



COMPLIANCE CHALLENGES

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Concern Over VA Refinance Loan Advertising Practices Leads to CFPB Consent Orders

Time limit loan availability
Eligibility Notification
Skip payments
Cash-out refinance mortgage loans



In the years leading up to the recent wave of consent orders from the CFPB related to VA mortgage loan advertising practices, the CFPB, VA and Mortgage Bankers Association (MBA) had all been vocal about concerns related to VA refinancing practices.

In November 2017, the Consumer Financial Protection Bureau (CFPB) and U.S. Department of Veterans Affairs (VA) issued a joint warning order to veterans regarding unsolicited refinance mortgage loan offers that “appear official” and sound “too good to be true.”

In 2018, Congress included in The Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (the Growth Act) provisions designed to protect veterans from “loan churning” or “serial refinancing.” The VA published policy guidance via Circulars 26-18-13, dated May 25, 2018 and 26-20-16, dated April 20, 2020.

Ultimately, the VA’s expectations of lenders included self-identification, review, cure and quarterly reporting of Interest Rate Reduction Refinancing Loans (IRRRL) loans that did not com-

ply with the Growth Act and VA policy.

About a year after the passage of the Growth Act, the Mortgage Bankers Association sent a letter to the VA addressing the MBA’s concern regarding potentially deceptive advertising of VA refinance mortgage loans. In the letter, MBA stated that such “solicitations can be very harmful to veterans, as they may lead them to obtain refinances that they do not fully understand or are not in their financial interest. MBA therefore encourages VA to use its existing authorities to deter these misleading

solicitations in accordance with its mission to ensure appropriate consumer safeguards in its home loan program.”

In particular, echoing concerns of the CFPB and the VA in their joint warning order, the MBA noted as troublesome advertising practices (1) language or symbols such as logos or stamps to imply affiliation with, or endorsement by, the federal government, (2) the presentation of a false sense of urgency or a strict deadline for the consumer to act, and (3) misleading descriptions of interest rates or other loan terms, including representing an adjustable-rate loan as a fixed-rate loan or promising the ability to skip one or more payments.

CONSENT ORDERS ISSUED

Starting in late July 2020, the CFPB began issuing consent orders against lenders regarding direct mail advertising practices for VA refinance mortgage loans. The consent orders resulted from what the CFPB referred to as an “ongoing sweep of investigations” regarding

the use by mortgage companies of “deceptive mailers to advertise VA-guaranteed mortgages.”

By the end of October 2020, there were a total of nine consent orders involving the following lenders and civil money penalty amounts: Accelerate Mortgage, LLC (\$225,000), Clear Path Lending, Inc. (\$625,000), Go Direct Lenders, Inc. (\$150,000), Hypotec, Inc. (\$50,000), Low VA Rates, LLC (\$1,800,000), PHLoans.com, Inc. (\$260,000), Prime Choice Funding, Inc. (645,000), Service 1st Mortgage, Inc. (\$230,000), and Sovereign Lending Group, Inc. (\$460,000).

In the consent orders, the CFPB found violations of Regulation Z advertising requirements, the Mortgage Acts and Practices Advertising Rule (the MAP Rule or Regulation N), and the Consumer Financial Protection Act (CFPA).

The CFPA authorizes the CFPB to pursue unfair, deceptive or abusive acts or practices. Similar to the concerns noted in the joint warning order from the CFPB and the VA and in the letter from MBA, the CFPB’s findings in the consent orders include “false, misleading and inaccurate representations” about credit terms and the availability of loans under the VA mortgage loan program, the inability of consumers to obtain the advertised terms, and falsely representing an affiliation with the federal government (which is prohibited by the MAP Rule).

With regard to the inability of consumers to obtain advertised terms, based on a comparison of actual loans made and rate sheets, the CFPB determined advertisements included simple interest rates and annual percentage rates that creditors were not prepared to actually offer to consumers.

EXAMPLES CITED BY CFPB

Examples of false, misleading or inaccurate representations cited by the CFPB include:

- Advertisements for cash-out refinance mortgage loans disclosed a monthly payment based on only the cash-out amount and not the full

loan amount.

- Advertisements that used the word “fixed” in various ways to describe a variable-rate mortgage loan.
- Advertisements that falsely suggested time limits on the availability of loans under the VA mortgage loan program.
- Advertisements that disclosed an escrow refund amount that was calculated using a methodology that had no relationship to the actual escrow refund a consumer would receive. Additionally, the consumer had to fund a new escrow account with the refinance loan.
- Advertisements that claimed the consumer could skip one or more payments, but did not disclose specific timing requirements or that the skipped payments would be financed into the new mortgage loan.

Examples of false representations of affiliation with the federal government cited by the CFPB include:

- An advertisement that included “2017 – Eligibility Notification” and “Benefit Allotment” in the header of the advertisement, and in the body of the advertisement there were statements that the lender had “important information regarding your VA loan” or that the lender had “records” that the consumer had “yet to take advantage of programs sponsored by The Department of Veteran’s Affairs.”
- Advertisements that used phrases like “IRRRL – Benefit Allotment,” “VA-1211 Benefit Allotment Notice,” “Form 21-0760 Eligibility Notification” or “Understanding your VA Benefit Statement.”
- Advertisements that contained a Reference Number, and were printed on light green paper similar to the light green paper that the VA has used for Certificates of Eligibility, which contain a Reference Number.
- Advertisements that used formats, symbols, QR codes, or logos resembling those used by the Federal Deposit Insurance Corporation and the Internal Revenue Service.

Although certain advertisements included a disclaimer that the lender was

not affiliated with the government, the CFPB found the disclaimer was to be inadequate because it was in fine print or did not appear on the first page of the advertisement.

The characteristics of the advertisements cited by the CFPB in the eight consent orders as the basis for its findings that the advertisements misrepresented a government affiliation deserve close attention because they indicate that the CFPB takes an expansive view of what constitutes such a misrepresentation. Certain consent orders prohibit the lender from using various terms in advertisements, including the term “VA loan specialist.”

While, the CFPB’s focus in this area reinforces the need for all lenders to carefully review their advertisements to avoid the regulatory violations and the other issues that the CFPB found to be problematic, credit unions are in a unique position.

By knowing and understanding that these types of advertisements are being sent to their members, credit unions can help educate their members and assist them in obtaining the mortgage that is right for them. ▲

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