



DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON DC 20420

SPECIAL COUNSEL
WASHINGTON, D.C.

2015 DEC 31 AM 11:14

December 30, 2015

Ms. Carolyn N. Lerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, DC 20036

RE: OSC File No. DI-14-3866

Dear Ms. Lerner:

I am responding to your letter dated September 3, 2015, regarding allegations made by an anonymous whistleblower regarding the Department of Veterans Affairs Home Loan Guaranty Program located at the St. Petersburg Regional Loan Center (RLC) in St. Petersburg, Florida. The whistleblower alleged that management at the RLC consistently disregarded Federal regulations and agency guidance prohibiting certain fees charged by lenders in loan agreements and that loan specialists routinely approved loans with fee structures that exceed prescribed percentage limits on permissible administrative fees. The Secretary of Veterans Affairs has delegated to me the authority to sign the enclosed report and take any actions deemed necessary as referenced in 5 United States Code § 1213(d)(5).

The Secretary asked that the Veterans Benefits Administration (VBA) investigate the whistleblower's allegations. VBA's Loan Guaranty Service conducted an investigation and did not substantiate either of the whistleblower's allegations.

The results of the fact-finding investigation and resulting recommendations are summarized in the enclosed report. Questions may be directed to Mr. Mike Frueh, Director of Loan Guaranty Service, at (202) 632-8862.

Thank you for the opportunity to respond.

Sincerely,



Robert L. Nabors II
Chief of Staff

Enclosure

DEPARTMENT OF VETERANS AFFAIRS

**Report to the
Office of Special Counsel
OSC File No. DI-14-3866**

**Department of Veterans Affairs
St. Petersburg Regional Loan Center
St. Petersburg, Florida**



**Veterans Benefits Administration
Washington, DC
Report Date: October 23, 2015**

Executive Summary

Summary of Allegations

The Secretary of Veterans Affairs directed Loan Guaranty Service, located within the Veterans Benefits Administration (VBA) Central Office, to investigate the allegations lodged by a whistleblower at the St. Petersburg Regional Loan Center (RLC) in St. Petersburg, Florida. The whistleblower alleged that RLC management consistently disregarded Federal regulations and agency guidance prohibiting certain fees charged by lenders and that RLC loan specialists routinely approved loans with fee structures that exceeded prescribed percentage limits on permissible administrative fees.

Specific Allegations of the Whistleblower

1. Management in the St. Petersburg Regional Benefit Office (Loan Center) has consistently disregarded Federal regulations and agency guidance prohibiting certain fees charged by lenders in loan agreements.
2. St. Petersburg loan specialists routinely approved loans with fee structures that exceed prescribed percentage limits on permissible administrative fees.

After careful review of Loan Guaranty Service's findings, the Department of Veterans Affairs (VA) makes the following conclusions and recommendations.

Conclusions

VA **did not substantiate** the allegation that management at the St. Petersburg RLC consistently disregarded Federal regulations and agency guidance prohibiting certain fees charged by lenders in loan agreements or the allegation that loan specialists at the St. Petersburg RLC routinely approved loans with fee structures that exceeded prescribed percentage limits on permissible administrative fees.

The investigation included a review of the seven sample HUD-1 settlement statements, the Cleveland RLC document titled *Closing Cost Information for Lenders*, and the Microsoft (MS) PowerPoint presentation provided to the Office of Special Counsel (OSC) by the whistleblower. OSC declined to provide copies of the emails referenced in the September 3, 2015, referral letter due to the whistleblower's request to remain anonymous.

This VA response to OSC is based on the results of these reviews as well as a review by Loan Guaranty Service of VA regulations and policies governing fees and charges paid by Veterans obtaining a VA-guaranteed home loan.

VA found the fees and charges paid by the Veteran in each of the seven sample cases to be in conformance with VA regulations, with the exception of one overcharge of \$95.00 for loan sample number seven. That overcharge was correctly identified by the St. Petersburg RLC and refunded to the Veteran by the lender upon instruction from the RLC.

It was determined that the whistleblower may not be aware of the full depth of the entirety of review and the proper application of VA policies regarding fees and charges paid by the Veteran when acquiring or refinancing a home loan. While VA does not substantiate the allegation, Loan Guaranty Service will take this opportunity to evaluate the clarity of the policies, procedures, and training regarding fees and charges paid by the Veteran and determine what contributed to the whistleblower's incomplete understanding of VA policy regarding these fees and charges.

Recommendations to the St. Petersburg Regional Loan Center

1. The RLC should evaluate the training needs of staff regarding fees and charges paid by Veterans.
2. The RLC should evaluate communications to staff to identify any factors contributing to the misunderstanding of the policies and procedures on fees and charges.

Recommendations to Loan Guaranty Service

1. Loan Guaranty Service should evaluate the need for clarification of the policies, procedures, and training regarding fees and charges paid by the Veteran.
2. Loan Guaranty Service should amend the rule found at 38 Code of Federal Regulations (CFR), Section 36.4313 to clarify how VA regards fees and charges.

Summary Statement

VA's investigation and review of the evidence provided to OSC by the whistleblower **did not** find violations or apparent violations of VA or VBA policy.

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I. Introduction

The Secretary of Veterans Affairs directed Loan Guaranty Service to investigate complaints lodged with the OSC by the whistleblower, a loan specialist at the St. Petersburg RLC. The whistleblower alleged that RLC management consistently disregarded Federal regulations and agency guidance prohibiting certain fees charged by lenders and that RLC loan specialists routinely approved loans with fee structures that exceeded prescribed percentage limits on permissible administrative fees.

II. Facility Profile

The St. Petersburg RLC serves a population of over 2,310,000 unique Veterans, administering home loan benefits to assist Veterans in obtaining, retaining, and adapting homes.

III. Specific Allegations of the Whistleblower

1. Management in the St. Petersburg Regional Benefit Office (Loan Center) consistently disregarded Federal regulations and agency guidance prohibiting certain fees charged by lenders in loan agreements.
2. St. Petersburg loan specialists routinely approved loans with fee structures that exceeded prescribed percentage limits on permissible administrative fees.

IV. Background

RLCs assist Veterans in obtaining, retaining, and adapting homes through use of their VA home loan guaranty and specially adapted housing benefits. RLCs also provide oversight of VA-guaranteed loans by conducting file reviews of VA-guaranteed loans to ensure that the completed loans meet VA and Federal guidelines.

On April 13, 2014, Loan Guaranty Service deployed the web-based Full File Loan Review (FFLR) tool. This tool facilitates nationalization of workload and provides a standardized process for staff to complete the review of guaranteed loan files, as well as provide any associated feedback to the lender. Mandatory training for all loan specialists and management staff was provided through the Talent Management System from April 3-11, 2014. Prior to the deployment of FFLR and the associated national training, significant inconsistencies existed among the RLCs in the interpretation and application of VA policies and procedures regarding accurate review and follow-up actions on guaranteed loan files.

Loan Guaranty Service provides additional oversight through a national statistical quality review process conducted by the LoanSTAR (Statistical Technical Accuracy

Review) staff, part of Loan Guaranty Service’s oversight department based in Nashville, Tennessee. LoanSTAR reviewers conduct national quality reviews of RLC work products completed by all business sections.

The table below provides information on the number of loan files reviewed under FFLR and LoanSTAR for both the St. Petersburg RLC and the nation as a whole, for fiscal years 2014 and 2015. Each completed loan review conducted by the RLC or LoanSTAR includes a determination on whether or not the fees and charges paid by the Veteran are in compliance with VA guidelines. When these reviews identify fees or charges that are not in compliance with VA guidelines, the RLC creates a deficiency letter to the lender instructing them to refund the noncompliant fees and/or charges to the Veteran. The RLC follows-up with the lender to verify that the refund has been issued.

	Fiscal Year 2014		Fiscal Year 2015	
	St. Petersburg	Nation	St. Petersburg	Nation
FFLR Cases Reviewed by RLC ¹	3,763	33,438	4,458	41,436
LoanSTAR Loan Production Cases Reviewed	384	3,456	384	3,456

V. Conduct of the Investigation

VBA assigned Mrs. Camille Sain and Mr. William Bowman, loan specialists with Loan Guaranty Service’s quality assurance staff, to investigate. Mrs. Sain is a certified internal auditor (CIA), and Mr. Bowman is currently working to complete the CIA certification process.

The investigators reviewed relevant policies, procedures, and reports, as well as the seven sample HUD-1 loan settlement statements, the MS PowerPoint presentation referenced in the OSC referral, and the document from the Cleveland RLC titled *Closing Cost Information for Lenders*, also referenced in the OSC referral letter.

OSC declined to provide copies of the emails referenced in the referral letter due to the whistleblower’s request to remain anonymous. Therefore, the investigators were unable to review the emails from RLC management that were provided by the whistleblower.

Due to the whistleblower’s request for anonymity, the investigators were unable to interview the whistleblower. Upon the investigators’ discussion with Loan Guaranty

¹ Oracle Business Intelligence Enterprise Edition (OBIEE), Total Completed Reviews, October 27, 2015

Service leadership, no interviews with RLC management or staff were deemed necessary for the investigation, and none were conducted.

VI. Findings, Conclusions, and Recommendations

Findings

In the OSC referral letter dated September 3, 2015, the whistleblower specifically referenced 38 CFR, Section 36.4313, Part b. This section states “(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.”

It is important to note that 38 CFR 36.4313, Part b does not specify whether the referenced brokerage fees refer to real estate brokerage fees or mortgage brokerage fees. As there were no real estate brokerage fees charged in any of the seven sample cases provided to OSC by the whistleblower, it appears that the whistleblower is alleging that mortgage brokerage fees paid by the Veteran, also referred to as broker compensation, violate VA regulations, policies, and/or procedures. Due to the whistleblower’s request for anonymity, the investigators were unable to verify if this was, in fact, the whistleblower’s assertion. VA does not regulate mortgage brokerage fees, and there is no prohibition in VA regulations or policy preventing Veterans from paying these fees on VA-guaranteed home loans.

There is no evidence that the whistleblower made reference to the Lenders Handbook – VA Pamphlet 26-7, which provides information, policies, and procedures on the application of the governing laws and regulations for VA-guaranteed home loans. The Lenders Handbook – VA Pamphlet 26-7, Chapter 8, Topic 3c defines brokerage fees. For VA home loan purposes, brokerage fees are defined as follows: “fees or commissions charged by a real estate agent or broker in connection with a VA loan may not be charged to or paid by the Veteran-purchaser.” VA policy does not prohibit the payment of mortgage brokerage fees by the Veteran.

VBA Circular 26-14-10, *Policy Clarification on Unallowable Fees*, referenced by the whistleblower provides clarifying guidance on unallowable fees. All fees must be disclosed during the settlement of all real estate transactions.

Allowable fees are those expressly identified in 38 CFR 36.4313. In addition to these allowable fees, a lender may charge an origination fee of up to one percent of the loan amount. All other fees are considered unallowable because the one-percent origination is permitted only in lieu of the unallowable fees.

Unallowable fees may also be itemized on a settlement statement (HUD-1) due to disclosure requirements, RESPA, or some other reasons, such as a state law. The fact that a settlement statement itemizes an unallowable fee does not mean that the fee is

prohibited. What does make the unallowable fee prohibited is whether the lender charges the full one-percent origination fee *in addition* to the unallowable fee. If so, the lender has committed a violation.

In summary, allowable fees are fees that can be added to the lender's bottom line at loan closing. Unallowable fees must be subtracted from the lender's bottom line. Fees that VA expressly prohibits in regulation or policy guidance are considered legal violations.

Prior to the reporting rules changed in October 2015, all fees were disclosed on the standardized HUD-1 Settlement Statement. By reviewing the HUD-1 Settlement Statement, RLC loan specialists are able to identify all fees, make a determination of whether they are allowable or unallowable, and determine if unallowable fees plus the origination charge exceed the maximum allowed. Unallowable does not necessarily mean forbidden or prohibited. Examples of two unallowable fees are "underwriting fee" and "document preparation fee." If an RLC loan specialist determined that a one-percent flat fee was charged in addition to an underwriting fee and a document preparation fee, the RLC would require the lender to return both fees. If an RLC loan specialist reviewed a HUD-1 Settlement Statement where a one-percent flat fee was not charged, yet an underwriting fee and document preparation fee were charged and did not exceed one percent of the loan amount, the RLC would not require the lender to return either fee. Item 3 of VBA Circular 26-14-10 states, "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." This circular is somewhat unclear in that it does not specifically address mortgage brokerage fees, which are allowable charges for VA-guaranteed loans.

The MS PowerPoint presentation referenced in the OSC referral letter states the following on slide 8, "line 801 (of the HUD-1) includes up to one-percent origination," and "line 801 can also include broker compensation." These statements are in reference to allowable charges by the lender for origination costs and mortgage brokerage fees. The content of the MS PowerPoint presentation was found to be consistent with VA regulations, policies, and procedures.

All fees and charges contained in the seven sample cases were determined to be correct or were appropriately refunded to the Veteran per RLC instructions. Review of the case notes for the seven sample cases revealed no evidence of instruction by management to take action to violate or disregard any VA policy or procedure. Attachment B provides the review results for each of the seven sample cases provided by OSC.

The information contained in the Cleveland RLC document titled *Closing Cost Information for Lenders* was found to be incorrect. Specifically, the document was incorrect in stating that Veterans are not allowed to pay mortgage brokerage fees. As

stated above, VA policy does not preclude the payment of mortgage brokerage fees by the Veteran. The identification of incorrect and inconsistent guidance historically provided by individual RLCs was a factor in the decision to nationalize the loan review workload and training. National training provided April 3-11, 2014, supersedes the Cleveland document titled *Closing Cost Information for Lenders*, as well as any other local guidance that differs in content from the national training provided.

The OSC declined to provide copies of the emails from RLC management that were referenced in the referral letter dated September 3, 2015, due to the whistleblower's request to remain anonymous. Therefore, Loan Guaranty Service was unable to review the instructions provided in those communications for accuracy, content, or conformance with VA policy.

Conclusions

1. VA **did not substantiate** the allegation that management in the St. Petersburg RLC consistently disregarded Federal regulations and agency guidance prohibiting certain fees charged by lenders in loan agreements.
2. VA **did not substantiate** the allegation that loan specialists in the St. Petersburg RLC routinely approved loans with fee structures that exceeded prescribed percentage limits on permissible administrative fees.

The investigation included a review of the seven sample settlement statements, the Cleveland RLC document titled *Closing Cost Information for Lenders*, and the MS PowerPoint presentation provided to OSC by the whistleblower. OSC declined to provide copies of the emails from RLC management, referenced in the referral letter dated September 3, 2015, due to the whistleblower's request to remain anonymous.

This VA response to OSC is based on the results of these reviews as well as a review by VBA's investigators, employed by Loan Guaranty Service's quality assurance staff, of VA regulations and policies governing fees and charges paid by Veterans obtaining a VA-guaranteed home loan.

VA found the fees and charges paid by the Veteran in each of the seven sample cases provided to be in conformance with VA regulations, with the exception of one overcharge of \$95.00 for loan sample number 7. That overcharge was correctly identified by the RLC and refunded to the Veteran by the lender upon instruction from the RLC.

It was determined that the whistleblower may not be aware of the full depth of the entirety of review and the proper application of VA policies regarding fees and charges paid by the Veteran when acquiring or refinancing a home loan. Although VA did not substantiate the allegation, Loan Guaranty Service will take this opportunity to evaluate the clarity of the policies and procedures regarding fees and charges paid by the

Veteran and to determine what contributed to the whistleblower's incomplete understanding of VA policy regarding fees and charges.

Recommendations to the St. Petersburg Regional Loan Center

1. The RLC should evaluate the training needs of staff regarding fees and charges paid by Veterans.
2. The RLC should evaluate communications to staff to identify any factors contributing to the misunderstanding of the policies and procedures on fees and charges.

Recommendations to Loan Guaranty Service

1. Loan Guaranty Service should evaluate the need for clarification of the policies, procedures, and training regarding fees and charges paid by the Veteran.
2. Loan Guaranty Service should amend the rule found at 38 CFR, Section 36.4313 to clarify how VA regards fees and charges.

Summary Statement

VA's investigation and review of the evidence provided to OSC by the whistleblower **did not** find violations or apparent violations of VA or VBA policy. The supporting documentation provided by the whistleblower contained no evidence of fees or charges paid by the Veteran that did not meet VA guidelines. The evaluation of the fees and charges paid by the Veteran can be complex and requires a full understanding of the applicable policies and procedures by all employees tasked with loan file reviews. VA identified opportunities for additional clarification in both policy and training to assist all staff in attaining the required level of understanding.

Glossary

Brokerage Fees: from Lenders Handbook, VA Pamphlet, 26-7, Chapter 8, Topic 3c., Change 15, *Borrower Fees and Charges*, November 8, 2010.

For VA home loan purposes, brokerage fees are defined as follows: “fees or commissions charged by a real estate agent or broker in connection with a VA loan may **not** be charged to or paid by the Veteran-purchaser.”

Mortgage Broker: from Business Dictionary.com

A mortgage broker is a financial professional who seeks to obtain optimum rates and terms on behalf of a borrower, but is not a party to the transaction.

Real Estate Broker: from Business Dictionary.com

A real estate broker is an agent who has met education requirements to qualify for their own real estate business and hire other independent agents from whom they will earn a commission of what the agent generates in sales volume.

Attachment A
Documents Reviewed by Loan Guaranty Service

1. Department of Veterans Affairs, 38 CFR, Section 36.4313, Part b, *General Provisions*.
2. Department of Veterans Affairs, Lenders Handbook – VA Pamphlet 26-7, Chapter 8, topic 3c, November 8, 2010, Change 15, *Borrower Fees and Charges and the VA Funding Fee*
3. Department of Veterans Affairs, Circular 26-14-10, May 7, 2014, *Policy Clarification on Unallowable Fees*
4. Department of Veterans Affairs, Loan Policy MS PowerPoint Presentation, undated, *Policy Discussion & Documentation Requirements*
5. Cleveland RLC document, undated, *Closing Cost Information for Lenders*
6. Seven sample HUD-1 settlement statements (see Attachment B)

**Attachment B
Loan Sample Data**

Sample Number	Lender	Loan/Payoff Amount	1% Maximum Origination	Total Fees/Charges Paid by Veteran	All Fees/Charges Within Prescribed VA Guidelines?	Comments
1	Endeavor America Loans Service	\$218,996	\$2,189.96	\$550	Yes	None
2	Plaza Home Mortgage	\$95,036	\$950.36	\$0	Yes	None
3	Stonegate Mortgage Corporation	\$304,000	\$3,040	\$1,380	Yes	None
4	WJ Bradley Mortgage Capital	\$814,250	\$8,142.50	\$1,980	Yes	None
5	Sierra Pacific Mortgage	\$682,320	\$6,823.20	\$0	Yes	None
6	CMG Mortgage	\$115,807.19	\$1,158.07	\$0	Yes	None
7	Ark-La-Tex Financial Services	\$247,616	\$2,476.16	\$1,770	Yes, after \$95.00 refunded to Veteran	\$95.00 broker service fee charge identified as unallowable by the St. Petersburg RLC was refunded to the Veteran by the lender