



441 G St. N.W.
Washington, DC 20548

B-330627

January 2, 2019

The Honorable Johnny Isakson
Chairman
The Honorable Jon Tester
Ranking Member
Committee on Veterans' Affairs
United States Senate

The Honorable Phil Roe, M.D.
Chairman
The Honorable Tim Walz
Ranking Member
Committee on Veterans' Affairs
House of Representatives

Subject: *Department of Veterans Affairs: Loan Guaranty: Revisions to VA-Guaranteed or Insured Cash-Out Home Refinance Loans*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Veterans Affairs (VA) entitled "Loan Guaranty: Revisions to VA-Guaranteed or Insured Cash-Out Home Refinance Loans" (RIN: 2900-AQ42). We received the rule on December 19, 2018. It was published in the *Federal Register* as an interim final rule on December 17, 2018. 83 Fed. Reg. 64,459. The effective date of the interim final rule is February 15, 2019.

The interim final rule amends the rules on VA-guaranteed or insured cash-out refinance loans. The Economic Growth, Regulatory Relief, and Consumer Protection Act requires VA to promulgate regulations governing cash-out refinance loans. This interim final rule defines the parameters of when VA will permit cash-out refinance loans, to include defining net tangible benefit, recoupment, and seasoning requirements.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule was published in the *Federal Register* on December 17, 2018. 83 Fed. Reg. 64,459. We received the rule on December 19, 2018. The *Congressional Record* does not indicate when it was received by either House of Congress. It has a stated effective date of February 15, 2019. Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of VA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Julia C. Matta
Managing Associate General Counsel

Enclosure

cc: Jeffrey M. Martin
Assistant Director, Office of Regulation
Policy and Management
Department of Veterans Affairs

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF VETERANS AFFAIRS
ENTITLED
“LOAN GUARANTY: REVISIONS TO VA-GUARANTEED
OR INSURED CASH-OUT HOME REFINANCE LOANS”
(RIN: 2900-AQ42)

(i) Cost-benefit analysis

The Department of Veterans Affairs (VA) stated that under the interim final rule, some veterans will no longer be able to obtain Type II Cash-Out Loans as they previously did. VA also estimated that lenders would incur no more than \$5.12 million in annual net production income losses from a reduced amount of Type I Cash-Out refinances and no more than \$50.21 million in annual net production income losses from Type II Cash-Out refinances due to the rule. VA further stated it estimated that it would see a mandatory cost program cost impact of \$96.7 million for FY 2019 through FY 2021 due to reduced funding fees generated related to the decrease in total Cash-Out refinances.

VA stated the interim final rule will ensure that veterans are well informed during the loan process and are not placed at financial disadvantage by taking the loan. Additionally, VA stated VA cash-out loans will be of higher quality because all cash-out loans will be in the financial interest of the borrower, leading to fewer defaults, and more competitive interest rates for veteran-borrowers as VA loans will be perceived as less risky. As for vendors, VA states the interim final rule incorporates the appropriate mix of benefit utilization, lender compliance, and finance advantage to veterans that improves the overall program integrity to allow for future growth and sustainability. VA further states the interim final rule will create a level playing field among lenders.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

VA stated the requirements of the RFA are not applicable because the Secretary waived notice and comment proceedings.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

VA states the interim final rule will not require expenditures of \$100 million or more by state, local, and tribal governments, or on the private sector.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551*et seq.*

VA stated it was invoking section 309(a)(2) of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, to waive the notice and comment procedures of 5 U.S.C. §§ 551-59 where the Secretary determines that urgent or compelling circumstances

make compliance with such requirements impractical or contrary to the public interest. VA stated it was doing this because of concerns about a small group of lenders continuing to exploit legislative and regulatory gaps, constraints in the availability of program liquidity, and lender uncertainty in how to implement a responsible cash-out refinance program. VA also noted that the standard under section 309 is separate and apart from the more generally applicable “good cause” exception under APA.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

VA stated the interim final rule does contain a collection of information which has been submitted to the Office of Management and Budget (OMB) for approval. VA estimated the collection to impose a total annual burden of 12,906 hours on lenders to complete the collection at a total annual cost of \$483,458.76. VA also estimates the collection would impose a one-time technology cost of \$1,266,366.

Statutory authorization for the rule

VA states it promulgated the interim final rule under 38 U.S.C. §§ 501, 3720.

Executive Order No. 12,866 (Regulatory Planning and Review)

VA stated OMB had reviewed the interim final rule and that the regulatory impact analysis accompanied the rule.

Executive Order No. 13,132 (Federalism)

The interim final rule does not address the Order.