

VA Financial Policies and Procedures
Home Loan Program - COWC

CHAPTER 3

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0301 OVERVIEW

This chapter provides guidance on the implementation of the financial policies and procedures for the waiver of a Veteran's or spouse's indebtedness that resulted from (a) payment of a claim under the guaranty or insurance of loans, (b) liquidation of direct loans, (c) liquidation of loans acquired under [38 C.F.R. 36.4318](#) or (d) liquidation of vendee accounts. The phrase "Veteran or spouse" includes a Veteran-borrower, Veteran-transferee, Veteran-purchaser on a vendee account and a former or surviving spouse of a Veteran.

Home Loan Program waiver actions will be processed by the St. Paul consolidated Committee on Waivers and Compromises (Committee). Home Loan Program compromise actions will be processed by the Debt Management Center (DMC).

A Veteran, including a spouse whose name is on the loan, who obtained, acquired or assumed a loan made under [38 U.S.C. Chapter 37](#), becomes indebted to the United States when there is a default and foreclosure (loss of property) on the obligation.

0302 POLICIES

030201 VA will only waive an indebtedness of a Veteran or the Veteran's spouse when the following factors are determined to exist:

- A. Following default, there was a loss of the property which constituted the security for the loan guaranteed, insured or made under [38 U.S.C. Chapter 37](#).
- B. There is no indication of fraud, misrepresentation or bad faith on the part of the person or persons having an interest in obtaining the waiver; and
- C. Collection of such indebtedness would be against equity and good conscience.

0303 AUTHORITY AND REFERENCES

030301 [38 C.F.R. 1.964\(a\)](#), Waiver; Loan Guaranty

030302 [38 C.F.R. 36.4318](#), Refunding of Loans in Default

030303 [38 U.S.C. Chapter 37](#), Housing and Small Business Loans

030304 [38 U.S.C. 5302\(b\)](#), Waiver of Recovery of Claims by the United States

0304 ROLES AND RESPONSIBILITIES

030401 The Assistant Secretary for Management/Chief Financial Officer (CFO), as required by the Chief Financial Officers Act of 1990 and 38 U.S.C. 309, oversees all financial management activities relating to the Department's programs and operations. Specific responsibilities include the direction, management and provision of policy guidance and oversight of VA's financial management personnel, activities and operations. The CFO establishes financial policy, systems and operating procedures for all VA financial entities and provides guidance on all aspects of financial management.

030402 Under Secretaries, Assistant Secretaries, Chief Financial Officers, Fiscal Officers, Chief Accountants and other key officials are responsible for ensuring compliance with the policies and procedures set forth in this chapter.

030403 Committees on Waivers and Compromises are authorized to consider a request for waiver of collection of any indebtedness described in paragraph 0301.

0305 PROCEDURES

030501 Veterans who voluntarily surrender a deed of title in lieu of foreclosure in connection with a defaulted VA guaranteed loan and who also sign a promissory note to VA for the difference between the outstanding debt and the value of the security at the time the original deed was written, do not, by virtue of signing such a note, surrender the right to seek a waiver of the debt.

030502 Exclusions from Waiver

A. In addition to the exclusions stated in chapter 2, paragraph 020506, waivers will not be considered in the following instances:

Redemption Cases:

1. If the property is redeemed by the Veteran or spouse or their assignee, or
2. If the Veteran or spouse is the successful bidder at the foreclosure sale.

B. Installment Payments, Security Not Liquidated. This includes current or past-due installments on direct loans, acquired loans or vendee accounts when the security has not been liquidated.

030503 Deferred Action

In states where there is a right of redemption, a request for waiver cannot be granted until the expiration of the redemption period. The decision will state the expiration date of the right of redemption. If collection of the debt would be waived except for the bar established by the redemption period, a diary will be maintained for the day after expiration of the redemption period. If there is no basis for waiver, a decision denying the request will be made, so that normal collection action can be resumed.

030504 Standard

A. A Veteran, including a spouse if obligated, who obtained, acquired or assumed a loan made under 38 U.S.C. Chapter 37, becomes indebted to the United States when there is a default and foreclosure (loss of property) on the obligation that causes the Department to suffer a loss. There is a difference, however, between a Veteran who neglected or disregarded his or her obligations unduly and a Veteran whose indebtedness arose despite his or her reasonable and prudent acts. In the first instance, the default is, in a sense, voluntary, primarily of the Veteran's own making and the direct result of his or her conduct. In the latter, although legally liable, the Veteran demonstrated good faith, and in equity and good conscience, possibly may not be held accountable for the resultant debt. The "equity and good conscience" concept in the present law affords the necessary latitude to achieve fairness between the Government and the obligor. Consequently, regardless of the cause of the default, the fact remains that the indebtedness of the Veteran or spouse comes into being and, under the law, steps must be taken to collect it. It is the Committee's responsibility to determine whether collection will be waived. The benefit of any waiver granted in favor of the Veteran will accrue to the spouse, unless the obligation of the spouse is specifically excepted. However, the waiver of the indebtedness of the Veteran's spouse will not accrue to the benefit of the Veteran unless specifically so determined by the Committee.

B. Loss of Property. Regarding home loans, there will be no "loss of the property" in those cases where the Veteran or spouse has a legal or equitable interest in the property and continues to occupy the property as a home. "Loss of the property" generally will be deemed to exist when the Veteran or spouse has lost all right, title and interest in the property through foreclosure, voluntary deed (e.g., deed in lieu of foreclosure) or other liquidation of the security. It is the responsibility of the Loan Guarantee Officer (LGO) to resolve the issue of the validity or the amount of the debt, or both, if raised by the Veteran.

1. The LGO is responsible for preparing an accounting or a request for any legal opinion, as needed, and making the initial decision on the validity and correct amount of the charged indebtedness. If waiver has not been requested, the notice to the Veteran of the LGO's decision will include appellate rights. The LGO will prepare any required Statement of the Case (SOC) or Supplemental Statement of the Case (SSOC). The

LGO will review the file to determine whether (a) notice was provided or attempted or (b) the foreclosure proceedings complied with applicable state law.

2. When waiver of recovery of the debt is also requested by the Veteran, development and adjudication of the issues must be sequential, with validity and amount of the debt decided first by the LGO, followed by immediate referral to the Committee for decision, on waiver of recovery. In waiver cases referred to the LGO, VA Form 4-824a, or the local automated system, will be annotated to indicate that the case has been disposed of by referral to the LGO. If the LGO refers the case back to the finance activity, with a written report that the debt is valid and/or in the correct amount, the decision on waiver of recovery will then be entered. If the Veteran disagrees with both the LGO's and Committee's decisions, the required SOC or SSOC will contain both issues.

C. A spouse, former spouse or surviving spouse of a Veteran can request a waiver of collection of a debt in connection with a loan that is either guaranteed, insured, made to or acquired by the Veteran under 38 U.S.C. Chapter 37 when such spouse was a co-obligor with the Veteran who is indebted to VA. A spouse can request a waiver in his or her own right, even if the Veteran has already requested a waiver and been denied. The income of both co-obligors must be considered in determining whether collection of the debt will create a financial hardship, except where the co-obligors are divorced or separated and maintaining separate residences. However, if the party requesting a waiver has remarried, then his or her current spouse's income must be considered.

030505 The Committee has no authority to consider (a) questions or appeals by the debtor concerning the creation or validity of the debt that is the subject of the waiver request or (b) transferee cases that involve questions of retroactive release of liability. The U.S. Court of Veterans Appeals (the Court), in the case of *Schaper v. Derwinski* (1 Vet. 430), stated that when the validity of a debt is challenged, VA is required to make a determination on its validity and that determination is reviewable by the Court. The making of this determination on the validity of a home loan guaranty debt is implicit in making a determination on a waiver request, under the standard of whether collection of the debt would be against equity and good conscience. Such matters (e.g., the debtor contends that he/she never received notice of default and foreclosure proceedings or that the foreclosure proceedings did not comply with applicable state law) will be referred immediately, by either the Committee administrative control function or the chairperson, to the LGO in or at the responsible Regional office. It is the LGO's responsibility to resolve the issue. If the issue cannot be resolved, then the Veteran is entitled to pursue the issue of the validity of the debt before the Board of Veterans Appeals (BVA) and the Court. The LGO is responsible for the preparation of any SOC and SSOC and will review the file to determine if notice has been provided or attempted or if the foreclosure proceedings complied with applicable state law. The LGO will then forward a written report of the findings to the finance activity. In waiver cases referred to the LGO, VA Form 4-8424a or the local automated system will be annotated in accordance with chapter 6, paragraph 060501.A.(5), to indicate that the case has been disposed of by referral to the LGO. If the LGO refers the case back to the finance

activity, with a written report that VA made reasonable efforts to provide notice, the case will be treated as a new waiver request.

In a precedent opinion titled “Consideration of Waiver and Challenge to Validity of Debt” (VAOPGCPREC 6-98, April 24, 1998), the General Counsel stated that when a Veteran both challenges the validity of the debt and requests waiver, the regional office must fully review the file and any material the Veteran submits and make appropriate written findings with regard to the validity of the debt. If the regional office concludes that the debt is validly established, then the waiver request will be referred to the Committee. If the debt is not fully waived by the Committee, the Veteran must be advised of the decisions on the validity of the debt and the waiver request and informed of his or her right to appeal. If the Veteran files a Notice of Disagreement, the subsequent SOC must fully discuss both the validity of the debt and the reasons for not waiving it. If the Veteran appeals both issues, BVA will fully consider and decide both questions.

0306 DEFINITIONS

030601 Administrative Control Function. The finance and fiscal operations, as well as any other activity designated with administrative control, at the local station Committee on Waivers and Compromises.

030602 Chairperson. The individual who manages the work of the Committee.

030603 Committee. The particular decision-making body, which may be composed of a one-person panel (38 C.F.R. 1.955(d)) or a two- to three-person panel. The Committee may be part of a centralized system or a regional office Committee system.

030604 Compromise. Acceptance of less than the full amount of a debt in settlement and full satisfaction of the debt.

030605 Debt. A claim for money made by or owed to the Government, arising out of activities of VA. It includes overpayments ([38 C.F.R. 1.962](#)).

030606 Member. The individual who participates on the panel to review waiver requests and compromise offers. The individual has special competence and familiarity with one or more of the debt claim areas (i.e., compensation, pension, education, insurance, loan guaranty, etc.)

030607 Reporting Member. The individual who is designated by the chairperson to be the presiding officer over a panel.

030608 Waiver. VA’s decision to give up the right to collect a valid debt, including interest and other late payment charges, which falls under the applicable statutes (38 U.S.C. 5302 and 5584) and regulations.

0307 RESCISSIONS

This chapter rescinds MP-4, Part I, Chapter 8, Section C, Home Loan Program.

0308 QUESTIONS

Questions concerning these financial policies and procedures should be directed as shown below:

VBA
All Others

VAVBAWAS/CO/FINREP (Outlook)
OFP Accounting Policy (Outlook)