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April 13, 2017

To: Clients and Friends

From: David F. Dulock

Subject: VA Advanced Notice of Proposed Rulemaking on Revising Allowable Charges and Fees Schedule in 38 CFR 36.4313(d)

In the April 13, 2017, issue of the *Federal Register* (82 FR 17792, [click here](#)) the Department of Veterans Affairs (VA) published an advanced notice of proposed rulemaking (ANPR) notifying the public that the VA is currently reviewing its regulations governing the allowable expenses that a veteran may pay or be charged in connection with obtaining a VA-guaranteed home loan, with a request for public comment, including the following questions republished in this memorandum.

You may submit comments and answers to the questions, identified by “RIN 2900–AP62—Loan Guaranty: Revisions to Allowable Charges and Fees Assessed Incident to VA-Guaranteed Home Loans”, by any of the following methods:

- *Fax:* (202) 273–9026.
- *Electronic:* /www.regulations.gov. Follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420.

Submitted comments and answers to the questions must be received by the VA on or before June 12, 2017.

In addition to seeking comment on how the VA should approach its review and revision of allowable charges and fees, the ANPR encourages commenters to discuss any issue related to improving these regulations and invites responses to the following questions:

1. What are ways that VA can protect veterans from incurring excessive closing costs, without being overly restrictive?
2. Under the current rule, VA distinguishes between a “fee” and a “charge” but does not define the terms. VA invites comments as to whether the public finds the distinction meaningful. Should VA eliminate the distinction? If not, how should VA define the terms?
3. Does the term “origination fee” accurately reflect what a borrower would pay to a lender in order to originate a loan? What do veterans and lenders view as the purpose of an origination fee?
4. How should VA identify which closing costs are acceptable for the veteran to pay, which are acceptable for another party but not a veteran to pay, and which, if any, should be prohibited?
5. To what extent, if at all, should VA limit third-party charges or fees to the actual costs of the service provided? Alternatively, should VA permit borrowers, sellers, and lenders to negotiate their own bargains?

6. To what extent, if at all, should local real estate customs affect (i) the types and amounts of closing costs that VA allows and (ii) which party is responsible for paying such costs?

7. In a non-VA-guaranteed loan transaction, how are attorneys' fees usually paid when the attorney is not representing the veteran? Should VA allow a borrower to pay an attorney fee if the attorney does not have a fiduciary duty to the borrower?

8. Should VA allow lenders to charge veterans differently depending upon the type of transaction (*e.g.*, purchase, cash-out refinance, streamlined refinance, etc.)? If so, what are the justifications for the different pricing?

9. What other lending programs, whether public or private, might VA consider as models in considering amendments to VA's charges and fees rule? What characteristics make these programs useful analogs to the VA-guaranteed loan program?

10. What other information should VA consider in determining the types of expenses a veteran should be expected to pay to close a VA-guaranteed loan?

11. What charges or fees should VA allow veterans to pay in order to close a construction or rehabilitation/renovation loan?

To assist you in answering the above questions, you may click on the following hyperlink to view the current fees and charges allowable under 38 CFR 36.4313(d) – [click here](#).

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