

**Report to Congress on  
Document Disclosure and Consumer  
Education**



**Department of Veterans Affairs  
May 2021**

**Department of Veterans Affairs (VA)**  
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**P.L. 115-174, Section 309**

## **Introduction**

Section 309(d) of the *Economic Growth, Regulatory Relief and Consumer Protection Act* (the Act), P.L. 115-174, directs the Secretary of Veterans Affairs to issue a publicly-available report, not less frequently than once each year, that examines the following, with respect to loans provided to Veterans under chapter 37, title 38, United States Code:

- The refinancing of fixed-rate mortgage loans to adjustable-rate mortgage loans;
- Whether Veterans are informed of the risks and disclosures associated with that refinancing; and
- Whether advertising materials for that refinancing are clear and do not contain misleading statements or assertions.

The report must also include findings based on any relevant complaints VA received from Veterans and the Secretary's assessment of the refinancing market. This report covers the period April 10, 2020, through March 31, 2021.

## **Background**

### Initial Concerns over Serial Refinancing/Loan Churning

The mission of VA's Home Loan Guaranty Service is to maximize opportunities for Service members and Veterans (collectively "Veterans") to obtain, retain and adapt their homes by providing viable and fiscally-responsible benefits in recognition of the Veterans' service to our Nation.

For many years, VA has partnered with other Government agencies, including the Consumer Financial Protection Bureau (CFPB) and the Office of the Comptroller of the Currency to address lender advertising materials that contain misleading statements or assertions. In November 2016, CFPB released a report detailing over 12,500 mortgage complaints from Veterans. The complaints ranged in topics such as misleading loan solicitations and lenders continuously communicating with Veterans even after a cease contact request.

A considerable amount of the complaints centered on lenders soliciting Veterans on refinance loan products. As a result, in November 2017, VA and CFPB issued the first joint Warning Order to Veterans who had a VA-guaranteed loan. Specifically, the

Warning Order advised Veterans of the dangers associated with refinance loans that inaccurately purport items such as extremely low interest rates, the ability to skip loan payments or provide cash back.

Also, in 2017, stakeholder concerns relating to misleading advertising and serial refinancing<sup>1</sup> of VA-guaranteed loans prompted multiple Congressional inquiries and briefings. In October 2017, VA and the Government National Mortgage Association (GNMA) established a joint Task Force to examine the frequency of loan churning and predatory lending practices, which included an examination of the aggressive and misleading refinancing propositions outlined in CFPB's November 2016 report.<sup>2</sup> On December 7, 2017, the VA-GNMA Task Force issued a GNMA All Participant Memorandum, which imposed a 6-month seasoning requirement for streamlined and cash-out refinance loans to be eligible for certain GNMA securities. This action strongly discouraged lenders from soliciting Veterans immediately after a VA-guaranteed loan closing because of the lengthened seasoning requirement for GNMA securities.

Shortly thereafter, in January 2018, VA announced its plans to issue a proposed rulemaking addressing churning practices and predatory lending in the refinance loan market.<sup>3</sup> While the proposed rule was under development, VA sought to mitigate predatory lending practices by issuing administrative policy guidance. On February 1, 2018, VA published Circular 26-18-1, *Policy Guidance for VA Interest Rate Reduction Refinance Loans (IRRRL)*.<sup>4</sup> The Circular advised lenders that certain loan disclosures should be provided early in the application process, such that Veterans have the opportunity to make informed decisions and determine if an IRRRL is in their financial interest.

On May 24, 2018, the President signed the Act into law. Section 309 of the Act, codified in part at 38 U.S.C. § 3709, provided new statutory criteria for determining when VA may guarantee a refinance loan. The Act required VA to promulgate regulations for certain cash-out refinance loans within 180 days (i.e., refinance loans where the principal balance of the new refinance loan is larger than the payoff amount of the loan being refinanced).

On December 17, 2018, VA published an interim final rule (AQ42) setting forth standards applicable to VA-guaranteed cash-out refinance loans.<sup>5</sup> The rule became

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<sup>1</sup> "Serial refinancing" and "loan churning" are used interchangeably and reflect the practice of refinancing a mortgage multiple times within a short timeframe. Serial refinancing negatively impacts Veterans, often through increasing the principal balance, stripping equity from the home and increasing the loan-to-value ratio, which potentially raises the risk of loan default.

<sup>2</sup> VA Press Release: VA, Ginnie Mae Create Task Force to Address Mortgage Refinancing Issues (Oct. 12, 2017). <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=2962>.

<sup>3</sup> Loan Guaranty: Revisions to VA-Guaranteed Refinance Home Loans. RIN 2900-AQ25. VA withdrew this proposed rulemaking in June 2018, following enactment of the Act.

<sup>4</sup> IRRRLs are also referred to as streamlined refinances. The terms are interchangeable in VA's program. [https://benefits.va.gov/HOMELOANS/documents/circulars/26\\_19\\_22.pdf](https://benefits.va.gov/HOMELOANS/documents/circulars/26_19_22.pdf).

<sup>5</sup> Loan Guaranty: Revisions to VA-Guaranteed or Insured Cash-Out Home Refinance Loans. RIN 2900- AQ42, 83 FR 64459 (Dec 17, 2018). <https://www.federalregister.gov/documents/2018/12/17/2018-27263/loan-guaranty-revisions-%20to-va-guaranteed-or-insured-cash-out-home-refinance-loans>.

effective on February 15, 2019, and applies to all cash-out refinance loan applications taken on or after that date. VA notes that this rule did not conform VA's existing IRRRL regulations to the Act. VA expects, in upcoming months, to conduct additional rulemaking on IRRRLs.

Assessment of the Refinance Market

According to Freddie Mac's Primary Market Mortgage Survey,<sup>6</sup> the 30-year fixed rate mortgage rate averaged 3.1% in 2020, a decline of approximately 90 basis points from a year earlier. Also according to the Survey, during 2020, "house prices rose 11.6% on a year-over-year basis...[and] [h]omeowners took advantage of record low mortgage rates and increased homeowner equity to refinance their properties, reducing their monthly payments and extracting equity through cash-out refinances."

The Survey also stated that "[w]ith mortgage rates reaching multiple record lows in 2020, refinance borrowers locked in thousands of dollars in savings on average by refinancing, sometimes more than once." Additionally, "[s]ome homeowners also took advantage of the opportunity to tap equity through cash-out refinancing, while others sped up the rate at which they paid down their principal, by refinancing into a shorter term." With mortgage rates remaining at near record lows, VA agrees with Freddie Mac's forecasts that refinance volume will remain strong in 2021. However, as the economic recovery from the Coronavirus Disease 2019 (COVID-19) pandemic continues, VA expects that mortgage interest rates will continue to fluctuate, which will affect refinance loan volume.

VA observes that while many of the public comments received in response to AQ42 predicted a contraction of the cash-out refinance loan market due to increased regulatory requirements, VA's data do not reflect such concerns. For cash-out and other non-IRRRL refinance loans, volume contracted from 160,051 in FY 2018 to 145,188 in FY 2019. However, this downward trend did not continue, as VA guaranteed 156,330 of such refinance loans during FY 2020 and 69,723 cash-out loans during the first two quarters of FY 2021. See the table below.

**Table 1. VA Cash-Out and Other Non-IRRRL Refinance Loans Guaranteed by Fiscal Year**

Fiscal Year	2015	2016	2017	2018	2019	2020
<b>Cash-Out/Other Refinancing</b>	114,222	136,911	169,038	160,051	145,188	156,330

<sup>6</sup> Freddie Mac's Primary Market Mortgage Survey. [http://www.freddiemac.com/research/insight/20210305\\_refinance\\_trends.page](http://www.freddiemac.com/research/insight/20210305_refinance_trends.page).

## Increased IRRRL Loan Activity and VA Oversight

While VA cash-out refinance activity has remained relatively steady, the VA-guaranteed IRRRL (also known as a streamlined refinance loan) volume has increased dramatically. Since passage of the Act in 2018, IRRRL volume has increased over 900%, and the trend continues with 535,893 IRRRLs closed during the first two quarters of fiscal year 2021. The IRRRLs guaranteed, from April 2020 through March 2021, resulted in a median savings of approximately \$184 per month (or \$2,208 annually), which corresponds to a 14% median reduction in monthly payment. The median interest rate change from a fixed-rate loan was approximately 1%.

**Table 2. IRRRLs Guaranteed by Fiscal Year**

<b>Fiscal Year</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>IRRRLs</b>	194,805	215,561	190,914	67,347	94,861	662,065

The increase in IRRRL volume is likely attributable to low interest rates. VA continues to systematically review IRRRLs guaranteed, to assess compliance with the Act's statutory requirements regarding loan seasoning, net tangible benefits (i.e., interest rate requirements) and recoupment.

VA initially identified approximately 22,132 loans from 480 lending institutions determined to be potentially non-compliant with requirements established in the Act. Of the loans that VA identified as being potentially noncompliant, 21,584 did not meet recoupment requirements; 544 did not meet the interest rate reduction requirements; and 4 did not satisfy the recoupment provisions of the Act. VA notified the lending institutions of the potential noncompliance, requiring each lender to review and validate the data provided, self-report additional loans in their database that they believe to be noncompliant and provide a plan to cure all deficient loans at no cost to the Veteran. VA reviewed and approved all lender plans to cure loan deficiencies and is currently conducting oversight of lender cure efforts. VA also continues to audit lenders' making of new VA-guaranteed refinance loans, in an effort to identify and rectify any additional noncompliance.

In reviewing lender plans and cases, VA determined a large percentage of loans from the initial data were flagged as being potentially noncompliant due to the way lender data is reported to VA at the time of guaranty. VA subsequently issued additional reminders and guidance to increase the likelihood that lenders correctly calculate and enter recoupment information into VA systems. In addition, VA implemented preventive controls in its system of records to mitigate the risk of lenders incorrectly entering data for new VA-guaranteed loans.

## VA's Examination of Fixed-to-Adjustable-Rate Loan Transactions

Transactions where a fixed-rate loan is refinanced to an adjustable-rate loan represent a small percentage of VA's guaranteed loan portfolio. Since enactment of the Act, VA guaranteed 1,310,952 IRRRLs and 424,861 cash-out refinance loans. Of those loans, less than 1% (901 loans) refinanced a fixed-rate loan to an adjustable-rate loan. For the period covered in this report, VA guaranteed 945,133 IRRRLs and 135,516 cash-out refinance loans. Of those loans, 53 loans refinanced a fixed-rate loan to an adjustable-rate loan.

## Understanding the Risks of Fixed-to-Adjustable-Rate Loan Transactions

Adjustable-rate loans are often higher-risk loans. Despite fixed-to-adjustable rate transactions representing a small percentage of VA's guaranteed loan portfolio, VA focuses special attention to lending practices that target Veterans for such refinances. Generally, borrowers obtain adjustable-rate loans to aid in affording a home for a short period (i.e., 3 to 5 years). However, adjustable-rate loans have a higher risk of payment shock. An increase in the dollar amount that a Veteran owes for a monthly loan payment increases the probability that the Veteran will refinance again or even default. This increases the risk of serial refinancing or a foreclosure. Fixed-rate loans, on the other hand, provide a stable interest rate over the life of the loan and may provide more certainty in the long term.

## Decreasing Veteran Risk Through Disclosure

Because of the increased risk associated with fixed-to-adjustable rate loan transactions, VA believes it is imperative that Veterans fully comprehend the financial risks and outcomes associated with such refinances. Ensuring that clear information is provided to Veterans during the loan process helps Veterans better understand the financial implications of the refinance loan. These details enable Veterans to make more informed decisions about whether to proceed with the loan.

Before the Act was signed into law, VA required lenders to provide a loan comparison statement to Veterans who obtained IRRRLs. In conforming VA's cash-out refinance loan regulation to the Act, VA incorporated a similar disclosure requirement applicable to cash-out refinances. For cash-out loans, lenders must provide a comparison statement and an equity statement to Veterans not later than 3 business days from the date of the loan application, and again at loan closing.<sup>7</sup> Requiring lenders to provide Veterans this information on two separate occasions enables Veterans to better understand the cash-out refinance transaction, including fixed-to-adjustable rate transactions.

The comparison statement provides Veterans with up-front information about the overall cost of the new loan. This statement compares loan data and costs associated with the existing loan to the data and costs associated with the proposed refinance loan.

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<sup>7</sup> See 38 C.F.R. § 36.4306(a)(3).

The equity statement informs the Veteran of the amount of home equity that would be removed from the property as a result of the refinance. The disclosure also explains that removal of such equity may affect the Veteran's ability to sell the home in the future. A Veteran must certify that he or she received these disclosures on both occasions. VA provided a sample disclosure to assist lenders in satisfying this regulatory requirement.

In addition to implementing and enforcing its own disclosure requirement, VA reviews lender compliance with CFPB-required disclosures (e.g., those specifically related to adjustable rate loans).<sup>8</sup> VA's oversight process includes sampling loans for Full File Loan Reviews. This process helps ensure that Veterans are provided with the required disclosures prior to closing. If, during these reviews, VA does not see evidence of CFPB disclosures, VA can refer the case to CFPB for potential action.

### Decreasing Veteran Risk through Oversight of Advertising Material

Lender advertisements or solicitations, regardless of form, concerning VA-guaranteed loans must not include any information falsely stating or implying that such advertisements or solicitations were issued by, or at the direction of, VA or any other department or agency of the United States.<sup>9</sup> Lenders also cannot use such materials to falsely state or imply that the lender has an exclusive right to make VA-guaranteed loans.

VA routinely conducts audits to ensure that lenders comply with relevant Federal statutes, VA regulations and VA policies, including those relating to loan advertising materials. When VA learns of lenders who violate VA's advertising standards, VA can act against such lenders (e.g., withdraw a lender's ability to automatically close VA-guaranteed loans).<sup>10</sup> For the period covered in this report, VA's Loan Guaranty Service has not withdrawn a participating lender's automatic authority.

### **VA Findings on Complaints**

As noted above, VA and CFPB issued a Warning Order in November 2017 that advised Veterans of the dangers associated with misleading solicitations and provided information on what to consider when receiving refinance materials from lenders. Both agencies published the Warning Order and took steps to disseminate the document (i.e., sharing it on official social media platforms and informing news organizations, Veteran advocacy groups and lending industry trade groups of its publication).

CFPB's publicly-available database<sup>11</sup> reflects the receipt of 256 complaints relating to VA-guaranteed loan applications during calendar year (CY) 2020. This is an 87% increase from CY 2019 (137 complaints) and a 159% increase from CY 2018 (99 complaints). In CY 2020, 9% (23 complaints) referenced misleading advertising and/or solicitations. Of the complaints submitted in CY 2019, 21% (28 complaints) referenced

<sup>8</sup> See 38 C.F.R. § 36.4312(d)(6); see also 12 C.F.R. § 1026.20(c) and (d).

<sup>9</sup> See 38 C.F.R. § 36.4370.

<sup>10</sup> See 38 C.F.R. § 36.4353.

<sup>11</sup> CFPB Consumer Complaint Database. <https://www.consumerfinance.gov/data-research/consumer-complaints/>.

misleading advertising and/or solicitation. The most common complaints related to solicitations promising Veterans extremely low interest rates, the ability to “skip” payments and no out-of-pocket costs to refinance their loan. Another common complaint involved certain companies sending out mail that falsely appears to be from or affiliated with VA. The solicitations claim an urgent matter and to contact the sender immediately to refinance to a lower rate. More recently, from January 2021 through March 2021, CFPB received 61 complaints related to VA-guaranteed loan applications. Three of these complaints referenced misleading advertising and/or solicitations.

During the period covered by this report, VA continued working with CFPB to mitigate deceptive advertising practices. This collaboration resulted in, for example, CFPB’s collection of more than \$4.4 million in civil monetary penalties from “multiple mortgage companies that used deceptive mailers to advertise VA-guaranteed mortgages.”<sup>12</sup> The consent orders that imposed the monetary penalties also required the companies to impose new safeguards in their origination processes. Such safeguards include designating an advertising compliance official who must review all mortgage advertisements for compliance before their use; prohibiting specific misrepresentations that such companies made in the past; and requiring the companies to comply with certain enhanced disclosure requirements to mitigate the likelihood of future misrepresentations.

## **Conclusion**

VA and CFPB continue to inform Veterans that they might receive misleading solicitations from unscrupulous lenders. Both agencies are also continuing to assist Veterans in understanding the costs and benefits of refinancing their existing loans. VA encourages Veterans to contact VA with any concerns or questions about advertising materials they may receive.

Veterans who have questions about refinancing or other home loan issues may contact VA through email or telephone to speak directly with a VA representative. VA representatives are readily available to provide information to lenders and Veterans. The availability of VA Loan Specialists to assist Veterans and lenders reflects VA’s commitment to provide the highest level of customer service. Congress enacted section 309 of the Act, in part, to assist Veterans in securing refinance loans that are in their best financial interest. VA appreciates the opportunity to implement Congress’s objective, thereby improving the financial outlook for Veterans.

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<sup>12</sup> CFPB Press Release: CFPB Settles with Ninth Mortgage Company to Address Deceptive Loan Advertisements Sent to Service members and Veterans (Oct. 26, 2020). <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-ninth-mortgage-company-address-deceptive-loan-advertisements-sent-servicemembers-and-veterans/>.