

CHAPTER 13. INDEMNIFIED LOAN AGREEMENTS

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13.01 INDEMNIFIED LOAN AGREEMENTS

a. An indemnification agreement (IA) may be established when it is determined egregious underwriting was conducted by the originating lender. Audit reviews are performed by VA Central Office (VACO) Oversight or the Loan Production (LP) section of jurisdiction when completing a full review. The IA is prepared by VACO Oversight for specified loans or subsequent VA interest rate reduction refinancing loans that go into default, as defined in 38 C.F.R. §36.4301, within 5 years of the date of guaranty to establish reimbursement for any loss incurred.

b. Any servicer who accepts transfer of servicing rights on the loan will be allowed to transfer property and convey title to VA and receive a claim payment. VA will pursue the originating lender for reimbursement of losses incurred as a result of the termination action. If the servicer of the loan is the originating lender, VA will not accept custody or pay a claim under guaranty.

c. If a loan modification is executed on an indemnified loan, servicers are still eligible for an incentive payment for completing the loan modification.

13.02 INDEMNIFICATION REQUIREMENTS

a. Indemnification shall be made in accordance with the following terms:

1. Where, as of the date of signing of an IA, a claim under guaranty has not been submitted to VA, the property will not be conveyed to VA and no claim under guaranty shall be submitted by the original servicer. All VA requirements for servicing and payment of loan fees will be observed in respect to such mortgage. In the event of a claim under guaranty from a transferee of a mortgage covered by this agreement, indemnification will be in accordance with paragraph (2) or (3) whichever applies.

2. Where a VA guaranty claim is pending, or has been paid in full, and the property is owned by VA, reconveyance of the property will be accepted by the servicer and indemnification will be made to VA for its investment. VA's investment includes, but is not limited to: the amount VA paid to the servicer when the servicer conveyed the property to VA; the full amount of the guaranty claim; all taxes and assessments; all maintenance and operating expenses, including costs of rehabilitation and preservation of the property; and all sales expenses, where applicable. In the event VA does not reconvey the property to the servicer, VA's loss will be calculated in accordance with paragraph (3).

3. Where a VA guaranty claim has been paid in full and the property has been sold by VA to a third party, the amount of indemnification is VA's investment as defined in paragraph (2), minus the sales price of the property.

4. In the event that VA determines that reimbursement is due from the servicer

under the terms of the agreement, VA will submit a request to the servicer via certified mail. The servicer must remit funds to VA within 30 days from the date of the letter. If full payment is not received timely, the servicer will also be liable for interest on any unpaid balance from the date of the letter until the date the payment is received by VA. The interest rate is determined by the Secretary of the Treasury pursuant to section 11 of the Debt Collection Act of 1982 (31 U.S.C. §3717) representing the Current Value of Funds Rate used in assessing interest on debts due to the United States.

5. Any material breach of the terms and conditions of the agreement shall constitute independent grounds for imposing administrative sanctions by VACO Oversight against the servicer pursuant to 38 C.F.R., Parts 2 and 36.

6. VACO Oversight notifies the VA-assigned technician, or the Loan Production team where the property is located, of the indemnified loan and forwards a copy of the indemnification agreement. The VA-assigned technician must upload the agreement into the VA Loan Electronic Reporting Interface and annotate the case notes accordingly.