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B-174343 November 17, 1971

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The Honorable Ted Stevens United States Senate

Dear Senator Stevens:

Reference is made to your letter of October 7, 1971, concerning the claim of United States against Robert C. Wright, of Sitke, Alaska, which has been referred to this Office for collection. The debt in question resulted from a subsequent purchaser's default on home loan No. LH 397156 CA SF, which had been gauranteed for Mr. Wright by the Vetrans Administration (VA) under title III of the Serviceman's Readjustment Act of 1944, as amended, 38 U.S.C. 1803.

Your inquiry notes that (quoting the VA):

"'*** It is the position of the Veterans Administration that in accordance with the laws of the States, the original mortgagor remains liable on the mortgage indebtedness unless he is released from personal liability, either specifically or by operation of law, even though he may no longer own the property.***'"

You request our advice, in view of the above-quoted statement, as to the applicability to Mr. Wright of section 580b of the California Code of Civil Procedure, the California anti-deficiency legislation, which bars deficiency judgments against defaulting purchasers after a foreclosure sale of property under a mortagage or deed of trust.

The Supreme Court has clearly enunciated the principles which are to govern in VA home loan guaranty cases. In United States v Shimer 367 U.S. 374, the court stated that the Serviceman's Readjustment Act of 1944, as amended, affords the United States an independent right of indemnity from the veteran in such cases; that said act authorizes the Administrator of Veterans' Affairs to displace State law in the issuance of necessary regulations; and that the regulations issued by the Administrator pursuant to said law provide "the whole and exclusive source of protection of the interests of the Veterans' Administration as a guarantor" in cases of this nature. Further, these principles have been expressly applied in California home loan guaranty cases, the courts having made clear that any action brought in California by the United States against a mortgagor veteran--for the amount paid the mortgages by the VA following a default after the veteran has disposed of the property--is an action based on the veteran's independent obligation to indemnify the United States for the amount paid the mortgages under the guaranty, rather thatn one for a deficiency judgment. In United States v. Rossil 342 F. 2d 505 (1965), involving facts identical to that of Mr. Wright, the United States Court of Appeals for the

Ninth Circuit reversed the District Court's conclusion that the action brought by the VA was one for a deficiency judgment to be governed by the California law, and held "[the veteran] was under an independent obligation to indemnify the United States for the amount paid under the guaranty, and the terms of that guaranty are governed by Federal law." See also McKnight v. United States, 259 F. 540 (1958), (Basis of the Government's suit against the veteran was not for a deficiency judgment to be governed by section 580b of the California Code, but rather was his independent contract ofindemity which is governed by Federal law and cannot be impaired by the State statute).

In view of the above, it seems clear that section 580b of the California Code of Civil procedure is inapplicable to the instant case, and would have no effect in an action brought by the United States against Mr. Wright on the above-described indemnity theory for the amount paid by the VA to the mortgages after foreclosure under the terms of the loan transaction and applicable Federal law and VA regulations.

We trust the above is responsive to your inquiry and will be of assistance to you.

Sincerely yours,

R. F. Keller Deputy Comptroller General of the United States