



MORTGAGE BANKERS ASSOCIATION

January 24, 2019

Jeffrey F. London  
Director  
Loan Guaranty Service  
Veterans Benefits Administration  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420

**RE: Loan Guaranty: Revisions to VA-Guaranteed or Insured Cash-Out Home Refinance Loans [RIN: 2900-AQ42]<sup>1</sup>**

Dear Mr. London:

The Mortgage Bankers Association (MBA)<sup>2</sup> thanks the Loan Guaranty Service of the U.S. Department of Veterans Affairs (VA) for the opportunity to comment on its interim final rule to implement new protections with respect to cash-out refinance loans. While MBA will be submitting more comprehensive comments on the interim final rule in the coming weeks, the recommendations that follow in this correspondence solely address a significant operational challenge that we have identified in the required borrower disclosures.

Due to this operational challenge, MBA strongly urges that VA not immediately implement any components of the borrower disclosures that rely on information that may not reasonably be in the possession of the lender providing these disclosures. Such a change would need to be publicly articulated as soon as possible, and certainly before the February 15, 2019 effective date of the interim final rule. If not

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<sup>1</sup> 83 FR 64459, "Loan Guaranty: Revisions to VA-Guaranteed or Insured Cash-Out Home Refinance Loans," December 17, 2018. Available at:

<https://www.federalregister.gov/documents/2018/12/17/2018-27263/loan-guaranty-revisions-to-va-guaranteed-or-insured-cash-out-home-refinance-loans>.

<sup>2</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, DC, the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership; and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,300 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's website: [www.mba.org](http://www.mba.org).

addressed prior to this effective date, the inability of lenders to comply with the interim final rule will likely cause many to cease offering VA cash-out refinances altogether.

MBA recognizes the urgent need to address the problem of serial mortgage refinancing, or “churning,” of VA-guaranteed or -insured loans. Churning occurs when servicemembers, veterans, or surviving spouses are persuaded to continually refinance their loans to obtain small monthly savings at the expense of outsized fees that are added to their principal balances. As a result of these repeated transactions, borrowers are often left with little (or no) equity in the home and are financially exposed to even small decreases in home prices. Furthermore, this repeated refinancing lowers investor demand for the Ginnie Mae securities backed by VA loans, which in turn raises average borrowing costs not only for VA borrowers, but also for the many first-time homebuyers and low-income or rural households that use programs operated by the Federal Housing Administration and the Rural Housing Service.

There certainly is a vital need for policymakers to address these problems. As was noted by MBA 2018 Chairman Dave Motley in testimony before a House of Representatives subcommittee, “MBA fully supports supervisory efforts to improve the policing of the market, as well as appropriate regulatory and legislative efforts to remove the ability or incentive for lenders to engage in churning.”<sup>3</sup> In further describing churning, Motley went on to state that “such conduct is unacceptable and should be put to an end.”<sup>4</sup>

The provisions included in the interim final rule, in concert with other actions taken by Ginnie Mae and the U.S. Congress, will help curb these abusive practices. One important component is the borrower disclosure providing a comparison of the terms of the initial loan and the refinance loan. MBA strongly supports the requirement that borrowers be given a clear description of how the terms of their refinance loan will differ from those of their existing loan—including the costs associated with the refinance transaction.

MBA is very concerned, however, that the interim final rule appears to require information in this disclosure which in many cases will be unavailable to the lender offering the refinance loan. In particular, the disclosure must include “the total the borrower will have paid after making all payments of principal, interest, and mortgage

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<sup>3</sup> Motley, J. David, “Home Loan Churning Practices and How Veteran Homebuyers are Being Affected.” Testimony before the U.S. House Committee on Veterans’ Affairs, Subcommittee on Economic Opportunity. January 10, 2018. Available at: [https://www.mba.org/Documents/1%202018%20MBA\\_Testimony\\_Motley.pdf](https://www.mba.org/Documents/1%202018%20MBA_Testimony_Motley.pdf).

<sup>4</sup> Id.

or guaranty insurance (if applicable), as scheduled, for both the new loan *and the loan being refinanced* [emphasis added].”<sup>5</sup>

If the lender offering the refinance loan is not the institution that originated or services the existing loan, it will not have access to the information needed to provide an accurate figure to the borrower. For example, without the original promissory note and other relevant materials, the lender will not always be able to determine the amortization schedule of the existing loan, which will adversely affect the accuracy of the estimate of the total remaining payments. Similarly, an institution that does not service the existing loan would not have knowledge of any principal curtailments that would affect the duration of mortgage insurance payments or any forbearance that was offered in response to a natural disaster.

More broadly, the information typically provided by the borrower in a loan application is simply not sufficient for lenders to comply with the new rule.

The operational challenges associated with this requirement are compounded by the very short implementation timeline provided in the interim final rule. In order to provide borrowers with this disclosure no later than three business days following the loan application, it is critical that lenders be able to rely on automated processes to produce the necessary information. The 60-day implementation period does not provide nearly enough time to allow for such automation and the requisite quality control.

In MBA’s ongoing communications with lenders offering VA loans, we have been informed by a number of institutions that they are very likely to discontinue offering VA cash-out refinance products until and unless they are able to comply with the interim final rule. Costly and inefficient workarounds or manual solutions will not be sufficient to resolve the legal and regulatory risks associated with non-compliance or inaccurate disclosures.

The interim final rule was promulgated to better protect servicemembers, veterans, and surviving spouses who make use of VA home loans. A reduction in product offerings or the provision of inaccurate information will have the opposite effect. **As such, MBA strongly urges that VA not mandate immediate compliance with any requirement that lenders disclose information that is not already included in a standard loan application (such as the total payments associated with the existing loan) prior to finalization of the rule.** Such a delay could be implemented through a revision to Circular 26-18-30 or other policy guidance clarifying that enforcement of borrower disclosure requirements will not begin until the finalization of the rule.

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<sup>5</sup> 83 FR 64463.

While other elements of the interim final rule may also present operational challenges for lenders given the 60-day implementation period, MBA recognizes the need to institute critical consumer protections as quickly as possible. The disclosure of total payments on the existing loan, however, does not rise to this level of importance for the borrower, nor can it reasonably be provided by lenders in the timeframe envisioned by VA. Further, in our full comments on the interim final rule, MBA will be proposing alternate methods for disclosing to the borrower the relative magnitude of the fees associated with the refinance transaction. We urge VA to consider these comments before undertaking enforcement of the calculations described in the interim final rule.

Thank you in advance for your consideration of this time-sensitive request. Should you have questions or wish to discuss further, please contact Dan Fichtler, Director of Housing Finance Policy, at (202) 557-2780 and [dfichtler@mba.org](mailto:dfichtler@mba.org).

Sincerely,

A handwritten signature in black ink, appearing to read "R. D. Broeksmit", with a stylized flourish at the end.

Robert D. Broeksmit, CMB  
President and Chief Executive Officer  
Mortgage Bankers Association