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: Agency Information Collection Activity: VA-Guaranteed Home Loan Cash-Out Refinance Loan Comparison Disclosure[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 the information collection required pursuant to regulation AQ42, as established by the February 2019 Interim Final Rule.[3] MBA appreciates the VA's continual efforts to work with the mortgage industry to enhance programs and policies related to the VA home loan benefit. The VA Cash-Out program, in particular, enables our Nation's veterans to access their home equity – an important financial benefit of owning a home. MBA appreciates the opportunity to comment on information collections that facilitate the VA lending process and welcomes the chance to contribute to the development of clear and consistent VA information collection policies.

The information collection presented for review contains significant operational challenges which result in diminished quality of information provided to the veteran.

---

[1] 87 Fed. Reg. 64860 (Oct. 26, 2022).

[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] 2900-AQ42 – Interim Final Rule – Loan Guaranty: Revisions to VA Guaranteed or Insured Cash-Out Home Refinance Loans. (38 CFR 26) Effective 2/15/2019. Available at: https://www.regulations.gov/document/VA-2018-VBA-0026-0001

MBA previously outlined these challenges both at a high level and in detail in its letters to VA in response to the Interim Final Rule.[4] While substantive comments on the Interim Final Rule itself are outside of the scope of the feedback requested in the notice as required by the Paperwork Reduction Act (PRA), MBA is taking the opportunity to again outline concerns with the content of the Interim Final Rule as it dictates the information collection. MBA is aware, additionally, that the VA is scheduled to publish a Final Rule on regulation AQ42 in June of 2023 per the Unified Agenda.[5] VA is not, per the rulemaking process, required to solicit public comment before publication of the Final Rule.[6]

Given that the regulation has been confirmed to be economically significant, and thus a "Major rule," MBA is taking this opportunity to reiterate to the VA that the disclosure as outlined should be thoroughly reviewed for improvements prior to the publication of a Final Rule on AQ42. Our members report that the requirements of AQ42 lead to confusion of the veteran, do not provide decision-level accuracy of information, and are an undue regulatory burden on VA's lender partners.[7]

General Feedback on the Comparison Disclosure

While MBA appreciates the purpose of the Comparison Disclosure to inform the borrower as to the costs and fees associated with a Cash-Out refinance transaction, MBA's members think that the disclosure should be eliminated. Providing the disclosure for a Cash-Out refinance does not help borrowers decide whether to move forward with the refinance, since comparing the existing and refinanced loan terms would prove of limited value for a borrower taking equity out of their home beyond closing costs, certain repairs, and incidental cash back.

Eliminating the Comparison Disclosure requirement for the Cash-Out refinance would require regulatory changes. Absent a repeal of the comparison disclosure, MBA members report that improvements could be made to enhance consumer understanding and reduce the burden of compliance of this information collection as explained herein.

Feedback on the Questions Posed by the PRA

[4] MBA, "Comment on AQ42 – Interim Final Rule – Broeksmit, Robert" (Jan 24, 2019 and February 19, 2019 of the same title) Available at: https://www.regulations.gov/document/VA-2018-VBA-0026-0001/comment?filter=MBA
[5] "AQ42 – Interim Final Rule – Loan Guaranty: Revisions to VA Guaranteed or Insured Cash-Out Home Refinance Loans" Regulations.gov Rulemaking Docket. Available at: https://www.regulations.gov/docket/VA-2018-VBA-0026/unified-agenda
[6] Office of the Federal Register, "A Guide to the Rulemaking Process" Available at: https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf
[7] VA-2018-VBA-0026-0002. "AQ42(IF) Regulatory Impact Analysis" (December 17, 2018) Available at: https://www.regulations.gov/document/VA-2018-VBA-0026-0002

MBA's responses to the questions outlined in the proposed collection of information:

1. **The collection of information should be revised to increase the practical utility of the form for veteran borrowers. Insofar as the information collection is for the veteran's awareness, it should not interfere with the proper performance of VBA's functions.**

   MBA supports the intent to provide transparency to the veteran to ensure they are making a sound financial decision on whether to proceed with a Cash-Out Refinance transaction. A critical component of a refinance transaction is being able to compare key loan characteristics. Typically, however, a lender lacks access to the loan terms needed to complete the Comparison Disclosure. For example, to be able to determine the total remaining loan term the lender must often identify amortization of an adjustable-rate loan, principal curtailments, early cancellation of private mortgage insurance, delinquencies, etc. Absent these defined loan terms at the time of application, lenders are required to estimate loan terms for the existing loan(s). Further, the Loan-to-Value ratio and the amount of equity being obtained by the refinanced loan are not determined at the time of application, thereby leading lenders to estimate these terms as well.

   Because much of the information provided in the Comparison Disclosure on a Cash-Out refinance are broad estimates, it raises questions as to the accuracy and decision value of the Comparison Disclosure, undermining the intended purpose of helping veterans make informed consumer choices. A consumer disclosure that includes estimated (and possibly inaccurate) loan characteristics and terms may create confusion and lead to decision errors.

   For these reasons, MBA proposes that the VA review and consider whether the information required to be collected on the Comparison Disclosure serves the intended purpose of helping the borrower decide whether to move forward with Cash-Out refinance transactions where the Comparison Disclosure is generated using estimated loan terms for the existing loan.

2. **VA underestimates the burden of the proposed collection of information.**

   MBA members have identified several areas where improvements could be made to lessen the burden of the proposed collection of information, outlined in response to No. 4 below.

3. **MBA has collected the following feedback on ways to enhance the quality, utility, and clarity of the information to be collected:**

   The greatest concern among MBA members is the potential for 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 or verifiable. 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 Cash-Out Refinances rather than incur the risk associated with False Claims Act enforcement. Fewer lenders offering VA Cash-Out refinances would detrimentally impact veteran borrowers looking to use these products.

Further, providing loan term estimates rather than defined 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 Cash-Out 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.

b. The New Loan-To-Value (LTV) ratio is usually estimated because the home has not yet been appraised.

c. The total paid for the existing and new loan is usually estimated because unless the lender happens to also service the loan being refinanced, the lender lacks access to the information required to assess the total payoff on the current loan. As stated above in response to No., 1 unknown loan terms include the amortization schedule, potential early cancellation of PMI, principal curtailments, and outstanding fees the borrower has accrued on the loan to be refinanced.

MBA recommends the VA add "Estimated" in the title of the "Existing Loan" column and provide clarity as to what documentation is required for the estimates above, as lenders often cannot obtain it, particularly within the three-day delivery period. As to the total paid for the existing and new loan, MBA suggests replacing the estimate of the total to be paid in the existing and new loans with a simple sum of the fees that the borrower is paying in exchange for the refinance transaction.

4. **MBA provides the following suggestions for ways to minimize the burden of the collection of information on respondents:**

   a. Eliminate borrower certification requirement
   Pursuant to 38 C.F.R. § 36.4306(a)(iv), the borrower is required to certify to having received 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 eliminate the borrower certification requirement and revise 38 C.F.R. § 36.4306(a)(iv) 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, as explained in more detail below.

   b. Confirm three-day delivery of Comparison Disclosure requirement
   As suggested above, MBA recommends removal of the VA's borrower certification requirement concerning receipt of the Comparison Disclosure within three (3) days of the loan application under 38 C.F.R. § 36.4306(a)(iv). Additionally, MBA recommends the VA adopt a similar delivery requirement under the Consumer Financial Protection Bureau's TILA-RESPA Integrated Disclosure (TRID) Rule for the Loan Estimate whereby, the estimate is required to be delivered or placed in the mail no later than the third business day of receiving a consumer's application.[8] Specifically, MBA suggests the VA revise 38 C.F.R. § 36.4306(a)(iv) such that lenders would be required to deliver and/or mail the Comparison Disclosure within three business days of receiving a consumer's loan application. Importantly, this regulatory change would algin VA's Comparison Disclosure delivery requirement with the 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.[9]

   c. Consider eliminating the second disclosure requirement
   Pursuant to 38 C.F.R. § 36.4306(a)(iv), a Comparison Disclosure is required to be provided at closing. The information included in the Comparison Disclosure is redundant when compared to the information

[8] 12 C.F.R. § 1026.19(e)(iii).
[9] 12 C.F.R. § 1026.19(e)(1)(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.").

included in the TRID-mandated Closing Disclosure which is also provided at closing. MBA recommends the VA review the Comparison and Closing Disclosures for redundancy and evaluate whether it would be less confusing to the borrower to eliminate the VA requirement to provide a second Comparison Disclosure at closing. MBA believes that the information required by the Comparison Disclosure is more clearly and expressly articulated in the TRID-mandated Closing Disclosure.

MBA values the importance of VA's Cash-Out Refinance program, particularly as inflation remains high and veterans look to access their equity. We welcome 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.

MBA greatly appreciates the efforts VA has put into developing and maintaining VA's Cash-Out program and urges VA to consider the above recommendations. Should you have questions or wish to discuss these comments, please contact Hanna Pitz at (202)557-2796.

Sincerely,

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