## Chapter 8. Indemnification Agreement

#### Overview

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| In this Chapter | This chapter contains the following topics.   |  |  |  | | --- | --- | --- | | Topic | Topic Name | See  Page | | 1 | Objective of Indemnification Agreements | 8-2 | | 2 | Egregious Loans | 8-3 | | 3 | Egregious Loans Processing Procedures | 8-4 | |

#### 1. Objective of Indemnification Agreements

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| Change Date | January 25, 2016, Change 1   * This entire section has been updated. |

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| a. Important Information About the Indemnification Agreement | When a loan is determined to be egregious, an Indemnification Agreement (IA) is executed by the lender and VA, whereby VA can recover all losses from the original lender. Should an egregious loan go into default within 5 years from the date of guaranty, and the property securing the loan is subsequently foreclosed, sold as a compromised sale, or obtained by voluntary conveyance (deed in lieu), VA can reject a lender’s claim request. [Paragraphs (2) and (3) of 38 U.S.C. 3710(g)](http://www.gpo.gov/fdsys/pkg/USCODE-2011-title38/pdf/USCODE-2011-title38-partIII-chap37-subchapII-sec3710.pdf), require VA to establish credit-underwriting standards by regulation. These standards contained in [38 C.F.R. § 36.4340, paragraph (4) (B),](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=52&SID=33fd9fc8a07031dd9b4b32248fdb2254&h=L&n=38y2.0.1.1.10&r=PART&ty=HTML#se38.2.36_14340) of section 3710(g) requires the lender to certify compliance with the underwriting standards. [Paragraph (4) (B)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=52&SID=33fd9fc8a07031dd9b4b32248fdb2254&h=L&n=38y2.0.1.1.10&r=PART&ty=HTML#se38.2.36_14340) states that any lender who knowingly and willfully makes a false certification shall be liable for civil penalty equal to twice the Government’s loss on the loan or another appropriate amount not to exceed $10,000, whichever is greater. While this is always an option, the IA process is the preferred method to address issues of this nature. |

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#### 2. Egregious Loans

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| a. Egregious Loans | Loans that clearly indicate that the lender failed to apply proper due diligence and demonstrated flagrant disregard for VA credit standards are considered to be egregious. Potentially egregious loans are referred to Loan Guaranty Service Central Office (LGYCO) Quality Assurance (QA) by the Regional Loan Center (RLC). These can also be forwarded by the Monitoring Unit (MU) after their preliminary loan review. LGYCO Loan Policy conducts a secondary review and renders a final decision. Loan Policy sends two unexecuted IAs to the RLC to forward to the lender. On lender audited cases, MU will send the IA included in their final report to the lender. All IAs with lender signatures are either received in or routed to LGYCO. |

3. Egregious Loans Processing Procedures

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| a. Create Folder and Letters on RLC Cases | Since RLC cases do not have a report or audit number, follow the steps below to create a folder and letters on RLC cases:   * Create a folder and assign a report number. * Prepare the letter from the LGY Director to the Regional Office (RO) Director on RLC cases. |

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| b. Create Letters on MU Cases | QA uses the same audit report numbers for MU cases.   * Prepare the letter from the LGY Director to the lender and also to the RO director. |

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| c. Tracking IA’s | Follow the steps below to manually track IAs:   * Enter the loan origination, loan servicing, and IA data in the appropriate tracking spreadsheets. * Enter the same data in the current system of record (currently webLGY). Indemnification information automatically carries over to the LGY loan servicing system (currently VA Loan Electronic Reporting Interface) indicating that the loan is indemnified. |

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| d. Concurrence Tracking | The LGY Director must review the case and execute the IAs.   * Submit the folder with the required letter(s) and the lender signed IAs for the LGY Director’s concurrence. * Document the appropriate tracking logs. |

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| e. Maintenance | Follow the steps below to maintain tracking of IAs:   * After concurrence is complete, send the letter and one fully executed IA to the lender. * Upload the second executed IA in the current LGY system of record (currently webLGY). |