MORTGAGE BANKERS ASSOCIATION

June 9, 2014

Mr. John Bell
Assistant Director for Loan Policy and Valuation
Veterans Benefits Administration,
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

RE: RIN 2900–AO65—Loan Guaranty: Ability-to-Repay Standards and Qualified Mortgage Definition under the Truth in Lending Act

Dear Mr. Bell,

The Mortgage Bankers Association[1] (MBA) appreciates the opportunity to comment on the interim final rule issued by the Department of Veterans Affairs (VA) to define a Qualified Mortgage (QM) for purposes of the VA Home Loan Guarantee Program (VA loan program). MBA commends VA's thoughtful work in developing the interim final rule. We believe the interim final rule, which replaces temporary guidance issued in January 2014, will help ensure that service members, veterans, and their families will continue to have access to sustainable and affordable credit through the VA loan program.

The VA loan program provides a valuable benefit for our nation's military families. The program's clear underwriting standards along with its "hands on" approach to working with borrowers who are experiencing financial difficulties has resulted in a uniquely strong record of well performing loans over many years.

Respecting the interim final rule, MBA commends VA for defining the vast majority of VA loans as QM safe harbor loans. Under the interim final rule, the only VA loans that will be designated QM rebuttable presumption loans are certain Interest Rate Reduction Refinance Loans (IRRRLs). For IRRRLs to be safe harbor loans they must have points and fees no greater than three percent without any adjustment for smaller loans. As explained in this letter, MBA believes that rather than classify some loans as rebuttable presumption QMs, it would be more efficient if VA changed its program guidelines to prohibit lenders from originating IRRRLs that do not provide a reasonable financial benefit to the borrower. Finally, if VA insists on making some

[1] 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, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and 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 2,200 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 Web site: www.mba.org.

IRRRLs rebuttable presumption QMs then it should delay implementation for these loans to give lenders sufficient time to modify and test their systems.

Background

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), the CFPB is responsible for rulemaking to implement Dodd-Frank's ability to repay (ATR) requirements including the exception for qualified mortgages. Also under Dodd-Frank, certain other agencies including VA are empowered to enact QM regulations for their programs.

The VA loan program is an entitlement for veterans and was originally created as part of the Servicemen's Readjustment Act of 1944 (G.I. Bill) to assist veterans' transition to civilian life by providing veterans mortgage credit on par with their non-veteran counterparts.[2] As indicated, the VA home loan program has operated effectively for decades and its loans perform well, due in part to its targeted population, thorough underwriting, and aggressive foreclosure prevention strategies. Both the number and dollar volume of VA-insured loans has increased markedly in recent years from 179,700 loans and $40 billion dollar volume in 2008 to 629,312 loans and $129 billion dollars in 2013.[3]

Safe Harbor v. Rebuttable Presumption Loans

Dodd-Frank provided a presumption of compliance with its Ability to Repay requirements for QM loans. When CFPB promulgated its ATR/QM rule it chose to treat most mortgage loans meeting QM requirements as "safe harbor" loans, with only higher priced mortgage loans (HPMLs) treated as loans where the presumption of compliance was rebuttable. Since the rule's implementation, because of the greater litigation risks attached to the rebuttable presumption standard, most lenders have chosen not to make such loans.

Change VA loan program guidelines to eliminate rebuttable presumption QMs

MBA believes that lenders similarly will be wary of originating IRRRLs that would be deemed rebuttable presumption QMs because such loans bring greater compliance and litigation risks. While MBA agrees that IRRRLs that do not improve borrowers' financial positions have no place in the VA program; we believe there is a better way to ensure that only safe, sustainable loans are made. To achieve this goal, MBA urges that VA change its program guidelines to eliminate IRRRLs that do not leave borrowers in a materially better financial position instead of making IRRRLs rebuttable presumption QMs.[4] Specifically, MBA suggests that VA consider adopting requirements similar to the "net tangible benefit test" used for FHA Streamline refinances loans, which like IRRRLs generally do not require an appraisal or a full credit underwriting. Eliminating the rebuttable presumption for VA QM loans would significantly simplify lenders' compliance burdens and encourage lenders to offer IRRRLs to borrowers.

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[2] Legislative History of the VA Home Loan Guaranty Program, http://www.benefits.va.gov/homeloans/documents/docs/history.pdf.

[3] Statistics taken from Inside Mortgage Finance and VA Annual Benefits Reports.

[4] Currently, VA has certain protections in place to protect borrowers; however MBA believes that additional requirements could be implemented to strengthen the program and prevent the need to implement a rebuttable presumption.

If VA insists on implementing a rebuttable presumption for IRRRLs, delay implementation of the IRRRL provisions to allow lenders to modify and test their systems.

If VA is determined to implement a rebuttable presumption for some IRRRLs, MBA urges that VA delay the effective date for the rebuttable presumption to give lenders sufficient time to test their systems to ensure that they are in compliance with VA guidelines. VA's decision to implement the interim final rule immediately upon its publication in the Federal Register created significant lender confusion. Notwithstanding that VA delayed implementation of its QM rule from May 9, 2014 to June 1, 2014, many lenders report that the delay did not provide them adequate time to prepare their systems.

Lenders tell MBA that they will require 120 days to complete the required system modifications to address QM rebuttable presumption loans. MBA requests VA provide an effective date for the rebuttable presumption provisions that is no sooner than 120 days after the rule is finalized. In addition—in order to ensure that lenders are able to effectively continue serving VA borrowers during the interim period—MBA believes that all VA loans should be deemed safe harbor QMs until a final rule is implemented.

Points and Fees

Under the interim final rule, in order for an IRRRL to become a QM safe harbor loan, the total points and fees payable in connection with a proposed streamlined refinance may not exceed three percent of the total new loan amount. The interim final rule, however, does not include a sliding scale increasing the points and fees limit for smaller loans as provided in the CFPB's rule. That rule contains a sliding scale for loans under $100,000 so that as the loan amount decreases, the permissible points and fees increase.

Under the three percent points and fees cap contained in this rule, the fixed costs to originate loans would not allow a lender to make lower balance loans and still cover their costs. Smaller loans have proportionately higher points and fees due to the fixed costs to originate a loan. To underscore this point, MBA data shows that retail sales and fulfillment expenses for mid-sized lenders have increased from $4,397 per loan in 2010 to $5,412 per loan in 2013, a 23 percent increase. Over this time period, average mortgage banker profitability fell from over $1,000 per loan in 2010 to only $150 per loan in the fourth quarter of 2013.

MBA has recently urged the CFPB to increase the small loan threshold for points and fees to three percent at $200,000 and up and adjust the scale accordingly. The chart below shows how such a change might work.

Current Rule		Recommended	
Loan Amount	Fees and Points Cap	Loan Amount	Fees and Points Cap
		$200,000 and up	3%
		$150,000 to $199,999	$6,000
$100,000 and up	3%	$100,000 to $149,999	4%
$60,000 to $99,999	$3,000	$80,000 to $99,999	$4,000
$20,000 to $59,999	5%	$20,000 to $79,999	5%
$12,500 to $19,999	$1,000	$12,500 to $19,999	$1,000
Less than $12,500	8%	Less than $12,500	8%
		new tiers/caps	

Absent a sliding scale of higher points and fees for smaller loans, the rule is likely to put access to sustainable and affordable QM credit out of the reach of certain military families that seek lower balance IRRRLs.

The need for an adjustment in this area is particularly pressing considering that few lenders are likely to make smaller balance loans if the three percent limit is retained. Establishment of an increasing points and fees limit for smaller loans would go a long way to solving this problem.

Right to Cure

Considering that the CFPB recently proposed that there be a right to cure for points and fees errors for its QM rule we're urging that the VA adopt a similar approach. Under CFPB's proposal, a cure would be available if the loan was originated in "good faith" as a QM and otherwise meets QM's requirements, the cure is provided by the creditor or assignee as a refund of any excess points and fees to the consumer within 120 days after consummation, and the creditor or assignee follows policies and procedures for post-consummation review of loans and for providing refunds to consumers when the points and fees inadvertently exceed the QM caps.

In our comment on CFPB's proposal, MBA supported the establishment of a cure provision and believes that it is a marked improvement over a rule without a cure. However, the comment letter urged that certain provisions be adjusted to ensure that lenders can provide safe sustainable loans to as many QM eligible consumers as possible. In the letter, MBA suggests eliminating the proposed "good faith requirement" as well as revising the time permitted to cure an error.[5]

Other Concerns

- Under the interim final rule there is a requirement that all fees and charges financed as part of the loan or paid at closing must have a recoupment period not exceeding 36 months. However, the rule does not explain which fees and charges are subject to the recoupment requirement. MBA believes that this matter should be clarified and all

[5] MBA's comment to CFPB on Docket No. CFPB-2014-0009; RIN 3170-AA43; Amendments to the 2013 Mortgage Rules Under the Truth in Lending Act (Regulation Z) is available upon request.

prepaid items such as taxes and mortgage insurance premiums should be excluded from the recoupment requirement.

- In the interim final rule there is a requirement that the "[t]otal points and fees payable… will not exceed three percent of the total new loan amount." Under TILA, "total loan amount" is defined as the total amount financed minus any prepaid fees or charges. MBA urges VA to clearly define "total new loan amount" to match the TILA definition of total loan amount.

- The current VA IRRRL guidelines permit borrowers to roll in prepaid fees and charges and escrow deposits as part of the maximum IRRRL calculation. VA should clarify that these fees are excluded from the points and fees test.

- Currently, a borrower may use an IRRRL to refinance a VA-insured loan on an investment property as long as the borrower certifies that they previously occupied the property. Under the Truth in Lending Act (TILA), investment properties are exempt from the CFPB's ATR/QM rule. VA should make clear that IRRRLs used to refinance investment properties are exempt from VA's QM rule.

Conclusion

MBA appreciates VA's work to develop this rule; however, we strongly recommend that VA change its program requirements to make all VA-insured loans QM safe harbor loan. If VA believes designating VA IRRRLs as QM rebuttable presumption loans is necessary, we urge VA to provide 120 days for lenders to implement the IRRRL provisions of the final rule. We look forward to working with VA on these important issues.

Should you have questions or wish to discuss any aspect of these comments further, please contact Ken Markison, Vice President and Regulatory Counsel, at (202) 557-2930 or kmarkison@mba.org, or Joe Gormley, Assistant Regulatory Counsel, at (202) 557-2870 or jgormley@mba.org.

Thank you for your consideration of our comments.

Sincerely,

Pete Mills
Senior Vice President
Residential Policy and Member Services