

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 36**

RIN 2900-AP62

**Loan Guaranty: Revisions to Allowable Charges and Fees Assessed Incident to VA-Guaranteed Home Loans****AGENCY:** Department of Veterans Affairs.**ACTION:** Advanced notice of proposed rulemaking.

**SUMMARY:** The Department of Veterans Affairs (VA) Loan Guaranty Service (LGY) 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. By issuing this advanced notice of proposed rulemaking, LGY seeks comments on how the public believes VA should approach this undertaking. Although LGY identifies specific issues for discussion below, it encourages commenters to discuss any issue related to improving these specific regulations.

**DATES:** Comments must be received on or before June 12, 2017.

**ADDRESSES:** Written comments may be submitted through [www.regulations.gov](http://www.regulations.gov); by mail or hand-delivery to Director, Regulation Policy and Management (OOREG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AP62—Loan Guaranty: Revisions to Allowable Charges and Fees Assessed Incident to VA-Guaranteed Home Loans.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** John Bell, III, Assistant Director for Loan Policy and Valuation, Loan Guaranty Service (262), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-8786. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:****I. Background**

VA has promulgated a list of permissible charges and fees a borrower may be charged or may pay incident to obtaining a VA-guaranteed home loan. See 38 CFR 36.4313. In 1948, VA published its rule regulating charges and fees which was codified at the former 38 CFR 36.4312. See 13 FR 7275, Nov. 27, 1948. That rule set forth the costs and expenses that loan proceeds could be used to pay, but was silent on whether a veteran might be allowed to pay such costs and expenses out of his or her own cash reserves. Id. Under the rule, borrowers could use proceeds from the loan to pay any cost or expense normally paid under local lending customs, except for certain brokerage and service charges. Id.

In 1954, VA substantially altered the rule's regulatory scheme. Instead of permitting lenders to charge costs and expenses normally paid under local lending customs, VA restricted the types of charges and fees veterans were allowed to pay by expressly enumerating the types allowed. See 19 FR 6717, Oct. 19, 1954. VA instituted this rule amendment in order to protect veterans from what are commonly known as “junk fees”.

The current charges and fees rule, now codified at 38 CFR 36.4313, is substantially similar to the 1954 version. While VA has amended the rule to modify the types of permissible charges and fees in the intervening years, the rule still retains the express enumeration scheme established by the 1954 version. In other words, the current rule protects veterans from having to satisfy any charge or fee not expressly allowed by the schedule codified at 38 CFR 36.4313(d). The rule, however, does allow a lender to charge a veteran, and for the veteran to pay, an origination fee of up to 1 percent of the loan amount, provided that the 1 percent fee be charged in lieu of all other fees permitted by the schedule. See 38 CFR 36.4313(d)(2). Compared with a conventional housing loan transaction, the fees the rule permits to be charged to veterans are relatively limited. Consequently, in transacting a sale with a VA-guaranteed loan borrower, sellers and lenders must bear many of the customary real estate transaction expenses.

Since implementation, the rule has protected many veterans from having to incur unreasonable closing costs. However, the home buying process has changed significantly since VA last implemented substantive changes to the permissible fee schedule. In recent

years, some veterans and their representatives have complained to VA that certain provisions of the rule can be detrimental to veterans' bargaining position during real estate negotiations. These parties have asserted that VA-guaranteed loan borrowers are sometimes unable to compete with other offerors whose financing options are not restricted by similar regulatory constraints. VA recognizes that these constraints can contribute to sellers' decisions to accept other offers or lead lenders to charge higher interest rates to offset losses.

VA will continue to safeguard the best interests of veteran homebuyers by protecting them from excessive and unreasonable closing costs. However, VA recognizes that an overly restrictive list of permissible charges and fees might, in certain circumstances, motivate market participants to avoid financing or selling homes to veterans.

**II. Questions for Comment**

In order to strike the appropriate balance between making it easier for veterans to utilize their home loan benefits and protecting them from unreasonable charges and fees, VA is considering ways to revise the list of acceptable charges and fees specified by the schedule codified at 38 CFR 36.4313(d). VA 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?

#### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on March 17, 2017, for publication.

Dated: March 17, 2017.

#### Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Chapters I, IV, V, VI, and VII

[EPA-HQ-OA-2017-0190; FRL-9961-60-OP]

### Evaluation of Existing Regulations

AGENCY: Environmental Protection Agency (EPA).

**ACTION:** Request for comment.

**SUMMARY:** In accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda," EPA is seeking input on regulations that may be appropriate for repeal, replacement, or modification.

**DATES:** Comments must be received on or before May 15, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OA-2017-0190 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** For further information on this document, please contact Sarah Rees, Director, Office of Regulatory Policy and Management, Office of Policy, 1200 Pennsylvania Avenue NW., Mail Code 1803A, Washington, DC 20460, Phone: (202) 564-1986; [Laws-Regs@epa.gov](mailto:Laws-Regs@epa.gov).

**SUPPLEMENTARY INFORMATION:** On February 24, 2017, President Trump signed Executive Order 13777, "Enforcing the Regulatory Reform Agenda," which established a federal policy "to alleviate unnecessary regulatory burdens" on the American people. Section 3(a) of the EO directs federal agencies to establish a Regulatory Reform Task Force (Task Force). One of the duties of the Task Force is to evaluate existing regulations and "make recommendations to the agency head regarding their repeal, replacement, or modification." The EO further asks that each Task Force "attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) are outdated, unnecessary, or ineffective;

(iii) impose costs that exceed benefits;

(iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriates Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility; or

(vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified."

Section 3(e) of the E.O. calls on the Task Force to "seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations" on regulations that meet some or all of the criteria above. Through this notice, EPA is soliciting such input from the public to inform its Task Force's evaluation of existing regulations. EPA requests that commenters be as specific as possible, include any supporting data or other information such as cost information, provide a **Federal Register** (FR) or Code of Federal Regulations (CFR) citation when referencing a specific regulation, and provide specific suggestions regarding repeal, replacement or modification. Although the agency will not respond to individual comments, the EPA values public feedback and will give careful consideration to all input that it receives. EPA will also be conducting outreach on this same topic. Information about opportunities for engagement with the agency will be available on <https://www.epa.gov/laws-regulations/regulatory-reform>.

Dated: April 10, 2017.

#### Samantha K. Dravis,

Regulatory Reform Officer and Associate Administrator, Office of Policy.

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