## Appendix B. Background for Liability Issues

## Overview

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| In this Chapter | This chapter contains the following topics. |

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#### 1. Loan Topics

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| Change Date | January 25, 2016   * This is a new section. |

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| a. Loan Type “2” | * VA-guaranteed loans made *prior* to January 1, 1990. * All VA-guaranteed manufactured home loans that are not permanently affixed. |

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| b. Loan Type “6” | VA-guaranteed loans made *on or after* January 1, 1990, known as Guaranty and Indemnity Fund (GIF) loans |

### 2. Date of Loan

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| a. VA-G**uaranteed Loans Made Prior to March 1, 1988** | Per [38 U.S.C. 3713 (a) and (b)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+943+7++%2838%20USC%203713%20%28a%29%20and%20%28b%29%29%20%20%20%20%20%20%20%20%20%20), these loans do not require VA or servicer approval before the property is transferred. Veterans may sell their home and allow the purchaser to “take over” the payments on the loan even if the purchaser does not specifically assume the mortgage obligation or agree to indemnify VA to the extent of any claim paid under the guaranty. The original Veteran remains liable to VA for any loss to the government caused by the transferee’s default and subsequent termination of the loan. These loans are commonly known as non-qualifying loans. |

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| b. VA-Guaranteed Loans Made on or After March 1, 1988 | Per [38 U.S.C. 3714](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+944+11++%2838%20USC%203714%29%20%20%20%20%20%20%20%20%20%20), these loans are not freely assumable. All assumptions must be approved in advance. In most cases the prior approval will release the selling Veteran from further liability on the loan. The exception to this rule occurs when the approval is granted only because the seller is unable to make further payments and the assumption is intended to prevent foreclosure. |

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| c. VA-Guaranteed Loans Closed on or After January 1, 1990, With the Exception of Manufactured Home Loans | Per [38 U.S.C. 3703(e)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+932+6++%2838%20USC%203703%28e%29%29%20%20%20%20%20%20%20%20%20%20), these loans are known as Guaranty and Indemnity Fund (GIF) loans. GIF loans generally eliminate the Veteran’s liability to repay VA for claims paid under guaranty. Original Veteran-borrowers remain liable only in cases involving fraud, misrepresentation, or bad faith. In these cases, the burden of proof is on VA. Transferee owners remain liable, unless granted pre-foreclosure debt waivers. |

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## 3. Types of Liability Reviews

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| a. Pre-Foreclosure Debt Waivers | This is an early decision on the collectability of a debt to the Government. The decision to release all or a portion of the estimated debt should depend on the feasibility of collecting the indebtedness and the borrower’s cooperation with VA servicing efforts. Pre-foreclosure debt waivers can be granted to the original Veteran borrowers and all transferee borrowers. These should encompass the majority of terminated loans and compromise sales. |

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| b. Released Under [38 U.S.C. 3713(a)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+943+7++%2838%20USC%203713%20%28a%29%20and%20%28b%29%29%20%20%20%20%20%20%20%20%20%20) | VA loans made prior to March 1, 1988, in which a release of liability was approved by VA prior to or after the transfer, but prior to loan termination. The original Veteran is not liable to VA for any loss incurred as a result of the termination or compromise sale. |

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| c. Released under [38 U.S.C. 3713(b)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+943+7++%2838%20USC%203713%20%28a%29%20and%20%28b%29%29%20%20%20%20%20%20%20%20%20%20) | VA loans made prior to March 1, 1988, in which the original Veteran did not obtain a release of liability from VA prior to loan termination. This is known as retroactive release of liability review and is conducted after the loan termination if VA suffered a loss. If pre-foreclosure debt waivers are granted, this procedure is not necessary. |

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| d. Released under [38 U.S.C. 3714](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+944+11++%2838%20USC%203714%29%20%20%20%20%20%20%20%20%20%20) | For release of liability completed on VA loans made on or after March 1, 1988, these loans are not freely assumable and all assumptions must be approved prior to transfer. |

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| e. Guaranty and Indemnity Fund Loans | If there is no finding of fraud, misrepresentation, or bad faith, the original Veteran is released from liability for the loss incurred, but entitlement cannot be used again unless VA loss is repaid. |

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| f. Bankruptcy Cases | VA loans where the obligors were released as a result of bankruptcy. |

## 4. General Guidelines

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| **a. Type “2” Loan Closed *Prior* to March 1,**  **1988 - Obligor at Termination / Compromise Sale** | |  |  | | --- | --- | | Original Veteran | The original Veteran remains liable to VA for any loss incurred; therefore, an early decision on the collectability of a debt to the Government should have been made. A pre-foreclosure debt waiver decision to release all or a portion of the estimated debt should depend on the feasibility of collecting the indebtedness and the borrower’s cooperation with VA servicing efforts. | | Transferee Owner | * If a release of liability was approved by VA prior to or after the transfer, the original Veteran is not liable to VA for any loss incurred as a result of the termination or compromise sale. The transferee borrower is liable to VA. An early decision on the collectability of a debt to the Government should have been made. A pre-foreclosure debt waiverdecision to release all or a portion of the estimated debt should depend on the feasibility of collecting the indebtedness and the borrower’s cooperation with VA servicing efforts. * If a release of liability was not approved by VA prior to or after the transfer, the original Veteran remains liable to VA for any loss incurred. Assuming that default and subsequent termination was beyond the original Veteran’s control, a pre-foreclosure waiver should be granted. In addition, an early decision of the transferee’s prospects for repaying the indebtedness to the Government should have been made. Again, a pre-foreclosure debt waiverdecision to release all or a portion of the estimated debt should depend on the feasibility of collecting the indebtedness and the transferee’s cooperation with VA servicing efforts. | |  |  | |

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## 4. General Guidelines, Continued

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| b. Type “6” Loan Closed *on or After* January 1, 1990, GIF Loans - Obligor at Termination / Compromise Sale | |  |  |  | | --- | --- | --- | | **Original Veteran-Borrower** | If there is no finding of fraud, misrepresentation, or bad faith, the original Veteran is released from liability for the loss incurred.  If fraud, misrepresentation, or bad faith is found by VA, the VA Loan Electronic Reporting Interface (VALERI) notes section must explain the nature of VA’s findings. |  | | **Transferee Owner** | These loans are not freely assumable. Therefore, a release of liability for the original Veteran should have been approved by the servicer or VA prior to the transfer. If the Veteran did not seek prior approval, he or she has demonstrated bad faith and will be liable. The transferee borrower is liable to VA. An early decision on the collectability of a debt to the Government should have been made. A pre-foreclosure debt waiver decision to release all or a portion of the estimated debt should depend on the feasibility of collecting the indebtedness and the transferee’s cooperation with VA servicing efforts. |  | |

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