

## Department of Veterans Affairs

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and the length of the interval that will precede the initial adjustment; and

(iv) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the borrower over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(6) *Annual disclosure.* At least 25 days before any adjustment to a borrower's monthly payment may occur, the lender must provide a notice to the borrower which sets forth the date of the notice, the effective date of the change, the old interest rate, the new interest rate, the new monthly payment amount, the current index and the date it was published, and a description of how the payment adjustment was calculated. A copy of the annual disclosure shall be made a part of the lender's permanent record on the loan.

(Authority: 38 U.S.C. 3707A)

### § 36.4813 Charges and fees.

(a) No charge shall be made against, or paid by, the borrower incident to the making of a guaranteed or insured loan other than those expressly permitted under paragraph (d) or (e) of this section, and no loan shall be guaranteed or insured unless the lender certifies to the Secretary that it has not imposed and will not impose any charges or fees against the borrower in excess of those permissible under paragraph (d) or (e) of this section. Any charge which is proper to make against the borrower under the provisions of this paragraph may be paid out of the proceeds of the loan: Provided, That if the purpose of the loan is to finance the purchase or construction of residential property the costs of closing the loan including the pro rata portion of the ground rents, hazard insurance premiums, current year's taxes, and other prepaid items normally involved in financing such transaction may not be included in the loan.

(b) Except as provided in this subpart, no brokerage or service charge or their equivalent may be charged against the debtor or the proceeds of the loan either initially, periodically, or otherwise.

(c) Brokerage or other charges shall not be made against the veteran for ob-

taining any guaranty or insurance under 38 U.S.C. chapter 37, nor shall any premiums for insurance on the life of the borrower be paid out of the proceeds of a loan.

(d) The following schedule of permissible fees and charges shall be applicable to all Department of Veterans Affairs guaranteed or insured loans.

(1) The veteran may pay reasonable and customary amounts for any of the following items:

(i) Fees of Department of Veterans Affairs appraiser and of compliance inspectors designated by the Department of Veterans Affairs except appraisal fees incurred for the predetermination of reasonable value requested by others than veteran or lender.

(ii) Recording fees and recording taxes or other charges incident to recordation.

(iii) Credit report.

(iv) That portion of taxes, assessments, and other similar items for the current year chargeable to the borrower and an initial deposit (lump-sum payment) for the tax and insurance account.

(v) Hazard insurance required by § 36.4829.

(vi) Survey, if required by lender or veteran; except that any charge for a survey in connection with a loan under §§ 36.4860 through 36.4865 (Condominium Loans) must have the prior approval of the Secretary.

(vii) Title examination and title insurance, if any.

(viii) The actual amount charged for flood zone determinations, including a charge for a life-of-the-loan flood zone determination service purchased at the time of loan origination, if made by a third party who guarantees the accuracy of the determination. A fee may not be charged for a flood zone determination made by a Department of Veterans Affairs appraiser or for the lender's own determination.

(ix) Such other items as may be authorized in advance by the Under Secretary for Benefits as appropriate for inclusion under this paragraph (d) as proper local variances.

(2) A lender may charge and the veteran may pay a flat charge not exceeding 1 percent of the amount of the loan, provided that such flat charge shall be

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in lieu of all other charges relating to costs of origination not expressly specified and allowed in this schedule.

(3) In cases where a lender makes advances to a veteran during the progress of construction, alteration, improvement, or repair, either under a commitment of the Department of Veterans Affairs to issue a guaranty certificate or insurance credit upon completion, or where the lender would be entitled to guaranty or insurance on such advances when reported under automatic procedure, the lender may make a charge against the veteran of not exceeding 2 percent of the amount of the loan for its services in supervising the making of advances and the progress of construction notwithstanding that the "holdback" or final advance is not actually paid out until after the construction, alteration, improvement, or repair is fully completed: Provided, That the major portion (51 percent or more) of the loan proceeds is paid out during the actual progress of the construction, alteration, improvement, or repair. Such charge may be in addition to the 1 percent charge allowed under paragraph (d)(2) of this section.

(4) In consideration, alteration, improvement or repair loans, including supplemental loans made pursuant to § 36.4859, where no charge is permissible under the provisions of paragraph (d)(3) of this section the lender may charge and the veteran may pay a flat sum not exceeding 1 percent of the amount of the loan. Such charge may be in addition to the 1 percent allowed under paragraph (d)(2) of this section.

(5) The fees and charges permitted under this paragraph are maximums and are not intended to preclude a lender from making alternative charges against the veteran which are not specifically authorized in the schedule provided the imposition of such alternative charges would not result in an aggregate charge or payment in excess of the prescribed maximum.

(6) The veteran borrower subject to the limitations set forth in paragraphs (d)(6) and (7) of this section may pay a discount required by a lender when the proceeds of the loan will be used for any of the following purposes:

(i) To refinance existing indebtedness pursuant to 38 U.S.C. 3710(a)(5), (a)(8), (a)(9)(B)(i) or (a)(9)(B)(ii);

(ii) To repair, alter or improve a dwelling owned by the veteran pursuant to 38 U.S.C. 3710(a)(4) or (7) if such loan is to be secured by a first lien;

(iii) To construct a dwelling or farm residence on land already owned or to be acquired by the veteran, provided that the veteran did not or will not acquire the land directly or indirectly from a builder or developer who will be constructing such dwelling or farm residence;

(iv) To purchase a dwelling from a class of sellers which the Secretary determines are legally precluded under all circumstances from paying such a discount if the best interest of the veteran would be so served.

(7) Discounts shall be computed as follows:

(i) Unless otherwise approved by the Secretary, the discount, if any, to be paid by the borrower on a loan secured by a first lien may not exceed the difference between the bid price, rounded to the lower whole number, and par value for GNMA (Government National Mortgage Association) 90-day forward bid closing price for pass through securities ½ percent less than the face note rate of the loan. Unless the lender and borrower negotiate a firm written commitment for a maximum amount of discount to be paid, the bid price to be used in the computation must be the GNMA 90-day forward bid closing quote for any day 1 to 4 business days prior to loan closing. "Loan closing" is defined for this purpose as the date on which the borrower's 3-day right of rescission commences pursuant to the Truth in Lending Act. If the lender and borrower choose to negotiate a firm discount commitment for a maximum amount of discount to be paid, the bid price to be used in establishing the maximum discount must be the closing quote for the business day prior to the date of the commitment. Lenders negotiating firm commitments must close that loan at a discount no higher than the firm commitment regardless of changes in the maximum allowable Department of Veterans Affairs interest rate. If a lender's commitment expires prior to loan closing, the lender and

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borrower may negotiate a new firm commitment based on the procedure outlined in this paragraph (d)(7)(i) or may use the procedure for determining the discount based on the GNMA 90-day forward bid closing quote for any day 1 to 4 business days prior to loan closing.

(ii) The borrower, subject to the limitations set forth in paragraphs (d)(6) and (7) of this section, may pay a discount required by the lender when the proceeds of the loan will be used to repair, alter, or improve a dwelling owned by the veteran pursuant to 38 U.S.C. 3710(a)(4) or (7) if such loan is unsecured or secured by less than a first lien. No such discount may be charged unless:

(A) The loan is submitted to the Secretary for prior approval;

(B) The dollar amount of the discount is disclosed to the Secretary and the veteran prior to the issuance by the Secretary of the certificate of commitment. Said certificate of commitment shall specify the discount to be paid by the veteran, and this discount may not be increased once the commitment is issued without the approval of the Secretary; and

(C) The discount has been determined by the Secretary to be reasonable in amount.

(iii) A veteran may pay the discount on an acquisition and improvement loan (as defined in § 36.4801) provided:

(A) The veteran pays no discount on the acquisition portion of the loan except in accordance with paragraph (d)(6)(iv) of this section; and

(B) The discount paid on the improvements portion of the loan does not exceed the percentage of discount paid on the acquisition portion of the loan.

NOTE TO PARAGRAPH (d)(7)(iii): Acquisition and improvement loans may be closed either on the automatic or prior approval basis.

(iv) Unless the Under Secretary for Benefits otherwise directs, all powers of the Secretary under paragraphs (d)(6) and (7) of this section are hereby delegated to the officials designated by § 36.4845(b).

(Authority: 38 U.S.C. 3703, 3710; 42 U.S.C. 4001 note, 4012a)

(8) On any loan to which 38 U.S.C. 3714 applies, the holder may charge a

reasonable fee, not to exceed the lesser of \$300 and the actual cost of any credit report required, or any maximum prescribed by applicable State law, for processing an application for assumption and changing its records.

(Authority: 38 U.S.C. 3714)

(e) Subject to the limitations set out in paragraph (e)(4) of this section, a fee must be paid to the Secretary.

(1) The fee on loans to veterans shall be as follows:

(i) On all interest rate reduction refinancing loans guaranteed under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11), the fee shall be 0.50 percent of the total loan amount.

(ii) On all refinancing loans other than those described in paragraph (e)(1)(i) of this section, the funding fee shall be 2.75 percent of the loan amount for loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of 38 U.S.C. 3701(b)(5), and 2 percent of the loan amount for loans to all other veterans; provided, however, that if the veteran is using entitlement for a second or subsequent time, the fee shall be 3 percent of the loan amount.

(iii) Except for loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of 38 U.S.C. 3701(b)(5), the funding fee shall be 2 percent of the total loan amount for all loans for the purchase or construction of a home on which the veteran does not make a down payment, unless the veteran is using entitlement for a second or subsequent time, in which case the fee shall be 3 percent. On purchase or construction loans on which the veteran makes a down payment of 5 percent or more, but less than 10 percent, the amount of the funding fee shall be 1.50 percent of the total loan amount. On purchase or construction loans on which the veteran makes a down payment of 10 percent or more, the amount of the funding fee shall be 1.25 percent of the total loan amount.

(iv) On loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of 38 U.S.C. 3701(b)(5), the funding fee shall be 2.75 percent of the total loan amount on loans for the purchase or

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construction of a home on which the veteran does not make a down payment, unless the veteran is using entitlement for a second or subsequent time, in which case the fee shall be 3 percent. On purchase or construction loans on which veterans whose entitlement is based on service in the Selected Reserve make a down payment of 5 percent or more, but less than 10 percent, the amount of the funding fee shall be 2.25 percent of the total loan amount. On purchase or construction loans on which such veterans make a down payment of 10 percent or more, the amount of the funding fee shall be 2 percent of the total loan amount.

(v) All or part of the fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 3729)

(2) Subject to the limitations set out in this section, a fee of one-half of one percent of the loan balance must be paid to the Secretary in a manner prescribed by the Secretary by a person assuming a loan to which 38 U.S.C. 3714 applies. The instrument securing such a loan shall contain a provision describing the right of the holder to collect this fee as trustee for the Department of Veterans Affairs. The loan holder shall list the amount of this fee in every assumption statement provided and include a notice that the fee must be paid to the holder immediately following loan settlement. The fee must be transmitted to the Secretary within 15 days of the receipt by the holder of the notice of transfer.

(Authority: 38 U.S.C. 3714, 3729)

(3) The lender is required to pay to the Secretary the fee described in paragraph (e)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraph (e)(4) of this section who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If payment of the fee de-

scribed in paragraph (e)(1) of this section is made more than 30 days after loan closing, interest will be assessed at a rate set in conformity with the Department of Treasury's Fiscal Requirements Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although the interest will be assessed only on funding fee payments received more than 30 days after closing.

(4) The lender is required to pay to the Secretary electronically through the Automated Clearing House (ACH) system the fees described in paragraphs (e)(1) and (e)(2) of this section and any late fees and interest due on them. This shall be paid to a collection agent by operator-assisted telephone, terminal entry, or CPU-to-CPU transmission. The collection agent will be identified by the Secretary. The lender shall provide the collection agent with the following: authorization for payment of the funding fee (including late fees and interest) along with the following information: VA lender ID number; four-digit personal identification number; dollar amount of debit; VA loan number; OJ (office of jurisdiction) code; closing date; loan amount; information about whether the payment includes a shortage, late charge, or interest; veteran name; loan type; sale amount; down payment; whether the veteran is a reservist; and whether this is a subsequent use of entitlement. For all transactions received prior to 8:15 p.m. on a workday, VA will be credited with the amount paid to the collection agent at the opening of business the next banking day.

(Authority: 38 U.S.C. 3729(a))

(5) The fees described in paragraph (e)(1) and (e)(2) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in

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section 3701(b) of title 38, United States Code.

(Authority: 38 U.S.C. 3729)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0474 and 2900-0516.)

**§ 36.4814 Advances and other charges.**

(a) A holder may advance any amount reasonably necessary and proper for the maintenance or repair of the security, or for the payment of accrued taxes, special assessments, ground or water rents, or premiums on fire or other casualty insurance against loss of or damage to such property and any such advance so made may be added to the guaranteed or insured indebtedness. A holder may also advance the one-half of one percent funding fee due on a transfer under 38 U.S.C. 3714 when this is not paid at the time of transfer. All security instruments for loans to which 38 U.S.C. 3714 applies must include a clause authorizing the collection of an assumption funding fee and an advance for this fee if it is not paid at the time of transfer.

(Authority: 38 U.S.C. 3703, 3714, 3732)

(b) In addition to advances allowable under paragraph (a) of this section, the holder may charge against the proceeds of the sale of the security; may charge against gross amounts collected; may include in any accounting to the Secretary after payment of a claim under the guaranty; may include in the computation of a claim under the guaranty, if lawfully authorized by the loan agreement and subject to § 36.4824(a); or, may include in the computation of an insurance loss, any of the following items actually paid:

- (1) Any expense which is reasonably necessary for preservation of the security;
- (2) Court costs in a foreclosure or other proper judicial proceeding involving the security;
- (3) Other expenses reasonably necessary for collecting the debt, or repossession or liquidation of the security;
- (4) Reasonable trustee's fees or commissions not in excess of those allowed by statute and in no event in excess of 5 percent of the unpaid indebtedness;

(5)(i) Fees for legal services actually performed, not to exceed the reasonable and customary fees for such services in the State where the property is located, as determined by the Secretary.

(ii) In determining what constitutes the reasonable and customary fees for legal services, the Secretary shall review allowances for legal fees in connection with the foreclosure of single-family housing loans, including bankruptcy-related services, issued by HUD, Fannie Mae, and Freddie Mac. The Secretary will review such fees annually and, as the Secretary deems necessary, publish in the FEDERAL REGISTER a table setting forth the amounts the Secretary determines to be reasonable and customary. The table will reflect the primary method for foreclosing in each state, either judicial or non-judicial, with the exception of those States where either judicial or non-judicial is acceptable. The use of a method not authorized in the table will require prior approval from VA. This table will be available throughout the year on a VA controlled Web site, such as at <http://www.homeloans.va.gov>.

(iii) If the foreclosure attorney has the discretion to conduct the sale or to name a substitute trustee to conduct the sale, the combined total paid for legal fees under paragraph (b)(5)(i) of this section and trustee's fees pursuant to paragraph (b)(4) of this section shall not exceed the applicable maximum allowance for legal fees established under paragraph (b)(5)(ii) of this section. If the trustee conducting the sale must be a Government official under local law, or if an individual other than the foreclosing attorney (or any employee of that attorney) is appointed as part of judicial proceedings, and local law also establishes the fees payable for the services of the public or judicially appointed trustee, then those fees will not be subject to the maximum established for legal fees under paragraph (b)(5)(ii) of this section and may be included in the total indebtedness.

(6) The cost of a credit report(s) on the debtor(s), which is (are) to be forwarded to the Secretary in connection with the claim;

(7) Reasonable and customary costs of property inspections;