

Revisions to VA-Guaranteed Cash-Out Refinancing Home Loans (RIN 2900-AQ42)

1. Purpose. This purpose of this Circular is to announce the Department Veterans Affairs' (VA) new policies regarding VA-guaranteed cash-out refinancing loans, including refinancing of construction loans (construction-to-permanent).

2. Background. On December 17, 2018, VA published an interim final rule addressing VA guaranty requirements for cash-out refinance loans (83 FR 64459). This rule implements section 309 of Public Law 115-174, *The Economic Growth, Regulatory Relief, and Consumer Protection Act* (the Act). Section 309 of the Act provides new statutory criteria to determine when VA may guarantee a refinancing loan. The Act required VA to promulgate regulations for cash-out refinancing loans, specifically refinancing loans in which the loan amount will exceed the payoff amount of the loan being refinanced. This rule amends VA regulations pertaining to all cash-out refinancing loans (38 CFR 36.4306). This includes refinancing of construction loans (construction-to-permanent loans), regardless of whether there is a change in the principal loan amount. VA is accepting public comments on the interim final rule through February 15, 2019, and encourages lenders to submit official comments and/or suggestions through the *Federal Register* at <https://www.regulations.gov>.

3. Effective. The rule is effective on February 15, 2019, and will apply to VA cash-out refinance loan applications taken on, or after, this date.

4. Action.

a. VA-guaranteed cash-out refinancing loans must meet the requirements of the new law. VA has categorized refinancing loans as the following:

(1) Interest Rate Reduction Refinancing Loan (IRRRL): a refinancing loan made to refinance an existing VA-guaranteed home loan at a lower interest rate.

(2) TYPE I Cash-Out Refinance: a refinancing loan in which the loan amount (including VA funding fee) does not exceed the payoff amount of the loan being refinanced.

(3) TYPE II Cash-Out Refinance: a refinancing loan in which the loan amount (including VA funding fee) exceeds the payoff amount of the loan being refinanced.

b. This rule does not apply to VA regulations pertaining to IRRRLs. Updates to VA's IRRRL regulations will be published separately from this Circular. Lenders and VA Regional Loan Center (RLC) personnel should continue to follow current IRRRL regulations and VA policy guidance shown in VA Circular 26-18-13.

c. All cash-out refinancing loan applications taken on or after February 15, 2019, as reflected by the application date, that do not meet the following requirements will not be eligible for guaranty by VA:

(1) Loan-to-Value (LTV). VA will no longer guaranty refinancing loans when the LTV exceeds 100 percent. If the Veteran chooses to close a loan in which the loan amount exceeds 100 percent of the reasonable value of the property, the Veteran must pay the amount which exceeds 100 percent of the property value at loan closing.

(a) LTV Calculation. Divide the total loan amount (including VA funding fee, if applicable) by the reasonable value on the Notice of Value of the property determined by the appraiser.

(2) Net Tangible Benefit Test (NTB). Lenders must ensure that all cash-out refinancing loans pass a NTB, which includes providing the Veteran with the following information no later than the third business day after receiving the Veteran's loan application, and again at loan closing:

(a) The refinancing loan satisfies at least one of the following eight NTB:

(i) The new loan eliminates monthly mortgage insurance, whether public or private, or monthly guaranty insurance;

(ii) The term of the new loan is shorter than the term of the loan being refinanced;

(iii) The interest rate on the new loan is lower than the interest rate on the loan being refinanced;

(iv) The payment on the new loan is lower than the payment on the loan being refinanced;

(v) The new loan results in an increase in the borrower's monthly residual income;

(vi) The new loan refinances an interim loan to construct, alter, or repair the home;

(vii) The new loan amount is equal to or less than 90 percent of the reasonable value of the home, or;

(viii) The new loan refinances an adjustable rate loan to a fixed rate loan.

(b) A comparison of key loan characteristics or terms for the existing and refinancing loan, including:

(i) Refinancing loan amount vs. the payoff amount of the loan being refinanced.

(ii) Loan type (i.e., fixed, adjustable) of the refinancing loan vs. the loan being refinanced.

(iii) Interest rate of the refinancing loan vs. the loan being refinanced.

(iv) Loan term of the refinancing loan vs. the loan being refinanced.

(v) The total the Veteran will have paid after making all payments (principal and interest), and mortgage insurance, as scheduled, for both the refinancing loan and the loan being refinanced.

(vi) LTV of the refinancing loan vs. the loan being refinanced

(c) An estimate of the home equity being removed from the home as a result of the refinance and explain how the removal of home equity may affect the Veteran.

(3) Loan Seasoning. VA will not guarantee a refinancing loan if the loan being refinanced has not been properly seasoned. This requirement applies to TYPE I refinancing loans made to refinance an existing VA-guaranteed home loan and all TYPE II refinancing loans. A loan is considered seasoned on the later of the date that is:

(a) 210 days after the first monthly payment is made, and

(b) Six monthly payments have been made on the loan.

(4) Fee Recoupment. The recoupment period of all fees, closing costs, expenses (other than taxes, escrow, insurance, and like assessments), and incurred costs must not exceed 36 months from the date of loan closing. The lender must certify the recoupment period to VA to obtain a Loan Guaranty Certificate. This requirement only applies to TYPE I cash-out refinancing loans made to refinance an existing VA-guaranteed home loan.

(a) Recoupment Calculation. Divide all fees, closing costs, expenses, and incurred costs (excluding taxes, escrow, insurance, and like assessments), by the reduction of the monthly principal and interest payment as a result of the refinance. If the loan being refinanced has been modified, the principal and interest reduction must be computed/compared to the modified principal and interest monthly payment.

5. Rescission: This Circular is rescinded January 1, 2020.

By Direction of the Under Secretary for Benefits

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