricted transfers to VA as authorized transfers of ownership, which will typically be handled automatically by their servicing systems. These unrestricted transfers of ownership include:

a. The creation of a lien or other encumbrance subordinate to the lender's security instrument that does not relate to a transfer of rights of occupancy in the property.

b. The creation of a purchase money security interest for household appliances.

c. A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety.

d. The granting of a leasehold interest of 3 years or less not containing an option to purchase.

e. A transfer to a relative resulting from the death of a borrower.

f. A transfer when the spouse or child of the borrower becomes a joint owner of the property with the borrower.

g. A transfer into an inter-vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

h. A transfer resulting from a decree to dissolve a marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse of the borrower becomes the sole owner of the property.

9. **Sale agreements not subject to 38 U.S.C. 3714.** VA does not consider a sale on an installment contract, contract for deed, or similar arrangement in which title is not transferred from the seller to the buyer, to be a "disposition" of property. Therefore, these sales do not require prior approval from a servicer or VA. However, borrowers inquiring should be cautioned that any borrower considering a sale in this manner would remain liable for repayment of the loan under such an arrangement.

a. Account records. VA does not require a servicer to change records, even if the agreement calls for the contract purchaser to make payments directly to that servicer. The contract seller is responsible for forwarding payment coupons and other information to the contract purchaser. Depending on the circumstances of a case, servicers may agree to change the account address to read “in care of” the contract purchaser, although the contract seller must promptly advise the servicer of any change in his or her address.

b. Eventual title transfer. Sales by installment contracts typically call for transfer of title after a certain period of time. If the contract calls for title to transfer prior to payment in full of the VA loan, VA requires assumption approval according to the procedures previously discussed. Processing charges and VA funding fees will be applicable upon transfer. As one of the conditions of the contract, servicers should advise the borrower to include language stating that application for assumption approval will be made, and approval secured, prior to the completion of title transfer. The contract should then address the options of both parties if the request for assumption approval is denied. Options could include voiding the contract with forfeiture of all payments previously made, or extending the contract period to allow the purchaser to correct any credit deficiencies and apply for approval at a later date.

10. **Document retention requirements and transmittals for post-closing reviews.**

Servicers are required to retain the supporting documentation for all transfers, assumptions, and releases of liability for at least 3 years from approval or denial. Servicers must also submit the package to VA for post-closing reviews once the processing is completed. To facilitate this process, servicers must include a cover letter identifying whether the transmitted package is for a completed transfer, a request for approval by VA, or information on an appealed case. The cover letter should also identify the VA Loan Identification Number (LIN), the original veteran, and contact information for a person at the servicer (name, phone number, and e-mail). Any indication of a request for substitution of entitlement should also be noted.

11. **Questions**. Please e-mail any questions regarding this circular to William White, Supervisory Loan Specialist, at william.white1@va.gov.

12. **Rescission**. This circular is rescinded January 1, 2010.

By Direction of the Under Secretary for Benefits

Judith A. Caden, Director
Loan Guaranty Service

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