

Allowable Borrower Fees and Charges (Broker Guide)

VA Allowable Borrower Fees and Charges (Broker Guide)

Mortgage Lending Division

Version 1.5 –07/24/17



DOCUMENT OVERVIEW

Purpose This document provides guidance on the allowable borrower fees and charges for U.S. Department of Veterans Affairs (VA) loans originated by CMS. **This document is for informational purposes only and is not to be used as compliance advice. You are responsible for compliance with and adherence to all applicable VA requirements and guidelines.**

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Revision History

Date	Version	Description of Change
07/24/17	1.5	Revised Cash Out Refinancing Loans section.
04/10/17	1.4	Reviewed by the VP, Credit; the EVP, Strategy & Initiatives; and the Director, Legal & Compliance Counsel. No changes required.
03/24/16	1.3	Reviewed by SVP, Lending Strategies & Initiatives and the VP, Credit, MLD. No Changes Required.
09/23/14	1.2	In the Lender DOES NOT CHARGE the 1% Origination Fee table on page 6, deleted Processing Fee and Mortgage Broker Fee from fees Veteran can pay (left side of table).
09/18/14	1.1	In the Allowable Fees and Charges section, updated the following: <ul style="list-style-type: none"> • Added the following sub-sections: <ul style="list-style-type: none"> ○ Allowable Fees ○ VA Standard and High Balance 1% Calculation ○ VA IRRRL 1% Calculation • Modified the 1% Flat Fee Requirements sub-section.
10/21/13	1.0	New document.

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OVERVIEW

Purpose The VA home loan program involves a veteran's benefit. VA policy has evolved around the objective of helping the veteran to use his/her home loan benefit. Therefore, VA regulations limit fees that the veteran can pay to obtain a loan. Carrington Mortgage Services, LLC (CMS) strictly adheres to the limitations on borrower-paid fees and charges when making VA loans.

VA Funding Fee To defray the cost of administering the VA home loan program, each veteran must pay a funding fee to VA at loan closing.

Congress may periodically change the funding fee rates to reflect changes in the cost of administering the program, or to assist a certain class of veterans.

ALLOWABLE FEES AND CHARGES

VA Regulations VA regulations in 38 CFR 36.4312 provide the list of fees and charges that the veteran can pay.

Allowable Fees The following fees are always allowed regardless of the 1% origination fee being charged:

- Appraisal Fee
- Compliance Inspection – Only if required by the NOV
- Credit Report
- Recording Fees, Taxes, and Stamps
- Prorated Tax and Insurance Escrow
- Hazard Insurance
- Title Policy, Title Exam, Title Search, and Title Endorsement
- Environmental Protection Lien Endorsement
- 1% Origination Fee
- VA Funding Fee
- Discount Points
- Closing Protection Letter
- Fraud Protection Report
- MERS Fee
- Well and Septic Inspection Fees

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Allowable Fees and Charges (continued)

1% Flat Fee Requirements CMS allows the Broker to submit VA loans for underwriting and funding using Lender Paid Compensation only. ***The Broker may not charge the 1% flat fee.*** For these loans, the veteran can pay a maximum of:

- Reasonable and customary amounts for any or all of the Itemized Fees and Charges designated by the VA, plus
- A maximum aggregate of 1% of the loan amount in fees and charges (which would not be allowed if the 1% fee was charged).
- ***Lender Paid Compensation only is allowed.***
- ***A one percent (1%) origination fee cannot be charged***

Since the 1% flat charge is not applied, the originator may charge fees (which would not be allowed if the 1% fee was charged) to the veteran. However, the aggregate of the fees may not be greater than 1% of the new loan amount. The Lender Paid Compensation will be applied to all such fees charged in excess of the 1%.

VA Standard and High Balance 1% Calculation

The 1% origination fee is calculated off the Base Loan Amount.

VA IRRRL 1% Calculation

The 1% origination fee is calculated off the Existing VA Loan Balance.

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Allowable Fees and Charges (continued)

1% Flat Fee Requirements (continued)

Detailed information regarding the charges that can and can't be paid by the Veteran for Third Party Originated loans are provided in the table below.

Lender DOES NOT CHARGE the 1% Origination Fee	
Charges the Veteran CAN pay (up to 1% of the loan amount)	Charges the Veteran CANNOT pay
Appraisal Fee (2 nd Appraisal ordered by & for lender) Lender Inspection Loan Closing or Settlement Fee Doc Prep Fee Attorney's Services (other than title work) Photo Fee Rate Lock in Fee Postage Fee Notary Fee Commitment Fee Trustee Fee TIL Prep Fee Tax Service Underwriting Fee Processing Fee Application Fee Pest Inspection (IRRRL or Cash-Out only) Copying Fee Assignment Fee Copying Fee Other Fees Authorized by VA	Termite/Pest Inspection (Purchase Only) Attorney Fee as a Benefit to the Lender Mortgage Broker Fee Realtor Commission Prepayment Penalties HUD/FHA Inspection Fees for Builders

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Allowable Fees and Charges (continued)

Itemized Fees and Charges The veteran may pay any or all of the following itemized fees and charges in amounts that are reasonable and customary.

Charge	Description
Appraisal and Compliance Inspections	<ul style="list-style-type: none"> The veteran can pay the fee of a VA appraiser and VA compliance inspectors. The veteran can also pay for a second appraisal if he/she is requesting reconsideration of value. The veteran cannot pay for an appraisal requested by CMS or the seller for reconsideration of value. The veteran cannot pay for appraisals requested by parties other than the veteran or CMS.
Recording Fees	The veteran can pay for recording fees and recording taxes or other charges related to recordation.
Credit Report	The veteran can pay for the credit report obtained by the lender. For automated underwriting cases, the veteran may pay the evaluation fee of \$50 in lieu of the charge for a credit report. For "Refer" cases, the veteran may also pay the charge for a merged credit report, if required.
Prepaid Items	The veteran can pay that portion of taxes, assessments, and similar items for the current year chargeable to the borrower and the initial deposit for the tax and insurance account.
Hazard Insurance	The veteran can pay the required hazard insurance premium. This includes flood insurance, if required.
Flood Zone Determination	The veteran can pay the actual amount charged for a determination of whether a property is in a special flood hazard area, if made by a third party who guarantees the accuracy of the determination. The veteran can pay a charge for a life-of-the-loan flood determination service purchased at the time of loan origination. A fee may not be charged for a flood zone determination made by the lender or a VA appraiser.
Survey	The veteran can pay a charge for a survey, if required by the lender or veteran. Any charge for a survey in connection with a condominium loan must have the prior approval of VA.
Title Examination and Title Insurance	The veteran may pay a fee for title examination and title insurance, if any. If CMS decides that an environmental protection lien endorsement to a title policy is needed, the cost of the endorsement may be charged to the veteran.
Special Mailing Fees for Refinancing Loans	For refinancing loans only, the veteran can pay charges for Federal Express, Express Mail, or a similar service when the saved per diem interest cost to the veteran will exceed the cost of special handling.
VA Funding Fee	Unless exempt, each veteran must pay a funding fee to VA.
Mortgage Electronic Registration System (MERS) Fee	The veteran may pay a fee for MERS. MERS is a one-time fee for the purpose of electronically tracking the ownership of the beneficial interest in a loan and its servicing rights.
Other Fees Authorized by VA	Additional fees attributable to local variances may be charged to the veteran only if specifically authorized by VA. CMS may submit a written request to the Regional Loan Center for approval if the fee is normally paid by the borrower in a particular jurisdiction and considered reasonable and customary in the jurisdiction.

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Allowable Fees and Charges (continued)

Itemized Fees and Charges (continued)

Whenever the charge relates to services performed by a third party, the amount paid by the borrower must be limited to the actual charge of that third party.

Example: If CMS obtains a credit report at a cost of \$30, CMS may only charge the borrower \$30 for the credit report. CMS may **not** charge \$35, even if it believes a \$5 handling charge is fair.

In addition, the borrower may **not** pay a duplicate fee for services that have already been paid for by another party.

Examples:

- An appraisal is completed on a property and paid for by a prospective purchase, but the sale is never completed. A second purchaser applies for a loan before the validity period of the Notice of Value (NOV) expires. CMS uses the same NOV. CMS may **not** charge the second purchaser an appraisal fee if no second appraisal is ordered.
- A survey or flood zone determination, if CMS elects to use an existing survey or flood determination.

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FEES AND CHARGES NOT ALLOWED

Use of One Percent Flat Charge The maximum allowable flat charge of one percent of the loan amount (or greater percentage in the case of construction loans) is intended to cover **all** of the CMS' costs and services which are not reimbursable as itemized fees and charges. CMS may pay third parties for services or do as it wishes with the funds from the flat charge, as long as CMS complies with the Real Estate Settlement Procedures Act (RESPA).

The [Itemized Fees and Charges](#) section and [CMS' One Percent Flat Charge](#) section above provide some examples of items that **cannot** be charged to the veteran as itemized fees and charges.

This section provides more examples of items that cannot be paid by the veteran, but can be paid out of the lender's flat charge or by some party other than the veteran.

Attorney's Fees CMS may **not** charge the borrower for attorney's fees. However, reasonable fees for title examination work and title insurance can be paid by the borrower. They are allowable itemized fees and charges.

VA does not intend to prevent the veteran from seeking independent legal representation; therefore, the veteran can independently retain an attorney and pay a fee for legal services in connection with the purchase of a home. Closing documents should clearly indicate that the attorney's fee is **not** being charged by CMS, but is being paid by the veteran as part of an independent arrangement with an attorney.

Brokerage Fee Fees or commissions charged by a real estate agent or broker in connection with a VA loan may **not** be charged to or paid by the veteran-purchaser.

While use of "buyer" brokers is not precluded, veteran-purchasers may **not**, under any circumstances, be charged a brokerage fee or commission in connection with the services of such individuals. Since information on property available for purchase and financing options is widely available to the public from a variety of sources, VA does not believe that preventing the veteran from paying buyer-broker fees will harm the veteran.

Prepayment Penalties A veteran obtaining a VA refinancing loan **cannot** use the loan proceeds to pay penalty costs for prepayment of an existing loan.

A veteran purchasing a property with a VA loan **cannot** pay penalty costs required to discharge any existing liens on the seller's property.

HUD/FHA Inspection Fees for Builders In proposed construction cases in which the dwelling was constructed under the Department of Housing and Urban Development (HUD) supervision, the cost of any inspections or re-inspections must be borne by the builder or sponsor and are **not** chargeable to the veteran/purchase. This includes:

- Re-inspections by VA or HUD of onsite or offsite work for which an escrow agreement was established, and
- Any additional re-inspections deemed necessary by VA to ensure conformity with VA regulations.

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OTHER PARTIES' FEES AND CHARGES

- Policy** CMS, the seller, or any other party may pay fees and charges, including discount points, on behalf of the borrower.
- VA regulations limit charges “made against or paid by” the borrower. They do not limit the payment of fees and charges by other parties.
- Exception:** Excessive seller concessions are prohibited.

SELLER CONCESSIONS

- Definition** For the purposes of this topic, a seller concession is anything of value added to the transaction by the builder or seller for which the buyer pays nothing additional and which the seller is **not** customarily expected or required to pay or provide.
- In some localities, builders, or sellers offer concessions as a competitive tool. In extreme cases, the concessions may entice unwary or unqualified veterans into home mortgages they cannot afford. The concessions may disguise the veteran’s inability to qualify for the loan.

- Seller Concessions** Seller concessions include, but are not limited to, the following:
- Payment of the buyer’s VA funding fee
 - Prepayment of the buyer’s property taxes and insurance
 - Gifts, such as a television or microwave oven
 - Payment of extra points to provide permanent interest rate buydowns
 - Payoff of credit balances or judgments on behalf of the buyer

Seller concessions **do not** include payment of the buyer’s closing costs or payment of points as appropriate to the market.

Example: If the market dictates an interest rate of 7.5 percent with two discount points, the seller’s payment of the two points would not be a seller concession. If the seller paid 5 points, 3 of these points would be considered a seller concession.

- Four Percent Limit** Any seller concession or combination of concessions which exceeds four percent of the established reasonable value of the property is considered excessive and unacceptable for VA-guaranteed loans.

Do not include normal discount points and payment of the buyer’s closing costs in total concessions for determining whether concessions exceed the four percent limit.

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LOANS THAT DO NOT CLOSE

Requirements The borrower's out-of-pocket expense for itemized fees and charges already incurred, such as the appraisal and credit report, are not refundable.

If CMS has already collected the one percent flat fee from the borrower, CMS **must** refund the fee. This applies to a loan that does not close for any reason, including the borrower going to another lender.

FEES AND CHARGES THAT CAN BE INCLUDED IN THE LOAN

All VA Loans For all types of VA loans, the loan amount may include the VA funding fee.
No other fees and charges or discount points may be included in the loan amount for regular purchase or construction loans.
Only refinancing loans may include other allowable fees and charges and discount points in the loan amount.

Cash Out Refinancing Loans For cash out refinancing loans, allowable fees and charges and discount points may be paid from cash proceeds of the loan, as long as total proceeds do not exceed 100 percent of the reasonable value of the property. (Refer to the [Allowable Fees and Charges](#) section for details.)
Only the VA funding fee can be added to the 100 percent limit to increase the loan amount.

IRRRLs The following fees and charges may be included in an Interest Rate Reduction Refinancing Loan (IRRRL):

- Any allowable fees and charges listed in the [Allowable Fees and Charges](#) section. This includes closing costs from the [Itemized Fee and Charges](#) list, the funding fee, and CMS' flat charge.
- While the borrower may pay any reasonable amount of discount points in cash, no more than two discount points can be included in the loan amount.

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Fees and Charges that Can Be Included in the Loan (continued)

Other Refinancing Loans

The following information applies to any loan to refinance:

- A construction loan,
- An installment land sales contract, or
- A loan assumed by the veteran at an interest rate higher than that for the proposed financing loan.

The loan amount may include:

- Any allowable fees and charges listed in the Allowable Fees and Charges section, and
- Reasonable discount points.

Note: Maximum loan limits may not allow inclusion of the full amount of these items.

The maximum loan amount will be the lesser of the:

- Sum of the outstanding balance of the loan being refinanced, plus allowable fees and charges (other than the funding fee), plus discount points, or
- VA reasonable value of the property, plus
- VA funding fee, plus
- Cost of any energy efficiency improvements.

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VA FUNDING FEE

Requirements for CMS

The VA requires CMS to:

- Verify the status of any veteran who may be exempt from paying the funding fee,
- Determine the amount of the funding fee owed by any non-exempt borrower,
- Collect the appropriate fee from all non-exempt borrowers at loan closing,
- Electronically remit the funds to VA in a timely manner through the VA Funding Fee Payment System,
- Print proof of payment of the funding fee, and
- Submit proof that the funding fee has been paid or that the veteran is exempt from paying the funding fee to VA with the closed loan package.

Note: The funding fee may be paid from loan proceeds or cash from the borrower.

VA Funding Fee Exemption

The following individuals are exempt from paying the VA funding fee:

- Veterans receiving VA compensation for service-connected disabilities.
- Veterans who would be entitled to receive compensation for service-connected disability if they did not receive retirement pay.
- Veterans who are rated by VA as eligible to receive compensation as a result of pre-discharge disability examination and rating.
- Veterans entitled to receive compensation, but who are not presently in receipt because they are on active duty.
- Surviving spouses of veterans who died in service or from service-connected disabilities (whether or not such surviving spouses are veterans with their own entitlement, and whether or not they are using their own entitlement on the loan).

Verify Exempt Status

CMS verifies exempt status by obtaining one of the following:

- A properly completed and signed VA Form 26-8937, Verification of VA Benefits, indicating the borrower's exempt status,
- For a veteran who elected service retirement pay instead of VA compensation, a copy of the original VA notification of disability rating and documentation of the veteran's service retirement income, or
- Indications on the Certificate of Eligibility (COE) that the borrower is entitled as an unmarried, surviving spouse.

Consult VA if the borrower's status is unclear after reviewing the appropriate documents, or if conflicting information is found.

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VA Funding Fee (continued)

Loan Submissions Involving Exempt Borrowers

Submit a copy of the documentation used to verify exempt status with the closing package.

Exception: CMS does not have to submit the documentation if the borrower is an eligible surviving spouse, or the documentation had been previously provided to the VA with the loan application as verification of the veteran's income.

Note: A lender who believes that a servicemember may be exempt from payment of the funding fee based on a pre-discharge exam should contact the VA Regional Loan Center (RLC) of jurisdiction for assistance confirming the exempt status.

Cannot Determine Exempt Status

If the veteran's exempt status cannot be verified prior to loan closing, the funding fee **must** be remitted as if the borrower is not exempt.

Indicate in the closing package that the veteran claims exempt status. VA will determine the borrower's status and refund the funding fee, if appropriate.

If the veteran has a pending disability compensation claim at the time of loan closing, the funding fee must be remitted as if the borrower was not exempt.

Advise the veteran to contact the VA RLC to request a refund if it is later determined that the veteran is entitled to compensation retroactively to a date prior to loan closing.

Refer to [Refunding Overpayments](#) for details.

Calculating the Funding Fee

For all loans, except IRRRLs, apply the appropriate percentage (from the [Funding Fee Tables](#)) to the loan amount.

If the funding fee is to be paid from loan proceeds, apply the percentage to the loan amount without the funding fee amount added to it.

For IRRRLs, calculate the funding fee by completing VA Form 26-8923, IRRRL Worksheet.

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VA Funding Fee (continued)

Using the Funding Fee Tables

Use the following parameters to find the appropriate percentage in the Funding Fee Tables:

- Review the COE to determine if the veteran is eligible for VA loan benefits through service in the regular military or the Reserves/National Guard. (For Reserves/National Guard, the COE bears the notation.)
- Review the COE to determine if the veteran is a subsequent user of VA home loan benefits or is obtaining his/her first VA loan. An entitlement code of "5" and/or a loan number entered in the "Loan Number" column indicates subsequent use.
- Determine the type of loan being obtained. The funding fee varies depending on whether the loan is a purchase or construction loan, an IRRRL, or a cash-out refinancing loan.
- Verify that the borrower is making a down payment of at least five or ten percent.
 - Calculate the percentage of the sales price of the property the veteran is remitting as a down payment.
 - The down payment may come from the veteran's own resources or borrowed funds. However, if the purchase price exceeds the "reasonable value of the property," the difference between the purchase price and the reasonable value must be paid by the veteran in cash, without borrowing.
- For construction loans only, equity in the secured property counts as a down payment for calculating the funding fee.

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VA Funding Fee (continued)

Funding Fee Tables

Purchase and Construction Loans

Note: In 2011, funding fees were lower from October 1 through October 5, and November 18 through November 21. The enactment of Public Law 112-56, signed November 21, 2011, establishes rates at the levels listed below through September 30, 2016. Prior to September 30, 2016, VA will publish updated information on the fees for loans closed after that date.

Type of Veteran	Down Payment	Percentage for First-Time Use	Percentage for Subsequent Use
Regular Military	None	2.15%	3.30%*
	5% or more	1.50%	1.50%
	10% or more	1.25%	1.25%
Reserves/ National Guard	None	2.40%	3.30%*
	5% or more	1.75%	1.75%
	10% or more	1.50%	1.50%

Cash Out Refinancing Loans

Note: There are no reduced funding fees for regular refinances based on equity. Reduced fees only apply to purchase loans where a down payment of at least five percent is made.

Type of Veteran	Percentage for First-Time Use	Percentage for Subsequent Use
Regular Military	2.15%	3.30%*
Reserves/National Guard	2.40%	3.30%*

* The higher subsequent use fee does not apply to these types of loans if the veteran's only prior use of entitlement was for a manufactured home loan.

Type of Loan	Percentage for Either type of Veteran Whether First-Time or Subsequent Use
IRRRLs	0.50%
Manufactured Home Loans (not permanently affixed)	1.00%
Loan Assumptions	0.50%

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VA Funding Fee (continued)

How and When to Remit VA Funding Fee Remit the VA funding fee via the VA Funding Fee Payment System (FFPS) within 15 calendar days of Loan closing.
If a fee is remitted more than 15 days after loan closing, VA assesses a four percent late fee. Fees paid more than 30 days late are assessed and interest charge in addition to the late fee.

Refunding Overpayments A refund is appropriate if:

- An exempt veteran paid a funding fee, or
- A miscalculation of the fee caused an overpayment.

Make appropriate corrections using the VA FFPS.

If a veteran was overcharged, the following applies:

- A veteran who paid cash for the funding fee receives a cash refund for the amount of the overpayment.
- In the case of a veteran who paid the funding fee out of the loan proceeds, CMS must apply the overpayment against the loan balance. Submit evidence to VA that the refund was applied to the loan's principal balance.

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