

Policy Clarification on Unallowable Fees

1. Purpose. The purpose of this Circular is to clarify the Department of Veterans Affairs (VA) policy on the treatment of unallowable fees when lenders charge a loan origination fee that is less than one percent of the loan amount on purchase and cash-out transactions, and less than one percent of the payoff amount on interest rate reduction refinance loans (IRRRLs).

2. Background. Lenders may charge a flat fee, referred to as a loan origination fee, not to exceed one percent of the loan amount (for IRRRLs, the one percent flat charge is based on the payoff amount). This flat charge is intended to cover all of the lender's costs which are not reimbursable as itemized fees. Non-reimbursable fees that are not included in the flat fee are considered unallowable.

3. Policy. If the lender charges the full one percent loan origination fee, they cannot charge unallowable fees. Unallowable fees are those that are not expressly specified in 38 CFR 36.4313. Note: VA treats pest inspection fees the same as any other unallowable fee. Examples of unallowable itemized fees can be found in Chapter 8, Section 2d of the [VA Lenders Handbook](#).

a. Example: If the lender charges a \$1,000 loan origination fee on a \$100,000 loan, they have charged the maximum allowable origination fee, and cannot charge additional unallowable fees, such as a document preparation fee or pest inspection fee. However, if the lender charged an \$800 loan origination fee on a \$100,000 loan, the lender may charge up to \$200 in unallowable fees, such as a document preparation fee or pest inspection fee. In all cases, the aggregate of the loan origination fee and unallowable fees cannot exceed the one percent threshold.

4. Clarification. Third-party overcharges are not treated the same as unallowable fees for purposes of determining the aggregate one percent limit; third-party charges are limited to the invoice charge, regardless of the amount charged for the loan origination fee. In the case of appraisals, the amount charged cannot exceed VA's published rates.

a. Example 1: The lender charged an origination fee of \$800 on a \$100,000 loan. The credit report charge on the HUD-1, *Settlement Statement* is \$50. The credit report invoice reflects \$20. In this case, the lender must refund the \$30 overcharge to the Veteran.

b. Example 2: The lender charged an \$800 origination fee on a \$100,000 loan. The appraisal charge on the HUD-1, *Settlement Statement* is \$500. VA's maximum published appraisal rate for the state is \$425. In this case, the lender must refund the \$75 overcharge to the Veteran.

5. Subordination Fees. Subordination fees are treated differently than unallowable and third-party fees. Subordination fees cannot be financed into the loan, regardless of the amount charged for the loan origination fee. A subordination fee may be charged on the HUD-1, *Settlement Statement*; however, the Veteran must either pay this fee in cash or have a premium pricing credit large enough to cover the subordination charge.

6. Rescission: This Circular is rescinded January 1, 2016.

By Direction of the Under Secretary for Benefits

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