

## **Secondary Borrowing Requirements on Assumption Transactions**

1. Purpose. The Department of Veterans Affairs (VA) is publishing this Circular to help holders<sup>1</sup> process assumption transactions that also involve secondary borrowing.

2. Background. Any VA-guaranteed home loan (other than for repairs, alterations, or improvements) must be secured by a first lien on the collateral.<sup>2</sup> Sometimes an assumer of a VA-guaranteed loan will also need to obtain another lien to help finance the purchase. This is called secondary borrowing and is generally not prohibited by VA. But if the secondary loan is not processed correctly, it can jeopardize the VA-guaranteed home loan's first lien position. VA's Lenders Handbook M26-7 does not specifically address how to process assumption transactions where the assumer is obtaining secondary borrowing simultaneously with the assumption of a VA-guaranteed home loan.

3. Secondary Borrowing on Assumption Transactions. Although VA does not prohibit an assumer (regardless of whether a Veteran) of a VA-guaranteed loan from obtaining a junior lien in conjunction with an assumption, the holder processing the assumption is responsible for ensuring that all statutory and regulatory requirements are met, including those related to retaining the priority of the VA-guaranteed loan. When processing the assumption of a VA-guaranteed loan, holders are expected to take the following steps to protect the VA-guaranteed loan's priority:

a. Lien position: the holder must take steps necessary to ensure the secondary borrowing is subordinate to the VA-guaranteed loan (that is, the secondary borrowing must be in a junior lien position relative to the VA-guaranteed loan). This might include, for example, obtaining a subordination agreement.

b. Documentation of the secondary borrowing: the holder of the VA-guaranteed loan is to document in the assumption loan file the name of the secondary lender, the amount of the secondary borrowing, and the repayment terms of the secondary borrowing agreed to by the assumer .

c. Allowable purposes: proceeds of the secondary borrowing may be used to pay for allowable closing costs<sup>3</sup> needed to close the assumption or for amounts due the seller at closing as part of the assumption transaction.

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<sup>1</sup> The term "holder" is defined in 38 C.F.R. § 36.4301 as "the lender or any subsequent assignee or transferee of the guaranteed obligation or the authorized servicing agent (also referred to as 'the servicer') of the lender or of the assignee or transferee."

<sup>2</sup> See 38 U.S.C. § 3703(d)(3); 38 C.F.R. § 36.4355.

<sup>3</sup> See 38 U.S.C. § 3703(c)(1); 38 C.F.R. § 36.4313.

d. Cash back: assumer is not to receive cash back from the secondary borrowing.

e. Underwriting: the recurring monthly payment for any secondary borrowing must be considered when evaluating the assumer's debts on VA Form 26-6393, *Loan Analysis*, and in automated underwriting feedback (as applicable).

f. Interest rate: the interest rate may exceed the rate on the VA-guaranteed loan and may be negotiated between the assumer and the lender of the secondary borrowing.

g. Assumability: If the secondary borrowing is not assumable, the holder of the VA-guaranteed loan should counsel the assumer that this may restrict their ability to sell the property to another creditworthy assumer through an assumption in the future.

h. Grace period: the secondary borrowing is to include a reasonable grace period before a late charge is assessed and, in the event of default, before the secondary lender may commence foreclosure proceedings.

4. Questions. For questions or comments please submit a request through VA's ServiceNow customer portal at [https://yourit.va.gov/csm?id=rlc\\_pathfinder](https://yourit.va.gov/csm?id=rlc_pathfinder), or contact VA by phone at 1-877-827-3702, between the hours of 8:00 AM and 6:00 PM Eastern time.

5. Effective Date. This policy is effective immediately.

6. 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 2900-0523, 2900-0515, 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.

7. Rescission: This Circular is valid until rescinded.

By Direction of the Under Secretary for Benefits

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