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National Association of Federally-Insured Credit Unions

February 15, 2019

Director
Regulations Management
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420

RE: Loan Guaranty: Revisions to VA-Guaranteed or Insured Cash-Out Home Refinance Loans (RIN 2900-AQ42)

Dear Director of Regulations Management:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Department of Veterans Affairs (VA) interim final rule on revisions to VA-guaranteed or insured cash-out home refinance loans. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 115 million consumers with personal and small business financial service products. NAFCU and its members appreciate the VA's leadership and commitment to curtailing predatory lending practices targeting veterans. NAFCU's members are proud to serve veterans, and support regulations aimed at curbing lending that could jeopardize their financial security. Credit unions do not engage in the types of predatory lending practices that this rule intends to target. Accordingly, NAFCU is generally supportive of the interim final rule, but is concerned about the impacts the additional regulatory burdens will have on the credit union industry. In addition, NAFCU seeks clarification of the timing of the net tangible benefit test's loan comparison disclosure, and guidance on the required standardized form that must be used. Above all else, NAFCU suggests the VA delay the rule's compliance date by at least 30 days to ensure credit unions are provided with a reasonable timeframe to adopt the rule's changes into their lending practices.

General Comments

On May 24, 2018, the *Economic Growth, Regulatory Relief, and Consumer Protection Act* (S. 2155) was signed into law. The objective of section 309 is to protect veterans from predatory lending by providing new standards for fee recoupment, net tangible benefits, and loan seasoning for those cash-out refinances where the principal of the new loan to be guaranteed or insured by the VA is less than the payoff amount of the loan being refinanced. In addition, section 309 required the VA to promulgate regulations for cash-out refinance loans where the principal of the new loan to be guaranteed or insured by the VA is larger than the payoff amount of the loan being refinanced. A cash-out refinance results in a new mortgage loan and allows the borrower to take cash from the equity in the home.

Prior to the enactment of S. 2155, a legislative and regulatory gap existed related to seasoning, recoupage, and net tangible benefit test standards. Unfortunately, bad actors in the lending industry took advantage of this gap, despite anti-predatory lending measures taken by the VA and Congress. The practice of “churning” – whereby a borrower refinances a loan several times in a short period of time, which generates high fees for lenders, but often times leaves the borrower with a larger loan balance and in a worse financial position – became more prevalent.

According to the Bureau of Consumer Financial Protection’s (Bureau’s) Office of Servicemember Affairs Annual Report released in January 2019, 11 percent of the complaints submitted by servicemembers were attributable to mortgage complaints, with 30 percent of those complaints specific to VA mortgages. More specifically, the report showed a total of 5,200 total VA mortgage complaints, with 13 percent of the complaints regarding applying for a mortgage or refinancing an existing mortgage. In 2017, the Bureau in conjunction with the VA issued a “warning order” to servicemembers and veterans with VA mortgage loans to beware of offers for refinancing. The recent Bureau report evidences the fact that VA mortgage refinancing is still a ripe issue.

Based on these demonstrated patterns, NAFCU and its member credit unions support the intent of section 309 and this rule implementing the statute. However, credit unions are not-for-profit, member-owned financial institutions that work hard to help their communities, including veterans, and do not engage in predatory lending practices. The requirements of this interim final rule and the quickly-approaching compliance date will impose regulatory burden on credit unions.

NAFCU understands the VA’s decision to waive the notice and comment period so as to not disenfranchise any veterans until the rule goes into effect, but encourages the VA to extend the compliance date to give credit unions reasonable time to implement the changes in an effective and cost efficient manner. The rule’s 60-day implementation period will likely require significant staff hours and other resources to ensure timely compliance. Extending this compliance date by at least 30 days would help to relieve this burden and ultimately prove beneficial for both lenders and borrowers.

The Interim Final Rule Imposes Additional Regulatory Burdens on Credit Unions.

This interim final rule imposes additional regulatory burdens upon all lenders, which will require additional time to ensure compliance. Credit unions will need to update their internal policies and procedures, as well as ensure any vendor they may use is compliant. In the meantime, credit unions will likely need to implement manual processes for cash-out refinances until automation occurs. Consequently, the additional regulatory burdens could drive some credit unions to cease offering refinances altogether. Credit unions are often smaller financial institutions with limited resources, and NAFCU is concerned that this interim final rule will reduce the amount of VA cash-out refinancing by the credit union industry. This is likely to be especially true for those smaller credit unions who face significant staff and budget constraints. As of September 2018, over 70 percent of federally-insured credit unions had assets less than \$100 million, and 26 percent had assets less than \$10 million.

The Net Tangible Benefit Test’s Required Loan Comparison Disclosure Presents Operational Challenges that are Difficult to Implement.

S. 2155 requires a net tangible benefit test, meaning the new loan must be in the financial interest of the borrower. The net tangible benefit test provides protection from predatory lending and harmful financial situations. The VA set parameters to determine when a cash-out refinance provides a net tangible benefit by setting forth eight factors, one of which has to be met to pass the test. Lenders must also provide a loan comparison disclosure to the borrower as part of the test.

Borrowers will benefit from the loan comparison disclosure showing the new payoff amount, interest rate and type of loan versus the previous loan, as it allows for informed financial decisions about cash-out refinances. However, operational difficulties may arise given the timing of the required loan comparison disclosure. The first disclosure is to be disseminated no later than three business days from the date of the loan application, and the second at the loan closing. Dissemination of the first required loan comparison disclosure presents the greatest operational difficulty in terms of timing. To illustrate, if a borrower does not have all the required information at the time the loan application is received, a comparative analysis may be difficult, if not impossible, to provide. Providing a comparative analysis to a borrower without the complete and proper information could be deemed “deceptive” behavior and result in an unfair, deceptive, or abusive acts and practices (UDAAP) violation, ultimately leading to a Bureau enforcement action.

In the situation where inaccurate information is provided in the comparison disclosure, the regulation is not clear on whether a credit union must send a modified or corrected comparison disclosure. Thus, credit unions may be left in a situation where they must send a required loan comparison disclosure in order to comply with the three-day window but it does not contain accurate information. Similar to the recently resolved “black hole” issue with providing loan estimate disclosure under the Bureau’s *Truth in Lending Act* (TILA) and *Real Estate Settlement Procedures Act* (RESPA) Integrated Disclosure (TRID) rule, such timing requirements can lead to unintended consequences. This requirement in the interim rule is contrary to the purpose behind the loan comparison disclosure which is to provide accurate and beneficial information to borrowers in order to make an informed financial decision.

NAFCU also suggests the VA provide clarification on when the loan application is deemed to be received by the lender, thus starting the clock on the three-day window to provide the loan comparison disclosure. For example, the Bureau’s TRID rule¹ requires a loan estimate disclosure to be delivered to a borrower in a required amount of days. Certain pieces of financial information are required, and once those are obtained, the loan application is deemed to be received and the clock to deliver the loan estimate disclosure is triggered. An expanded definition of “loan application” for purposes of the loan comparison disclosure would provide credit unions with a clear starting point and minimize any confusion on when the required disclosure must be sent.

Additionally, the interim final rule does not provide a standardized model form or guidance on how to internally prepare the information in a standardized format acceptable to the VA. To date,

¹ See 12 C.F.R. Part 1026, Supp. I, Comment 1026.2(a)(3)-1.

the VA has not provided a standardized model form or guidance on a standardized format to use, yet credit unions are expected to comply by the effective date. This lack of guidance impedes credit unions' ability to comply with the rule. NAFCU requests that the VA provide a standardized form or guidance on a standardized format as soon as possible. Alternatively, NAFCU suggests the VA allow a grace period for compliance with this portion of the rule until the standardized form or guidance is provided.

Conclusion

NAFCU appreciates the opportunity to provide comments on the interim final rule regarding VA-guaranteed or insured cash-out home refinance loans. NAFCU members support regulations that curtail predatory lending practices targeting veterans and we thank the VA for implementing section 309 of S. 2155. However, the interim final rule increases regulatory burdens on credit unions and presents several operational challenges. Lastly, the VA has not provided the industry with the necessary standardized form or formatting guidelines for the loan comparison disclosure. If you have any questions, please contact me at kschafer@nafcuhq.org or (703) 842-2249.

Sincerely,



Kaley Schafer
Regulatory Affairs Counsel