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February 6, 2019

Jeffrey F. London  
Director  
Loan Guaranty Service  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, NW  
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Office of Management and Budget  
Attn: Desk Officer for the Department of  
Veterans Affairs  
Office of Information and Regulatory  
Affairs (OIRA)  
Washington, DC 20503

**Re: RIN 2900-AQ42, Loan Guaranty: Revisions to VA-Guaranteed or Insured  
Cash-out Home Refinance Loans**

To Whom it May Concern:

I am writing to share the views of the Housing Policy Council (HPC)<sup>1</sup> on key aspects of the Department of Veterans Affairs' (VA) Revisions to VA-Guaranteed or Insured Cash-Out Home Refinance Loans (Interim Final Rule). Our comments are focused solely on the certification disclosure requirements in the Interim Final Rule. As the certification disclosure is a collection of information under the Paperwork Reduction Act (PRA), our comments also respond to the solicitation of comments under the PRA.

**Summary**

HPC supports the important effort to prevent abuses in the refinancing of VA home loans. However, the Interim Final Rule presents some severe operational challenges for lenders that cannot be addressed by the Interim Final Rule's effective date of February 15, 2019. We are requesting that VA: (1) postpone the implementation of any part of the new borrower disclosures that rely on loan information that lenders do not possess at the time of the loan refinancing; *or* (2) issue guidance stating that the VA will permit estimated values for these fields and will not require and/or enforce a mandate for precisely calculated and validated information until issuance of the final rule.

**Certain Disclosure Requirements are Impossible.**

The Interim Final Rule requires the lender to provide a borrower with a comparison of the existing loan and the proposed loan, and in many circumstances, the lender will not

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<sup>1</sup> The Housing Policy Council (HPC) is a trade association comprised of leading national mortgage lenders, servicers, mortgage insurers, and title and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable home ownership opportunities leading to long-term wealth-building and community-building for families.

have access to some of the required information. For example, if the lender did not originate or does not service the existing loan, the lender will not have access to the “total the borrower will have paid after making all payments of principal, interest, and mortgage or guaranty insurance.” Similarly, the lender will not have information regarding “the term remaining on the loan being refinanced.” Also, the lender will not have enough information to determine the loan to value (LTV) ratio of the existing loan. In fact, since this disclosure is required to first be delivered within three business days of the application, the lender also will not have the LTV ratio on the new loan, as an appraisal will not yet have been performed. The Interim Final Rule is silent as to how a lender can comply with these requirements when it does not have access to the required information.

In the preamble discussion of the certification that a lender must provide to a borrower, VA notes that it will not require lenders to complete a specific form and instead lenders will generate their own certification from their loan origination software. “VA is only asking the lender to take the information they already collect from and provide to veterans, and display and provide that information into an easy to read format for the veteran.” In many circumstances, specifically where the lender is not the originator or servicer of the existing loan, the lender does not collect or have access to the information required to be included in the certification.

While VA is not requiring a specific form at this time, VA has released a “sample certification” as an example. We have reviewed this sample and are concerned that it will lead to more confusion rather than clarity. While we recognize that the sample is a model and not required, we understand that VA may develop an official certification form that will be mandatory and that this sample may well reflect that final form. We believe the sample is complicated and will lead to confusion rather than the stated goal of understanding the loan terms. We ask that if VA pursues an official certification, the agency engage with interested parties in developing a form that enhances consumer understanding, as evidenced by some consumer testing.

## **Paperwork Reduction Act Considerations**

HPC asks that OMB not approve the collection of information contained in the Interim Final Rule. Under the PRA, VA must solicit comments to:

- (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency including whether the information shall have practical utility;
- (2) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information;
- (3) enhance the quality, utility, and clarity of the information to be collected; and
- (4) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The collection of information (the disclosures) required under the Interim Final Rule fails to satisfy the objective of each of these four factors.

First, the disclosures are likely to be ineffective, both because the information to be collected is not readily available and because the information is likely to create confusion rather than clarity. As such, we believe that these disclosures are not necessary for the proper performance of the functions of the VA and would not have practical utility. While the statute requires a net tangible benefit test to assure that the new loan is in the interest of the consumer, the statute does not mandate the timing or content of a disclosure that compares the existing and new loan. While we can appreciate the intent of the VA to provide a means for a veteran to understand the financial impact of the cash-out refinance loan, we do not believe that the approach proposed in the Interim Final Rule and the sample certification achieve this objective. As discussed above, since much of the information will be impossible to obtain, the collection of information will have, at best, limited practical utility.

Second, we do not believe VA accurately estimated the burden of the proposed collection of information. VA estimates that the average burden per response to be five minutes total for both instances of generation and disclosure as well as five minutes for training. These estimates do not account for the fact that, in many instances, the lender will not have the information to complete the disclosure. VA's estimates assume that the lender has access to or will be able to easily obtain the required information, which is often not the case. For the same reasons, we disagree with VA's estimates of the technology costs for lenders to capture, store, and transmit the new information within and across their existing technology platforms.

Third, the disclosures will not enhance the quality, usefulness, and clarity of the information to be disclosed. Many of the disclosure requirements in the Interim Final Rule are unworkable and, at times, impossible, which negates any proposed usefulness of the disclosures. The sample certification is likely to confuse the consumer, who may not know how to assess the two sets of figures to draw useful conclusions about the impact of the new loan relative to the existing loan.

Finally, VA could take other actions to minimize the burden on lenders with regards to consumer education and the disclosure of useful information. For example, instead of requiring confusing and unworkable disclosures, VA could develop an online comparison tool on the VA website. In the tool, a consumer could enter in information about their current loan and about the refinance and compare the two to make the best informed decision. The consumer could use the latest periodic statement for the existing loan, and the lender could provide as much information as is available about the new refinance loan. VA could conduct research and outreach to better understand the best format and data points to enhance consumer understanding. This approach would minimize the burden on those required to make the disclosures and could include additional questions that would help to ensure that the consumer understands the new loan and makes an informed decision about what form of financing, if any, is best suited to meet his or her needs. Further, this approach would generate a new data set from

which VA might be able to discern interesting patterns of behavior that would assist the agency in future policy-making or veteran outreach and education.

## **Conclusion**

HPC strongly supports the goal of preventing “churning” of refinances of VA loans. We also recognize that the authorizing statute presents challenges in developing the regulation and very tight timelines, and we appreciate the VA’s Loan Guaranty Service’s efforts to keep lenders informed of its implementation. As VA notes in the preamble, the varied interpretations of the statute contributed to lender uncertainty in how to implement a responsible cash-out refinance program. “VA believes this uncertainty has caused responsible lenders to employ a high degree of caution, (e.g., refraining from providing veterans with crucial refinance loans that are not predatory or risky. We agree with VA’s assessment, and unfortunately, without a temporary delay or written leniency regarding the certification disclosures, responsible lenders may not be able to provide VA cash-out refinance loans

We want to work with the VA to ensure that the loan program serves veterans efficiently and without abuses. A temporary delay or some additional written leniency in full enforcement of the disclosure requirement will enable lenders to work toward effective implementation of the Interim Final Rule, without negating the purpose of curbing “churning.”

We are asking that VA work quickly to clarify the guidance, and we look forward to working with VA on the effective implementation of the Interim Final Rule. Should you have any questions or need additional information from us, please contact Meg Burns, Senior Vice President for Mortgage Policy, at 202-589-1926.

Thank you for considering our views.

Yours truly,

A handwritten signature in black ink that reads "Edward J. DeMarco". The signature is written in a cursive style with a large initial 'E'.

Edward J. DeMarco  
President  
Housing Policy Council

cc: Director  
Regulation Policy and Management (00REG)  
Department of Veterans Affairs  
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