MORTGAGE BANKERS ASSOCIATION

December 23, 2022

Mr. John Bell, III
Executive Director
Loan Guaranty Service
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

RE: Loan Guaranty: Revisions to VA-Guaranteed or Insured Interest Rate Reduction Refinancing Loans[1]

Dear Executive Director Bell,

The Mortgage Bankers Association (MBA)[2] thanks the Loan Guaranty Service of the U.S. Department of Veterans Affairs (VA) for the opportunity to comment on proposed regulations applying to Interest Rate Reduction Refinancing Loans (IRRRLs) in accordance with The Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRR-CPA) and The Protecting Affordable Mortgages for Veterans Act of 2019 (together, "the Acts").[3][4] MBA appreciates the VA's efforts to work with lenders to enhance programs and policies related to the VA home loan benefit. The VA IRRRL program enables our Nation's veterans a low-cost, expedited path to reduce their interest rate and lower their monthly payments when market rates decline. MBA welcomes the chance to contribute to the development of clear and consistent VA information collection policies.

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[1] 87 Fed. Reg. 65700 (Nov. 1, 2022) (to be codified at 38 C.F.R. § 36.4307).

[2] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 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 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 more than 2,100 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

[3] PL 115-174. Economic Growth, Regulatory Relief, and Consumer Protection Act. (May 24, 2018) Available at: https://www.congress.gov/bill/115th-congress/senate-bill/2155/text

[4] PL 116-33. Protecting Affordable Mortgages for Veterans Act of 2019 (July 25, 2019) Available at: https://www.congress.gov/bill/116th-congress/senate-bill/1749

MBA urges the VA to accommodate the current processes lenders have in place as VA considers finalizing regulation relating to the implementation of the EGRR-CPA. The statute was made effective immediately upon passage in 2018, and VA lenders have already implemented systems and procedures to comply, as well as sought clarity from VA on many issues related to implementation. MBA was happy to see the passage of the Protecting Affordable Mortgages for Veterans Act of 2019 to remedy one of those implementation concerns.

As the VA considers finalizing the regulation, MBA and its members ask that the VA provide sufficient time to properly implement any changes. It is recommended to allow lenders at least nine months to implement the final rule.

Implementing Requirements of the Economic Growth, Regulatory Reduction and Consumer Protection Act

MBA suggests the following improvements to the proposed regulations implementing the IRRL provisions of the EGRR-CPA. These include the recoupment calculation, net tangible benefit test, and seasoning requirements.

Recoupment Calculation

MBA and its members applaud VA for proposing to align the recoupment calculation required to be disclosed to the borrower with that required for guaranty. Having two different calculations has resulted in confusion for the borrower because the disclosure information may indicate that the recoupment period would exceed 36 months although the relevant calculation for purposes of the guaranty complies with the 36-month recoupment requirement.

MBA and its members understand the proposed recoupment calculation to be disclosed to the borrower as follows:

$$\frac{(fees + closing\ costs + expenses) - lender\ credits}{dollar\ amount\ of\ the\ monthly\ P\&I\ reduction} \leq 36\ months$$

Expenses in the above calculation do not include taxes, amount held in escrow, and fees paid under 38 U.S.C. Chapter 37.

VA should additionally clarify its policy related to the following concerns:

1. **Formula inputs for loan with multi-year buydown**
   Borrowers are increasingly paying discount points, often to obtain a multi-year temporary buydown.

MBA asks that VA clarify the equation as it would be constructed for an IRRRL refinancing a VA loan with an interest rate currently reduced due to a temporary buydown. MBA recommends that the calculation reference the full rate and payment as reflected on the mortgage Note, as that provides a more accurate understanding of the long-term impacts of the refinance.

2. **Exclusion of Late and Legal Fees**
When refinancing a loan that is currently delinquent, lenders who are not the servicers of the current loan are unable to evaluate the total late or legal fees that will be charged upon payoff of the loan. MBA recommends the VA clarify that any outstanding fees associated with *the loan being refinanced* (e.g., late fees, legal fees, etc.) can be excluded from the recoupment calculation. Alternatively, MBA recommends the VA confirm that lenders will not be penalized for excluding such fees that are outside of their awareness.

Net Tangible Benefit

The VA requires that the total fees for the IRRRL be recovered in 36 months or less through payment reduction. This recoupment requirement may result in higher pricing for borrowers when it is not met, as lenders typically recover the closing costs through higher interest rates. The MBA believes the recoupment requirement should be removed when the refinance would provide any of the following benefits to the borrower:

(1) The new loan refinances an adjustable-rate mortgage into fixed-rate loan; or

(2) The new loan's term is less than the remaining term on the original loan, and at least ten years shorter than the term on the original loan.

If the new loan does not meet one of the net tangible benefit tests delineated above, VA should require that any closing costs be recouped over no more than 36 months. The MBA understands these recommendations would require statutory changes, however, we want to make our position clear in the event this issue is re-opened for discussion.

Loan Seasoning

In the wake of widespread forbearance use during the pandemic, lenders are increasingly encountering veterans seeking a refinance who recently exited from forbearance through modification. VA should provide clarity and create processes that address the following issues, working with Ginnie Mae for alignment where necessary:

1. **Lenders cannot access modification information**
   Lenders are unable to identify if the loan to be refinanced has been previously modified, affecting the seasoning calculation. Loan modifications are not reported to the credit bureaus, nor is the information available to lenders from Ginnie Mae. VA should either work with Ginnie Mae to create a process by which a modified loan can be identified, or remove the seasoning requirement post-modification. Relying on borrower attestation is not recommended.

2. **Assumptions**
   Lenders are unable to identify when a loan being refinanced was assumed. Additionally, a loan being assumed is not required to be bought out from a Ginnie Mae pool, therefore, Ginnie Mae does not have any seasoning requirements specifically regarding assumptions. VA should eliminate any seasoning requirement on Assumptions.

3. **Definition of Monthly Payments**
   Lenders are unable to identify when a borrower has made six consecutive monthly payments of all amounts due when the lender was not the servicer of the loan during the six-month seasoning period. The proposed definition includes amounts not reported to credit bureaus or available from Ginnie Mae, such as late fees, legal fees, and amounts under repayment plans. Accordingly, MBA recommends the VA consider revising the proposed definition of monthly payments to include only principal, interest, taxes and insurance (PITI).

Proposed IRRRL Comparison Disclosure

The following suggestions pertain to the Comparison Disclosure requirements as outlined in the Proposed Rule. MBA has some general concerns with providing estimates to veteran borrowers, as well as significant concerns and questions regarding procedural requirements within the rule.

<u>Content-Related Suggestions</u>

There is concern among MBA members about potential False Claims Act risk resulting from lenders having to rely on estimated loan figures to generate the Comparison Disclosure where defined loan terms are not accessible. Failure to provide accurate disclosures to borrowers could lead to significant lender liability under the False Claims Act. This liability could arise in a manner that deviates from VA's enforcement intentions, such as through actions by the Department of Justice or qui tam litigation. If lenders are unable to reasonably ensure the accuracy of their disclosures, many may choose to cease offering VA Refinances rather than incur the risk associated with False Claims Act enforcement. Fewer lenders offering VA refinances would detrimentally impact Veteran borrowers looking to use these products.

Further, providing loan term estimates, rather than actual loan terms, increases the risk of consumer confusion thereby undermining the purpose of the Comparison Disclosure to inform the consumer about the costs and fees associated with the refinance transaction.

Typically, at the time of application the following loan terms are often inaccessible thereby, causing the lender to rely on estimates from the borrower:

a. The borrower's current interest rate is often provided verbally by the potential borrower and may not be accurate.

b. The loan payoff amount for existing and new loan is usually estimated because unless the lender also services the loan being refinanced, the lender lacks access to the information required to assess the remaining balance on the current loan. Unknown factors included in the payoff calculation include the amortization schedule, principal curtailments, and outstanding fees the borrower has accrued on the loan to be refinanced.

MBA recommends the VA provide clarity as to what documentation is required for the estimates above, as lenders often cannot obtain the necessary information, particularly within the three-day delivery period.

MBA proposes that VA seriously review the information required to be collected, how it relates to IRRRLs, whether it provides utility to the borrower given the goals of the transaction from a borrower's perspective, and how heavily lenders must rely on possibly inaccurate estimates to provide it.

Procedural Concerns

MBA members are concerned that the proposed regulation as written contains significant operational challenges. MBA asks that the VA consider the following recommendations in finalizing the Rule.

1. **Issuance of Comparison Disclosure**
   Under the proposed language of 38 C.F.R. 36.4307(a)(11)(iii), the VA proposes an updated Comparison Disclosure be provided on the same date a revised Loan Estimate that includes revisions impacting certain loan terms is provided.[5] Requiring that the lender provide an updated Comparison Disclosure each time the Loan Estimate is redisclosed can create confusion to the consumer and expose the lender to non-compliance. MBA recommends that the lender be required to provide the Comparison Disclosure on the date the lender provides

[5] 87 Fed. Reg. 65714.

the Initial Loan Estimate and again on the date the lender provides the Initial Closing Disclosure.

2. **Confirm three-day delivery of Comparison Disclosure requirement**
Under the proposed language of 38 C.F.R. § 36.4307(a)(11)(iii), the VA would require lenders to provide the Comparison Disclosure "on the date the lender provides the Loan Estimate".[6] Creditors are required to deliver or place the Loan Estimate in the mail no later than the third business day of receiving a consumer's application.[7] MBA recommends the VA adopt a similar requirement whereby lenders would be required to deliver and/or mail the Comparison Disclosure within three business days of receiving a consumer's loan application. This regulatory change would align VA's Comparison Disclosure delivery requirement with the Consumer Financial Protection Bureau's TILA-RESPA Integrated Disclosure (TRID) Rule which provides that a consumer is considered to have received the Loan Estimate if it is mailed within three-business days of the loan application.[8]

3. **Eliminate borrower certification requirement**
Under the proposed language of 38 C.F.R. § 36.4307(a)(11)(v), the borrower is required to certify receipt of the Comparison Disclosure at the time of application and at loan closing. Validating the delivery of the Comparison Disclosure with the borrower is largely dependent on the borrower's memory and, therefore, can create confusion if the borrower does not recall receiving the Comparison Disclosure. Accordingly, MBA suggests the VA revise the proposed 38 C.F.R. § 36.4307(a)(11)(v) to permit lenders to verify delivery of the Comparison Disclosure by documenting issuance of the Comparison Disclosure, such as with system timestamps, within the requisite time period.

While MBA appreciates the intentions behind the requirement of the consumer disclosure, refinements to the timing and evidence of delivery would better implement statutory requirements under the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018.[9] Improvements could be made to enhance consumer understanding and reduce the compliance burden for this information collection.

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[6] 87 Fed. Reg. 65714.
[7] 12 C.F.R. § 1026.19(e)(iii).
[8] 12 C.F.R. § 1026.19(e)(iv) ("If any disclosures required under paragraph (e)(1)(i) of this section are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.").
[9] PL 115-174. Economic Growth, Regulatory Relief, and Consumer Protection Act. (May 24, 2018) Available at: https://www.congress.gov/bill/115th-congress/senate-bill/2155/text

Conclusion

MBA thanks VA for the opportunity to provide feedback on the regulatory implementation of statutory requirements provided in The Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 and The Protecting Affordable Mortgages for Veterans Act of 2019.[10][11] MBA urges VA to consider our suggestions as they are informed by more than three years of practitioner experience complying with the statute.

MBA values the importance of VA's IRRRL program and welcomes the opportunity to work with VA to further improve its program to ensure loan quality and the development of clear standards to promote safe and sustainable financing. Should you have questions or wish to discuss these comments, please contact Hanna Pitz at (202)557-2796 or Darnell Peterson at (202)557-2922.

Sincerely,

Pete Mills
Senior Vice President
Residential Policy and Strategic Industry Engagement
Mortgage Bankers Association

[10] PL 115-174. Economic Growth, Regulatory Relief, and Consumer Protection Act. (May 24, 2018) Available at: https://www.congress.gov/bill/115th-congress/senate-bill/2155/text
[11] PL 116-33. Protecting Affordable Mortgages for Veterans Act of 2019 (July 25, 2019) Available at: https://www.congress.gov/bill/116th-congress/senate-bill/1749