

CONTENTS

CHAPTER 7. CLOSING NATIVE AMERICAN VETERAN DIRECT LOANS

PARAGRAPH	PAGE
7.01 Approval of Loan Closers.....	7-2
7.02 Responsibility of Loan Closer.....	7-2
7.03 Expenses, Fees, and Charges of Loan Closing.....	7-2
7.04 Assignment of, and Request for, Loan Closer.....	7-3
7.05 Preparation and Transmittal of Case to Loan Closer.....	7-3
7.06 Estate of Veteran.....	7-4
7.07 Execution and Recording of Debt and Security Instruments.....	7-4
7.08 Loan Proceeds Request.....	7-5
7.09 Shipment of Papers and Final Report of Loan Closer.....	7-5

7.01 APPROVAL OF LOAN CLOSERS

Loan closers may be title or abstract companies, banks, realtors, escrow agents or attorneys. In general, approval will be based on proven competence, experience, and facilities necessary to enable the loan closer to perform the services required. Stations should coordinate with the particular tribal housing office or similar organization to determine if there are qualified individuals within the organization who can serve as loan closers. If a loan closer cannot be found, appropriate station personnel will conduct the loan closing.

7.02 RESPONSIBILITY OF LOAN CLOSER

Except as noted in section 7.01 above, loan closers are not agents or employees of the Department of Veterans Affairs (VA). They will be accountable to VA for legal sufficiency and for a prompt and proper closing in accordance with this chapter. The scope of services and requirements for proper loan closing depends upon such variables as the type of transaction to which the loan relates (e.g., construction or purchase loan), condition of title to the affected property, local laws, custom, and other factors.

7.03 EXPENSES, FEES, AND CHARGES OF LOAN CLOSING

a. Fees to be Paid by Borrower. The borrower must pay the following loan closing costs to the parties indicated:

1. A funding fee of 1.25 percent of the total loan amount should be deposited in the Native American Direct Loan (NADL) obligation account. (For Interest Rate Reduction Refinance Loans (IRRRLs) the funding fee will be 0.5 percent.) All or part of the funding fee may be paid in cash at loan closing or included in the loan amount without regard to the reasonable value of the property or the maximum loan amount. In computing the fee, any amount included in the loan to enable the borrower to pay such fee will be disregarded.

(a) Such fee will not be collected from a Veteran who is receiving compensation or who, but for the receipt of retirement or active duty pay, would be entitled to receive compensation or from a surviving spouse described in 38 U.S.C. 3710(b)(2).

(b) If the Veteran elects to pay the funding fee from his or her own resources and not finance it in the loan, it will be forwarded to the station with the loan closing documents. In cases where the funding fee is financed, stations will have to advise the Administrative Loan Accounting Center (ALAC) so that the appropriate accounts can be credited. For example, in a case where the purchase price is \$80,000 but the Veteran will be financing the funding fee, the note will reflect \$81,000 (\$80,000 plus \$1,000 funding fee). However, the actual check prepared will be in the amount of \$80,000, the purchase price. The voucher requesting the check should indicate that the Veteran is financing the fee and the amount so ALAC can take proper action.

(c) If a third party is designated to process the loan package on VA's behalf, a processing fee to that third party is not to exceed \$300, plus the cost of any credit report required and appraisal. (For an IRRRL, the fee is \$50 and no credit report or appraisal will normally be required.)

2. Costs or expenses normally paid by a purchaser incident to loan closing including, but not limited to, the following:

(a) Fees of VA's designated appraisers and compliance inspectors (does not apply to an IRRRL);

(b) Recording fees or other charges incident to recordation;

(c) That portion of assessments and other similar items for the current year chargeable to the borrower; and

(d) Hazard insurance premiums if such insurance is available. For IRRRLs, any existing escrow account can be transferred to the new account. If VA is servicing the loan, stations will need to coordinate with the appropriate finance activity to effect the transfer. In the event the existing direct loan is being serviced by a contract servicer, stations should contact Contract Assurance – Portfolio Loans for assistance in establishing the escrow on the new account.

(e) A fee to the loan closer, if closing is conducted by a third party. The fee must not exceed an amount that is reasonable and customary in the area for the service rendered. No service or brokerage fee may be charged against the Veteran borrower by any third party for procuring a direct loan.

b. Arranging for Payment by Borrower. Charges or costs payable by the borrower, except for the funding fee described above, must be paid in cash and may not be paid out of the proceeds of the loan. Accordingly, the loan closer must arrange with the Veteran or other parties concerned for the payment of all expenses, fees, and charges incurred in the closing of the loan. Such arrangements should be made at the earliest practical stage of the loan closing process to avoid future misunderstandings and delay.

7.04 ASSIGNMENT OF, AND REQUEST FOR, LOAN CLOSER

The loan closer should be designated as soon as possible so that this information is available at the time the Veteran is notified of loan approval. Such an approval letter should contain the name and address of the loan closer.

7.05 PREPARATION AND TRANSMITTAL OF CASE TO LOAN CLOSER

A cover letter should be prepared in duplicate and used to transmit the case to the loan closer. The letter should request acknowledgment of receipt of the package. The letter

should also request the loan closer to provide information, as soon as possible, as to the approximate date of loan closing and any other pertinent matters regarding the transaction. In each case, the package forwarded to the loan closer should contain:

- a. Full information of the name and address of the Veteran and any other person who will sign the evidence of debt and/or security instrument;
- b. The legal description of the property that will secure the direct loan and a street address, if available;
- c. The amount and term of the loan, the interest rate, and the amount of monthly payments;
- d. Explanation of the type of loan and the purpose to which it relates;
- e. Approved forms to be completed to evidence debt and security in the transaction (security instruments);
- f. Copies of the lender's Notice of Value and VA Form 26-1880;
- g. Repayment information; and
- h. Any other forms that may be required.

7.06 ESTATE OF VETERAN

In most cases, Veterans obtaining loans under this program will be acquiring a leasehold estate. A common type of leasehold estate on trust lands runs for 25 years with an automatic renewal provision for another 25 years. However, some tribes may grant leases for 50, 65, or 99 years. In no case will a loan be approved in which the lease does not extend for at least 14 years beyond the term of the loan without consulting the Loan Policy office. Loan closers must provide evidence to VA that a proper estate, consistent with the terms of the Memorandum of Understanding (MOU), has been obtained by the Veteran. Typically, this will involve a certification and evidence of recordation.

7.07 EXECUTION AND RECORDING OF DEBT AND SECURITY INSTRUMENTS

The security instruments used in connection with vendee loans will be used with Native American Direct Loans. Minor modifications may be necessary. Each station should have the security instruments reviewed by Regional Counsel prior to their use to determine that they are consistent with local laws and the applicable MOU. The debt and security instruments enclosed in the package are to be executed by all persons necessary to create a valid obligation (debt) of the Veteran and of such other persons as VA directed for that particular case; e.g., spouse, endorser, co-borrower, surety, guarantor, etc. They must also be sufficient to create a valid lien of the required dignity on the proper estate in

the property. In order to avoid incorrect computation of interest accruals, it is important that the loan instruments be dated as of the date of actual settlement. However, in those jurisdictions where it is an established practice to execute and record lien instruments in advance of actual disbursement of loan proceeds, such practice can be pursued if it is determined that it will not impair the validity or dignity of the lien held by VA. In such cases, interest will commence with the actual date of disbursement of loan proceeds in the case of purchase loans, and loan closers will be instructed to advise VA promptly of the date the disbursement was actually effected. The loan closer must present the appropriate documents to the tribal or other authorities for recording. Typically, the documents will be recorded in the area Bureau of Indian Affairs Title Office.

7.08 LOAN PROCEEDS REQUEST

When the case has progressed to a point where the loan closer is satisfied the loan will close, he or she will notify VA. The loan closer should set forth any special problems encountered or questions concerning the closing of the loan and specify what funds will be needed by the Veteran at closing. The loan closer should also specify the date fixed for disbursement of the loan proceeds for delivery to the payees. This information should be received by VA at least 15 days before the scheduled closing date. VA Form 26-1880 will be used for this purpose.

7.09 SHIPMENT OF PAPERS AND FINAL REPORT OF LOAN CLOSER

- a. Within 30-calendar days after loan closing, the loan closer must mail the note or bond for the amount of the loan to VA by registered mail with request for return receipt. the following papers:
- b. All other papers should be mailed to VA when all services required for the formal closing of the loan have been completed. These papers should accompany the loan closer's final accounting and be executed in duplicate. Such accounting should be in letter form and briefly summarize the transaction with respect to monies received and disbursed and note any pertinent facts relative to the transaction.
- c. Upon receipt, the closed-loan documentation should be reviewed to determine if the charges are acceptable, evidence of funding fee payment is present, and that the loan is in compliance with the terms of this directive.
- d. A memorandum will be prepared to Regional Counsel requesting they review the legal instruments to determine if they are sufficient to legally establish the loan. Once the review has been completed and it has been established that no further action is necessary, the security instruments should be placed in safekeeping in accordance with station procedures.