

March 14, 2019

Director, Regulations Management (00REG)  
Department of Veterans Affairs  
810 Vermont Avenue NW, Room 1063B  
Washington, DC 20420

Re: 83 Fed. Reg. 64,459 (Dec. 17, 2018), RIN 2900-AQ42, Interim Rulemaking  
Loan Guaranty: Revisions to VA-Guaranteed or Insured Cash-out Home Refinance Loans  
Additional Recommendations to Protect Divorced Veterans

Dear Director:

On February 15, 2019, we submitted comments regarding the above interim rulemaking. Since that time we have discussed the rule further with advocates for veterans and consumers, and we have identified an additional change that we strongly encourage the VA to make in order to adequately protect divorced veterans.

We believe the rule as currently written could impose an unreasonable hardship on veterans who need to refinance their home mortgage as part of a judicial separation or divorce. When a married couple legally separates or divorces, they have the option of entering into a formal, court-ordered agreement to allocate ownership and responsibility for the marital assets and debts. The marital home can be the most important asset, and a property division agreement will determine what happens to it. Assuming the home will not be sold, the agreement will set forth who retains ownership of the home and who must pay any mortgage on the home.

In these circumstances, it is common to give the home to one spouse and require that spouse to take steps to release the other spouse from liability on the mortgage. But lenders will almost never voluntarily agree to remove the non-occupying spouse from personal liability, even if that spouse gives up his or her ownership interest in the property. As a result, the spouse who gets ownership of the house must refinance the existing mortgage with a new one in his or her name. If that is not possible, the property division order may force a sale of the property.

As the rule is currently written, a veteran will not be allowed to use a VA mortgage to comply with a judicial separation or divorce order unless the transaction meets the requirements specified by the interim rule. We think this is a significant problem that should be repaired.

The VA loan program is intended to help veterans buy and maintain safe, affordable housing. Veterans going through a marital separation or divorce are at a turning point in their lives that rivals the challenge of leaving the military to become a civilian. Most veterans will not be able to schedule the property division obligation to meet the new seasoning rules or to occur when interest rates are falling. They may even have poor credit at the time of their divorce, due to the loss of household income. However, they should still be allowed to use the VA loan program to save their home. As long as the veteran is

otherwise eligible, using a VA loan to comply with such court orders clearly meets the purpose of the loan program.

The easiest way to fix the interim rule so it does not unfairly exclude legally separated or divorced veterans is to create a new exemption from 38 C.F.R. § 36.4306(a)(3), (b), and (c) for new loans originated for the purpose of complying with a court-ordered property division entered within 180 days prior to the date of the loan application.

If the Secretary does not believe he has the authority to create such an exemption, we urge the Secretary to advise Congress of the need for this change.

Respectfully,

Americans for Financial Reform Education Fund

Atlanta Legal Aid Society, Inc.

Connecticut Fair Housing Center

National Consumer Law Center, on behalf of our low-income clients

National Fair Housing Alliance

National Housing Law Project

VetsFirst, a program of United Spinal Association