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National Association of Federally-Insured Credit Unions

January 3, 2023

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 Proposed Rule (Docket No., VA-2022-VBA-0026; RIN 2900-AR58)**

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to you regarding the Department of Veterans Affairs (VA) Loan Guaranty: Revisions to VA-Guaranteed or Insured Interest Rate Reduction Refinancing Loans proposed rule (Proposed Rule). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 133 million consumers with personal and small business financial services products. Both section 309 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) and section 2 of the Protecting Affordable Mortgages for Veterans Act of 2019 (collectively, the Acts) materially clarify or modify the VA's authority to guarantee or insure a refinance loan. NAFCU and its members, many of whom have a deep history of serving our nation's veterans and their families, appreciate the opportunity to comment on the VA's proposed implementing updates to its existing interest rate reduction refinancing loan (IRRRL) regulation. To ensure the greatest number of veterans remain eligible for and have access to high-quality, affordable IRRRLs, NAFCU urges the VA to adopt a commonsense definition of "monthly payment," not impose the additional requirement that a veteran's requisite six monthly payments be consecutive, adopt a phased mandatory compliance timeline, and make principled exceptions to a loan's modification resetting its seasoning elements.

**General Comments**

Much of the Proposed Rule, if adopted, would likely operate to effectively reduce incidents of unscrupulous lenders taking advantage of veterans facing financial difficulties, better enable veterans to make informed refinancing decisions, and provide helpful regulatory clarity to credit unions helping veterans and their families protect their hard-won homeownership. However, in certain portions of the Proposed Rule, the VA greatly exceeds the Acts' statutory requirements and proposes to establish comparatively stringent IRRRL regulatory parameters that will drive down veteran IRRRL eligibility and drive up IRRRL costs for both veterans and lenders. The Proposed Rule is also silent as to key regulatory compliance components, including a mandatory compliance timeline.

**Loan Seasoning**

Currently, the VA's IRRRL regulation at 38 CFR § 36.4307 does not contain any loan seasoning elements, either in its own terms or by incorporating reference to other applicable VA regulations. Section 3709(c) of the EGRRCPA generally provides that a loan made to a veteran for a purpose specified in 38 USC §3710 may not be guaranteed or insured by the VA until the later of "(1) the date that is 210 days after the date on which the first monthly payment is made on the loan [to be refinanced]; and (2) the date on which the sixth monthly payment is made on the loan [to be refinanced]." The EGRRCPA, as the VA points out, does not define the term "monthly payment" or provide a rubric for the calculation of either of its seasoning elements. To implement the EGRRCPA's Section 3709(c) requirements, the VA proposes to amend its IRRRL regulation at 38 CFR §36.4307 to include a new subsection (a)(9).

*Seasoning Element One: Six Consecutive Monthly Payments*

The VA's proposed subsection 38 CFR §36.4307(a)(9)(i)(A) diverges from the EGRRCPA's statutory requirements in two critical respects and threatens to dramatically reduce the number of veterans who would otherwise be eligible to obtain an IRRRL and impose unnecessary, outsized compliance burdens on credit unions serving veterans and their families.

First, the VA proposes to expansively define a veteran's "monthly payment" on the loan to be refinanced as including "any additional monthly amounts agreed to between the veteran and the holder of the loan being refinanced." This proposed subsection cites "payments for taxes, hazard insurance, fees and charges related to late payments, and amounts owed as part of a repayment plan" as examples of the kinds of additional monthly amounts that may be agreed to between a veteran and the holder of the loan being refinanced. These examples reflect the common practice of a mortgage lender requiring a mortgage borrower to escrow additional amounts with the mortgage lender, on a monthly basis, for the mortgage lender's future payment of hazard insurance premiums and property taxes on the mortgage borrower's behalf. These examples also appropriately clarify that a veteran's simply incurring a late payment fee or penalty in connection with the veteran's home loan would not disqualify the veteran from subsequently being credited with making a timely monthly payment under this proposed subsection, provided the veteran pays any such fee or penalty during the calendar month in which it is incurred.

However, no other part of the VA's existing loan guaranty regulations adopts such an expansive definition of the term "monthly payment." Nothing within the Proposed Rule nor any other part of the VA's existing loan guaranty regulations would effectively exclude additional monthly amounts agreed to between a veteran and the holder of the loan being refinanced *that are wholly unrelated to the loan being refinanced*. For example, consider a veteran that has both a home loan and an auto loan with the same lender. Under this proposed subsection, irrespective of the veteran's home loan payment status, the veteran would not be credited with making a timely monthly payment under this proposed subsection in any month the veteran fails to pay any portion of the veteran's auto loan in the month it is due. Certainly, neither Congress nor the VA intended for a veteran's payment history on an auto loan, student loan, credit card, business line

of credit, or any other financial obligation that is wholly unrelated to a home loan being refinanced to affect a veteran's eligibility for an IRRRL in this way.

Beyond dramatically reducing the number of veterans who would otherwise be eligible for an IRRRL, the VA's proposed definition of "monthly payment" would, if adopted, drive up IRRRL costs. The proposed definition would impose unnecessary, outsized compliance burdens on IRRRL lenders that have no reasonable means of reliably determining whether a veteran has definitively met this seasoning element. Most obvious is the case in which a veteran's failure to pay any portion of a wholly unrelated loan during the month in which it is due disqualifies the veteran for credit towards the six consecutive monthly payments seasoning element, but the proposed definition's likely effects are truly broad. IRRRL lenders underwriting the refinancing of a veteran's loan held by another lender have no reasonable means of reliably verifying whether a veteran previously incurred a late payment penalty or fee on the loan to be refinanced, let alone when such penalty or fee was paid in the month it was incurred. To do so, an IRRRL lender would be required to collect and review a great number of financial statements not typically collected during IRRRL underwriting – or any other form of home loan refinance underwriting.

Second, the VA materially modifies the EGRRCPA's six monthly payments seasoning element by requiring that such six monthly payments be consecutive. A veteran's failure to make a full monthly payment in any month before the veteran has made six consecutive monthly payments on the loan to be refinanced would reset the loan's seasoning element. The VA plainly has a responsibility to establish reasonable underwriting parameters for the loans to veterans it guarantees or insures, but this proposed subsection's requirement that a veteran make six consecutive monthly payments greatly exceeds the EGRRCPA's requirements and is all but certain to produce absurd, indefensible results.

For example, under the Proposed Rule, a veteran who purchased a home 11 months ago, timely made six consecutive monthly payments on his home loan but has not made even a partial payment on his home loan in the past five months would satisfy this proposed subsection's seasoning element. Another veteran who also purchased a home 11 months ago, timely made five consecutive monthly payments on her home loan, failed to notice and timely pay a nominal late fee incurred in the loan's sixth month, and has subsequently paid the late fee and timely made another five additional consecutive monthly payments would not.

NAFCU strongly urges the VA to amend this proposed subsection's definition of "monthly payment" to include only "the full monthly dollar amount owed under the note plus any additional monthly amounts agreed to between the veteran and the holder of the loan being refinanced *and directly related to the loan being refinanced*" and not interject a consecutiveness modifier into the EGRRCPA's six monthly payment seasoning element.

*Seasoning Element Two: 210 Days After the First Payment Due Date*

NAFCU and its members generally support the VA's interpretation of the EGRRCPA's 210 days seasoning element as expressed in proposed subsection 38 CFR §36.4307(a)(9)(i)(B)(ii). The

rubric in this proposed subsection reasonably tracks common industry practice and the VA's other existing loan guaranty regulations.

**Mandatory Compliance Timeline**

The Proposed Rule contains no proposed mandatory compliance timeline. Even if the VA adopts a version of the Proposed Rule that incorporates the other changes advocated for in this comment letter, the VA's amendments to its IRRRL regulation required by the Acts will require a great deal from IRRRL lenders. IRRRL lenders will, at a minimum, (1) need to recreate the VA's new mandatory net tangible benefit IRRRL comparison disclosures in their secure electronic form delivery and collection systems, (2) conduct electronic form reliability and user experience tests, and (3) train lending and compliance staff on the new disclosures' compliant use, maintenance, and review.

Many IRRRL credit union lenders are modest community lenders with limited assets, staff, and operational resources. To provide their members with access to valuable, competitive banking technologies, including secure electronic form delivery and collection systems, many smaller credit unions contract with third-party information technology service providers. Though many smaller credit unions can and do perform staff training in-house, they are nonetheless effectively captive to their service providers' timelines for new electronic form integration and testing. Some larger IRRRL lenders may be able to perform most or all of these mandatory compliance ramp-up functions in-house. Even for the larger IRRRL lenders, however, the VA's proposed amendments to its IRRRL regulation will require the close and diligent coordination of multiple employee teams.

NAFCU strongly encourages the VA to adopt a phased mandatory compliance timeline, based on IRRRL lender asset size, beginning not less than 90 days after the VA finalizes all amendments to its IRRRL regulation and publishes all new mandatory net tangible benefit IRRRL comparison disclosures.

**Loan Modifications**

The VA's proposed subsection 38 CFR §36.4307(a)(9)(ii) provides that if a loan being refinanced has been modified, both IRRRL seasoning elements will be evaluated as of the loan's modification date. No monthly payments made prior to the loan's modification count toward the proposed six consecutive monthly payments seasoning element, and the note date of the refinancing loan must be a date not less than 210 days after the first payment due date of the modified loan. Neither the EGRRCPA nor any other act requires the VA to adopt such a narrow interpretation of what constitutes a loan to be refinanced. The VA's rationale that both of a loan's IRRRL seasoning elements should be reset upon its modification because a loan modification produces an entirely new loan ignores nuances commonly seen in mortgage lending – particularly during times of broad financial distress and uncertainty.

For example, a credit union offering a loan modification option during a national health emergency to extend its home loan repayment grace period for all members from 15 to 30 calendar days or allowing all members to temporarily pause home loan repayments, is far

different from the same credit union engaging a member veteran to fully rework the member veteran's home loan over a new repayment period that is several years longer. NAFCU encourages the VA to consider how some loan modifications may not rise to the level of producing an entirely new loan and adopt reasonable exceptions to its proposal that any loan modification resets a loan's IRRRL seasoning elements.

**Conclusion**

NAFCU and its members appreciate the opportunity to comment on the VA's proposed changes to its IRRRL regulations that, if adopted, are likely to have a profound impact on the well-being of our nation's veterans and their families. To ensure the greatest number of veterans remain eligible for and have access to a high-quality, affordable IRRRLs, NAFCU urges the VA to adopt a commonsense definition of "monthly payment" across its IRRRL regulation, not impose the additional requirement that the EGRRCPA's requisite six monthly payments be consecutive, adopt a phased mandatory compliance timeline, and make principled exceptions to its general proposal that a loan's modification resets its IRRRL seasoning elements. Should you have any questions or require additional information, please contact me at dbaker@nafcu.org.

Sincerely,

Dale Ross Baker

Dale Ross Baker
Regulatory Affairs Counsel