

Updated Funding Fee Information for Lenders

1. **Purpose.** The purpose of this Circular is to clarify processes relating to the remittance of the statutory funding fee.

2. **Background.** VA's continued enhancements to the Certificate of Eligibility (COE) and WebLGY provide more certainty to lenders regarding whether to collect the funding fee. Generally, VA cannot guaranty a loan until the statutory funding fee associated with the loan is remitted to VA¹; however, a funding fee must not be collected from individuals who are, by statute, provided a waiver of the funding fee. VA is concerned that certain lenders are not exercising due diligence in determining when a borrower is exempt from having to pay the funding fee. VA is also concerned that some borrowers may have even been advised to finance the funding fee, so that they could effectively receive cashback after loan closing.

The statutory waiver of funding fees applies to the following:

- a. A Veteran who is receiving disability compensation (or who, but for the receipt of retirement pay or active service pay, would be entitled to receive compensation).
- b. A surviving spouse of any Veteran (including a person who died in the active military, naval, air, or space service) who died from a service-connected disability.
- c. A Veteran who is rated eligible to receive compensation as the result of a pre-discharge disability examination and rating, or based on a pre-discharge review of existing medical evidence (including service medical and treatment records) that results in the issuance of a memorandum rating. (Please see item 3.c. below.)
- d. A member of the Armed Forces who is serving on active duty and who provides, on or before the date of loan closing, evidence of having been awarded the Purple Heart.

3. **Action.** This Circular is effective immediately.

a. **Funding Fee Exemption Determination.** Lenders are to ensure, before loan closing, whether a borrower is exempt from having to pay a funding fee.² Lenders are also to exercise due diligence in determining whether an exemption would apply at the time of loan closing (that is, when the funding fee is normally collected from a borrower). Lenders are not to ignore information that could indicate a funding fee exemption might apply. Furthermore, lenders are not to advise a potentially exempt borrower to finance the funding fee, effectively providing the borrower with cashback after loan closing.

¹ 38 U.S.C. § 3729(a)(1).

² See VA Pamphlet M26-7, Revised: Chapter 8, Topic 8.

b. Interest Rate Reduction Refinancing Loans (IRRRLs). A COE is not necessary for IRRRLs.³ Recent enhancements to VA's systems provide for more accurate funding fee exemption information at the time the VA loan number is requested and on the IRRRL Appraisal Case Initiated screen of the loan record in WebLGY. Lenders can print this verification at any time throughout the loan origination process. This enhancement will enable lenders to expedite the loan origination process for IRRRL borrowers.

(NOTE: A surviving spouse who was a co-obligor under an existing VA-guaranteed loan is eligible for an IRRRL to refinance the VA-guaranteed loan.⁴

c. Other Loan Types. For all other loan types, the funding fee exemption information will be displayed on the COE. If the COE displays "Non-Exempt", the lender should ask the borrower if he/she has a pending compensation claim with VA. If the borrower indicates that a claim is pending, the lender should request an updated COE before loan closing (preferably not more than five days before closing) to verify whether the borrower is exempt. While the majority of COEs are processed instantaneously, there are rare cases where processing times may take up to five business days. Lenders should plan accordingly to avoid delaying loan closings.

(NOTE: If an Active Duty Service member has a pre-discharge claim pending, the lender should submit VA Form 26-8937, *Verification of VA Benefits*. If a proposed or memorandum rating is not obtained and a closing takes place, the funding fee exemption does not apply, and the Service member will not be entitled to a refund.)⁵

d. Funding Fee Corrections and Refund Requests. If necessary, lenders and servicers should initiate corrections and requests for a refund in the VA Funding Fee Payment System (FFPS).⁶

(1) *Refunds to the Borrower*. In cases where a borrower was charged a funding fee despite the applicability of an exemption, and VA determines a refund is due, VA will remit the refund directly to the borrower. In these cases, lenders are not required to reduce the principal balance of the loan. The refund destination in FFPS will state "Primary Veteran" or "Surviving Spouse", as appropriate.

(2) *Refunds to the lender*. In cases where the lender paid a funding fee to VA in error, without having charged the borrower, the refund will be remitted back to the lender. The refund destination in FFPS will state "Lender/Vendor".

(3) *Late fees and interest*. Late fees and interest charges due to untimely submission of funding fees to VA will be only be refunded to a lender in instances where the untimely submission was due to circumstances beyond the lender's control (such as system outages) and will only be approved on a case-by-case basis.⁷

³ See VA Pamphlet M26-7, Revised: Chapter 6, Topic 1.

⁴ 38 U.S.C. § 3710(e)(3); 38 C.F.R. § 36.4302(l)(2).

⁵ 38 U.S.C. § 3729(c)(2).

⁶ See VA Pamphlet M26-7, Revised: Chapter 8, Topic 8.

⁷ 38 C.F.R. § 36.4313(e)(3).

4. Paperwork Reduction Act. The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 -3520) and assigned OMB control number 2900-0406 for Verification of VA Benefits and 2900-0474 for a Payment Request for the Funding Fee Payment System. In accordance with the Paperwork Reduction Act, VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

5. Rescission. This Circular is rescinded July 1, 2023.

By Direction of the Under Secretary for Benefits

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