



April 12, 2016

To: Clients and Friends

From: Peter B. Idziak

Subject: Department of Veterans Affairs Issues Policy Clarification Regarding VA's Non-Allowable Fee Itemization Requirements for Closing Disclosure

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On April 11, 2016, the Department of Veterans Affairs ("VA") issued a circular explaining VA's fee itemization requirements regarding the Integrated Closing Disclosure ("CD") for consumer transactions governed by the TILA-RESPA Integrated Disclosure Rule (Circular 26-16-11, [click here](#)). The circular requires that, for so-called "non-allowable" fees and charges under 36.4313(d)(2), any credits used to offset such fees must be separately itemized on the CD in the Seller Paid or Paid By Others column.

The circular also states that the VA will require the final CD to be signed by the consumer. The requirements set out in the circular will apply to all VA-guaranteed home loans originated on, or after, June 1, 2016.

Pursuant to 38 CFR 36.4313(d)(1), a lender may only charge certain itemized "allowable" fees and charges to Veterans. The fees are, for the most part, third party fees, and include: (i) appraisal fees, (ii) recording fees, (iii) credit report, (iv) taxes and assessments, (v) hazard insurance, (vi) surveys, (vii) title examinations and insurance, (viii) flood zone determinations and insurance, and (ix) other items authorized by VA per local variances.

In addition, 38 CFR 36.4313(d)(2) permits a lender to charge the Veteran a flat charge, not to exceed one percent of the loan amount, if that charge is in lieu of all other charges relating to costs of origination not set out in 36.4313(d)(1). These fees are generally charged by the lender, but may be third party fees. A list of common non-allowable fees is found in the VA Lender's Handbook, Pamphlet 26-7, chapter 8, section 2.d ([click here](#)). These fees may be charged to the consumer on VA loans, provided they are included in the one percent lenders are permitted to charge the Veteran.

In order for VA to determine that the lender has complied with the fee and charge limitations of 36.4313, lenders must insure that any lender or seller credits that are intended to offset or reduce the non-allowable fees under 36.4313(d)(2) are disclosed as itemized credits in the Seller-Paid or Paid By Others column on the same line as the charge. VA has provided an example showing how such itemization must be disclosed on the CD (see Exhibit B, [click here](#)). We note that the general lender credit which exceeds the specific charges should be disclosed as a negative number in the land column of Section J, pursuant to 1026.38(h)(3)).

However, any lender or seller credit disclosed as a "lump sum" credit under Section J of the CD cannot be used to offset or reduce non-allowable fees. VA has also provided an example showing this incorrect form of disclosure (see Exhibit A, [click here](#)).

We advise you to read the full circular for more information.

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