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## Foreword By Congresswoman Katie Porter

I have seen up close the pain that comes with losing a home. As a child, I watched families lose their farms and homes during the 1980 farm crisis. Years later, when I served as the California Monitor for the National Mortgage Settlement, I saw the devastating consequences of predatory lending for families who lost their homes. **Every American, especially our nation's veterans, deserves a fair shot at homeownership.**

Since World War II, home loans from the Department of Veterans Affairs (VA) have helped millions of servicemembers, veterans, and eligible dependents buy homes. These no-money-down loans are a reward for military service, and for many borrowers, a ticket to the middle class. Unfortunately, these loans are also a lucrative opportunity for financial predators.

**The U.S. government is in an ongoing fight against predatory VA loans.** In recent years, scammers have focused on cash-out refinancings and loan “churning,” when lenders pressure borrowers to refinance their mortgages prematurely to harvest a second round of closing costs. Some lenders even make initial loans with elevated interest rates with the intended purpose of pushing veterans to refinance later.

Though churning and cash-out refinancings are also issues in loans to other homebuyers, cheating veterans runs counter to our commitment to them. **Predatory VA loan practices also have the potential to destabilize large pools of government backed mortgages.** In 2018, Congress passed a law to reduce churning and strengthen consumer protections for veteran borrowers, particularly on cash-out refinancings. These reforms, together with historically low interest rates, have driven down the prevalence of cash-out refinancings.

**Using new data and original analysis, this report finds that grossly overpriced cash-out refinancings continue to scam veterans.** While the number of predatory loans dipped after prior reforms, it is rising again—with many of the same lenders who were preying on veterans again engaged in wrongful practice.

This bad behavior must stop, especially as Americans build back better from the worst economic crisis in generations. **The VA, Ginnie Mae, and the Consumer Financial Protection Bureau should suspend or ban the bad actors in the VA home loan program, and revise regulations to strengthen oversight and enhance consumer protections.** Our veterans and their families have earned these benefits, and I look forward to working with my colleagues on both sides of the aisle to protect them.

Very truly yours,



Katie Porter

## Executive Summary

**Background:** Veterans earn a wide range of education, health care, and housing benefits that make them a lucrative target for financial predators. This includes **the VA home loan program, which provides servicemembers, veterans, and eligible dependents with affordable mortgages.** Since 2017, Congress and Federal regulators have been trying to address two main types of abuse in this program: loan churning and risky cash-out refinancings. Loan churning is a scheme where lenders originate an overpriced loan and then quickly pressure the borrower to refinance, generating new closing fees. Cash-out refinancings are not necessarily predatory, but they take value out of homes and tend to have bad terms, often leaving borrowers worse off.

### **Findings:**

- ❑ Key lenders in the VA home loan program are continuing to exploit veterans with predatory cash-out loans. **Loans from NewDay USA and The Federal Savings Bank—two lenders with a history of predatory practices—are far more expensive than the market average.** It is unlikely that low customer credit explains the disparity.
- ❑ NewDay USA and The Federal Savings Bank continue to aggressively market cash-out refinancings with fees and interest rates that could cost borrowers tens of thousands of dollars more over the life of the loan compared to other lenders.
- ❑ New cash-out refinancings remain below their 2019 high but are increasing rapidly in recent months. **The loans themselves appear just as predatory as when regulators suspended NewDay USA for misconduct in 2019.**
- ❑ Stronger regulation of the VA home loan program appears to have decreased churning, although falling interest rates in recent years gave many borrowers a reason to refinance, generating fees for lenders without the need to inflate initial rates.

### **Recommendations:**

- ❑ **Ginnie Mae should immediately suspend NewDay USA, The Federal Savings Bank, and any other lender with similar lending patterns from originating new cash-out loans.**
- ❑ VA should revise its 2018 rule on refinancings to protect borrowers refinancing to a fixed rate loan from paying excessive discount points. It should also eliminate the 90% loan-to-value ratio as a criteria for determining whether veterans benefit from a VA home loan; a 90% loan-to-value ratio does not by itself make refinancing beneficial.
- ❑ VA should add the VA home loan funding fee to the list of closing costs that must be recouped through savings from refinancing.
- ❑ CFPB should require lenders to include customer credit scores in their Home Mortgage Disclosure Act reporting to increase transparency of potentially predatory lending.
- ❑ HUD should deliver the report on the VA home loan program required in the *Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018*. The interim report delivered in May 2019 does not satisfy the requirements of the law or give Congress the information it needs to conduct effective oversight.

## Background

The U.S. Department of Veterans Affairs (VA) home loan guaranty program was established under the *Servicemen's Readjustment Act of 1944*, commonly known as the G.I. Bill. Originally designed to assist veterans returning from World War II in readjusting to civilian life, **the VA home loan program remains an important benefit of military service and a ticket to the middle class** for many veterans. Since 1944, the VA has guaranteed more than 25 million loans to veterans, with a record 1.2 million home loans in Fiscal Year 2020 totaling more than \$353 billion.<sup>1</sup>

There are three main types of VA home loans: purchase loans, interest rate reduction refinance loans (IRRRL), and cash-out refinance loans. Purchase loans are for buying a new home, while IRRRL and cash-out loans refinance existing mortgages. Though these types of products all exist in the conventional market, VA loans have special features. They generally do not require down payments or monthly mortgage insurance. They also tend to have relatively favorable interest rates because the VA guarantees a portion of the loan in the case of default. However, VA loans do include an additional "VA Funding Fee" to cover the VA's administrative costs.

### VA Loan Definitions

**Purchase Loan:** This loan helps veterans purchase a home at a competitive interest rate, often without a down payment or private mortgage insurance. To be eligible for this loan, borrowers must have satisfactory credit, sufficient income, and proof of veteran's service.

**Cash-Out Refinance Loan:** This loan allows veterans to replace their current loan with a new one under different terms. Borrowers can take cash out of home equity to finance activities like paying off debt or making home improvements. Unlike the interest rate reduction refinance loan, the cash-out refinance loan can be used to refinance a non-VA loan into a VA loan.

**Interest Rate Reduction Refinance Loan (IRRRL):** Also known as the streamline refinance loan, this loan is typically used to reduce the borrower's interest rate or to convert an adjustable rate mortgage to a fixed rate mortgage.

**Origination Fee:** The VA allows lenders to charge up to 1% of the loan amount as an origination fee. Lenders have the option of charging either a flat 1% origination fee or a host of fees that add up to a figure not exceeding 1% of the loan amount.

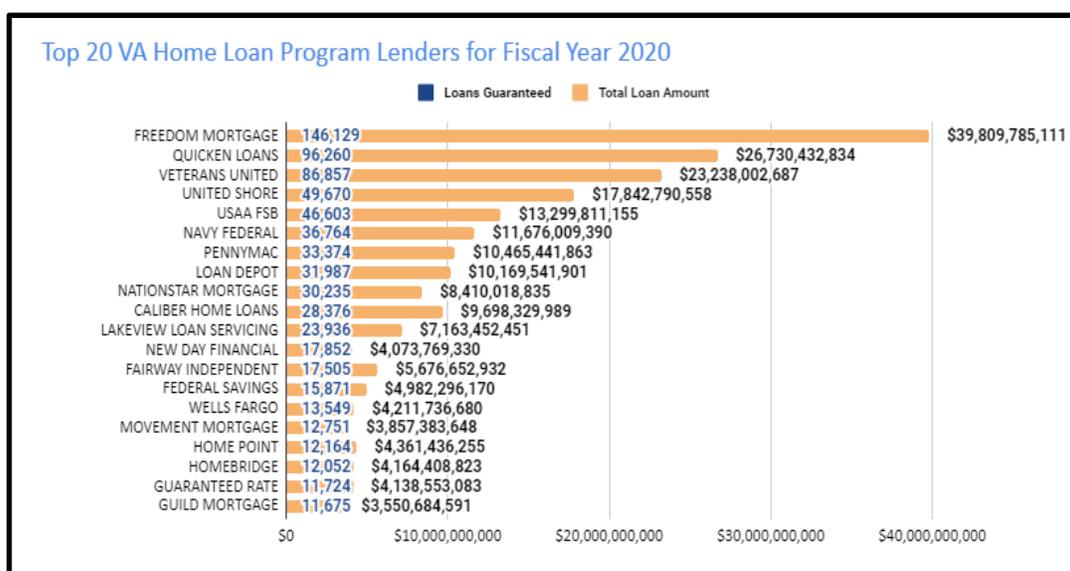
**VA Funding Fee:** Most borrowers are required to pay this fee, which covers VA's administrative costs for the home loan program. This fee ranges from .5% to 3.6% of the loan, depending on loan type and value.

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<sup>1</sup> Department of Veterans Affairs, Office of Public and Intergovernmental Affairs, October 28, 2020, <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5554>.

All types of VA loans are originated by private banks and mortgage brokers, not the VA. The loans are purchased and securitized by the Government National Mortgage Association, or Ginnie Mae.

Originators include many large banks and national mortgage companies, as well as smaller entities focused on servicemembers and veterans. The biggest VA home loan originators are conventional lenders such as Quicken Loans and United Shore Financial. VA lending is just a small portion of overall business for these companies—but still significant relative to lenders focused explicitly on servicemembers and veterans. The next tier of originators includes companies like USAA, Navy Federal Credit Union (NFCU), and Veterans United. These companies are focused on the military community and almost exclusively originate VA loans, but they're small compared to many conventional lenders. Major VA home loan program originators also include companies such as Freedom Mortgage and LoanDepot that are nominally conventional lenders but specialize in the types of refinancings that make up the majority of the VA home loan program.



Source: Department of Veterans Affairs

## Financial Exploitation of Veterans and VA Home Loan Borrowers

### Key Takeaways

In recent years, the most common type of mortgage scam in the VA home loan program was loan “churning,” primarily through cash-out refinancings. **Churning is when lenders engage in excessive buying or selling to generate additional fees, without regard for the customers goals or financial well being.** From 2018 to 2019, eight different lenders were suspended from the VA home loan program for churning, including NewDay USA. These enforcement actions, along with new legislation passed by Congress and falling interest rates have curbed churning and reduced the primacy of cash-out loans.

Servicemembers, military families, and veterans have characteristics that can make them targets for predatory lenders. Servicemembers are typically young, financially inexperienced, and getting a steady paycheck for the first time.<sup>2</sup> Concentration around military bases also makes servicemembers easy for predatory lenders to target, whether in person or online.<sup>3</sup> Leaving the military is also an adjustment, and studies by the Consumer Financial Protection Bureau (CFPB) show that servicemembers' credit tends to decline when they separate from active duty.<sup>4</sup> Recently separated veterans also gain access to a wide array of VA medical, tuition, and housing benefits. These programs can be complex and make veterans lifelong targets for financial exploitation, including predatory mortgage lenders.<sup>5</sup>

In recent years the most common type of mortgage scam targeting servicemembers and veterans was a practice called “churning.” Churn occurs when lenders convince borrowers to unnecessarily refinance their mortgages early to get new terms or take out cash. Borrowers appear to benefit from these refinance offers, getting a cheaper rate or lower monthly payments, but in the long run, these offers end up costing borrowers more—oftentimes much more. Simply put, **“VA lenders that churn loans do so because they can make a profit with two closings,”** according to the Urban Institute.<sup>6</sup> This is built into the business model for some lenders.<sup>7</sup> **Such lenders use aggressive tactics to originate loans veterans cannot afford, with the expectation they will be able to force them to refinance shortly thereafter.**<sup>8</sup> “Essentially, the lender revives the period of subprime lending under a new name,” wrote the VA in a 2018 rulemaking.<sup>9</sup>

<sup>2</sup> United States Department of Defense, “Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents,” August 9, 2006, [https://archive.defense.gov/pubs/pdfs/Report\\_to\\_Congress\\_final.pdf](https://archive.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf).

<sup>3</sup> Ibid.

<sup>4</sup> CFPB, “Debt and delinquency after military service,” November 2020, [https://files.consumerfinance.gov/f/documents/cfpb\\_debt-and-delinquency-after-military-service\\_report\\_2020-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_debt-and-delinquency-after-military-service_report_2020-11.pdf).

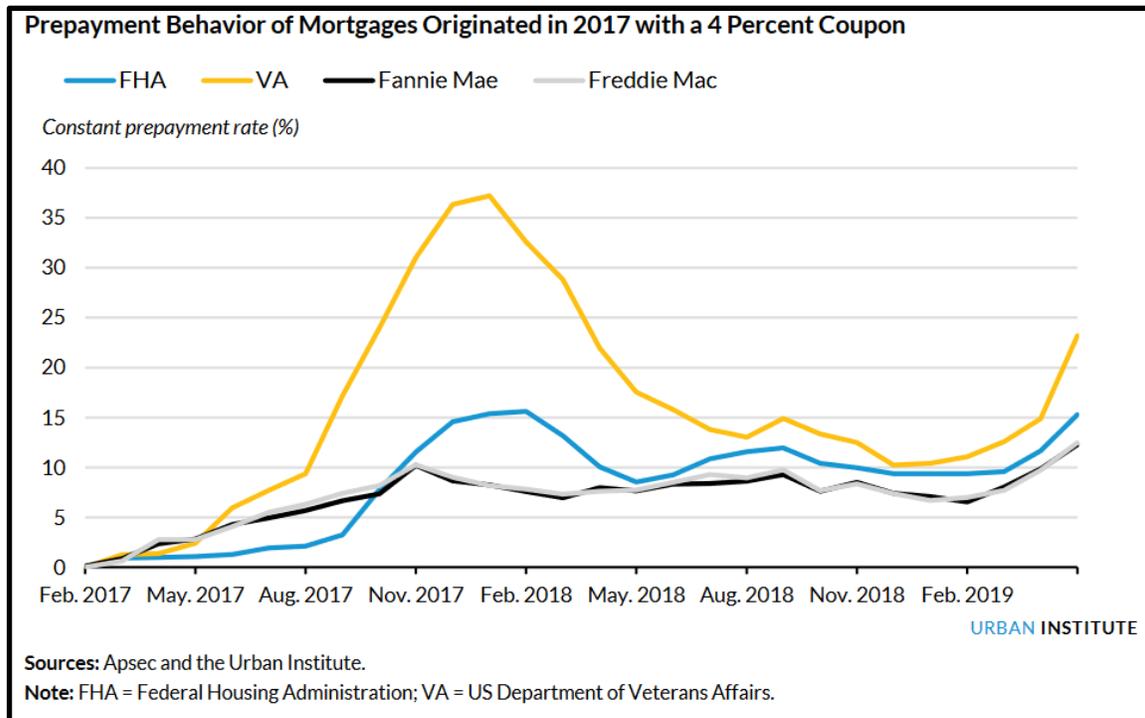
<sup>5</sup> GAO.

<sup>6</sup> Urban Institute, “Fast Prepayments of VA Mortgages Are Increasing Costs to Veteran and FHA Mortgage Borrowers,” June 2019, [https://www.urban.org/sites/default/files/publication/100420/fast\\_prepayments\\_of\\_va\\_mortgages\\_are\\_increasing\\_costs\\_to\\_veteran\\_and\\_fha\\_mortgage\\_borrowers\\_0.pdf](https://www.urban.org/sites/default/files/publication/100420/fast_prepayments_of_va_mortgages_are_increasing_costs_to_veteran_and_fha_mortgage_borrowers_0.pdf).

<sup>7</sup> Committee on Veterans Affairs, “Written Testimony: Michael R. Bright, Executive Vice President and Chief Operating Officer Government National Mortgage Association before the Committee on Veterans Affairs Subcommittee on Economic Opportunity,” January 10, 2018, <https://docs.house.gov/meetings/VR/VR10/20180110/106744/HHRG-115-VR10-Wstate-BrightM-20180110.pdf>.

<sup>8</sup> Ibid.

<sup>9</sup> Bloomberg, “Veterans Pay High Price as Lenders Push Cash-Out Home Loans,” December 28, 2018, <https://www.bloomberg.com/news/articles/2018-12-28/veterans-pay-high-price-as-lenders-push-cash-out-home-loans>.



*Rate of refinancing on VA home loans dramatically outpaced refinancing on other types of mortgages prior to government action in 2018.<sup>10</sup>*

At the time, the VA home loan market was dominated by cash-out refinancings that tended to cost more and save borrowers less. Cash-out may seem like an attractive option for a servicemember or veteran with outstanding debts—something that is common among younger borrowers. However, cash-out refinancing (as opposed to IRRRL) can create even more financial pain over the long term; these loans raise the borrower’s balance through additional fees *and* by taking equity out of their homes.<sup>11</sup> Market share for cash-out refinancings peaked in August 2018 when they accounted for 87.1% of all new VA home loan originations.<sup>12</sup>

**These practices have far-reaching consequences for the mortgage market and indeed for all government borrowers.** The issue stems from how VA home loans are packaged into securities and sold to investors. There are costs associated with packaging and unpackaging these loans, costs which ideally are spread out over the lifetime of a 15- or 30-year mortgage. **Churning loans after a few months increases these costs, and those costs are then passed onto consumers.** In 2019 this added as much as 0.07% to the cost of VA loans, according to estimates by the Urban Institute.<sup>13</sup> This may not seem like a huge number, but it is significant as a percentage of the largest purchase most consumers will ever make. **Churning also creates the appearance of an unstable market, discouraging investors and driving up costs even further in the long run.**

<sup>10</sup>Urban Institute, Op. cit.

<sup>11</sup> Urban Institute, Op. cit.

<sup>12</sup> Bloomberg & American Enterprise Institute, Op. cit.

<sup>13</sup> Urban Institute, Op. cit.

The Trump Administration finally took action to address churning in late 2017, prompted by oversight from Senator Elizabeth Warren and a series of media exposés.<sup>14,15</sup> First, in December 2017 Ginnie Mae announced new rules requiring loans to “season” for six months before they could be refinanced.<sup>16</sup> By early February 2018, Ginnie Mae had sent warning letters to nine lenders about churning.<sup>17</sup> In April, Ginnie Mae started suspending lenders from the VA home loan program, starting with NewDay USA and Nations Lending.<sup>18</sup> In May 2018, Ginnie Mae strengthened anti-churning rules again and temporarily booted two more lenders, Freedom Mortgage and SunWest.<sup>19</sup> Ginnie Mae would go on to suspend a total of nine lenders for churning and continue fine-tuning anti-churning rules through August 2019.

### Case Study: NewDay USA

Churning is often part of a pattern of malpractice and exploitation, and nowhere is that more true than at NewDay USA. NewDay was one of the first lenders suspended for churning VA loans in 2018, continuing a long-running pattern of abuse and misconduct. In 2015, the CFPB required NewDay to pay a \$2 million civil penalty for deceptive mortgage advertising and kickbacks for customer referrals.<sup>20</sup> Around that time, NewDay was fined \$5,280,000 by the Multi-State Mortgage Committee for widespread cheating on licensing exams.<sup>21</sup> As a result, NewDay was banned from all lending in New York and was required to pay a \$1 million penalty. The New York Department of Financial Services found additional compliance failures, including misrepresentation of loan terms and submission of false reports.<sup>22</sup>

Nonetheless, NewDay remains among the top 15 VA home loan originators. In 2020 it reported doubling its revenue to \$315 million and grew its staff by 50%.<sup>23</sup> It projects \$500 million in revenue in 2021, with more than \$9 billion in loan volume.<sup>24</sup>

<sup>14</sup> Senator Elizabeth Warren, “Letter to Ginnie Mae,” September 6, 2017, [https://www.warren.senate.gov/files/documents/2017\\_09\\_06\\_Letter\\_to\\_Ginnie\\_Mae.pdf](https://www.warren.senate.gov/files/documents/2017_09_06_Letter_to_Ginnie_Mae.pdf).

<sup>15</sup> Politico, Lorraine Woellert, “As lenders targeted veterans with risky mortgages, VA failed to act,” November 10, 2017, <https://www.politico.com/story/2017/11/10/veterans-risky-mortgages-va-244767>.

<sup>16</sup> GinnieMae, “APM 17-06: Pooling Eligibility for Refinance Loans and Monitoring of Prepay Activity” December 7, 2017, [https://www.ginniemae.gov/issuers/program\\_guidelines/Pages/mbsguideapmslibdisppage.aspx?ParamID=82](https://www.ginniemae.gov/issuers/program_guidelines/Pages/mbsguideapmslibdisppage.aspx?ParamID=82).

<sup>17</sup> Military Times, Karen Jowers, “Feds put 9 lenders on notice about ‘aggressive, misleading’ VA loan practices,” February 9, 2018, <https://www.militarytimes.com/pay-benefits/mil-money/2018/02/09/feds-put-9-lenders-on-notice-about-aggressive-misleading-va-loan-practices/>.

<sup>18</sup> HousingWire, Ben Lane, April 5, 2018, “Ginnie Mae reportedly boots two lenders from bond program over VA loan churning,” <https://www.housingwire.com/articles/43038-ginnie-mae-reportedly-boots-two-lenders-from-bond-program-over-va-loan-churning/>.

<sup>19</sup> HousingWire, Kelsey Ramirez, June 1, 2018, “Ginnie Mae reportedly boots 3 VA lenders from mortgage bond programs,” <https://www.housingwire.com/articles/43577-ginnie-mae-boots-3-va-lenders-from-mortgage-bond-programs/>.

<sup>20</sup> CFPB, “CFPB Takes Action Against NewDay USA for Deceptive Mortgage Advertising and Kickbacks,” February 10, 2015, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-newday-financial-for-deceptive-mortgage-advertising-and-kickbacks/>.

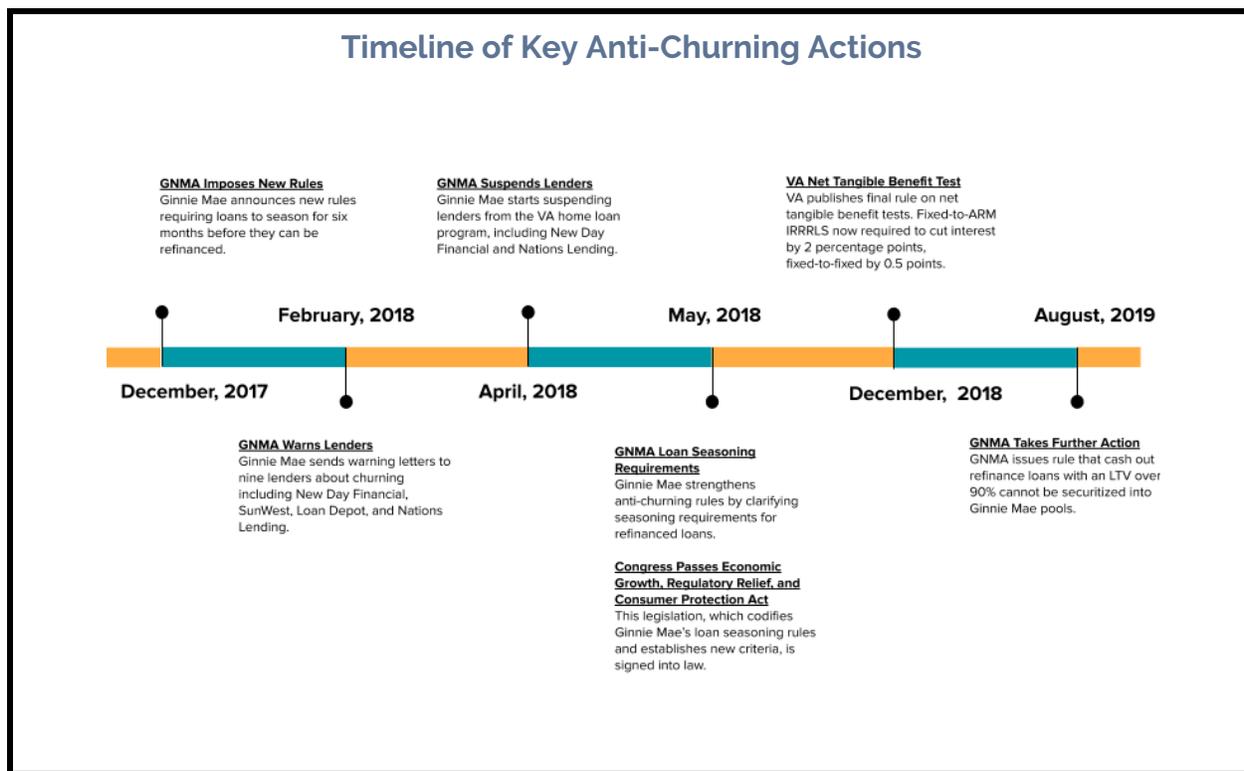
<sup>21</sup> HousingWire, Ben Lane, “NewDay USA fined for widespread cheating on licensing exams,” <https://www.housingwire.com/articles/33538-newday-financial-fined-for-widespread-cheating-on-licensing-exams/>.

<sup>22</sup> State of New York, Department of Financial Services, “NYDFS announces NewDay USA to Pay \$1 million and surrender New York License for exam cheating scheme,” [https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr1511191](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1511191).

<sup>23</sup> MPA, Clayton Jarvis, October 26, 2020, “How NewDay USA is preparing for another year of exponential growth,” <https://www.mpamag.com/news/how-newday-usa-is-preparing-for-another-year-of-exponential-growth-237179.aspx>.

<sup>24</sup> PR Newswire, NewDay USA, October 20, 2020, “NewDay USA Projected to More than Double Revenue in 2020 to Over \$300 Million, Serving More than 20,000 Veteran Families,” <https://www.prnewswire.com/news-releases/newday-usa-projected-to-more-than-double-revenue-in-2020-to-over-300-million-serving-more-than-20-000-veteran-families-301155452.html>.

Congress also took action to curb churning, passing the bipartisan *Economic Growth, Regulatory Relief, and Consumer Protection Act* in May 2018.<sup>25</sup> The law codified Ginnie Mae’s loan seasoning rules and established criteria to guarantee that new loans were actually in veterans’ best interests. This so-called “Net Tangible Benefit Test” specifies exactly how many basis points a second mortgage has to save the borrower, depending on the type of loan.<sup>26,27</sup> This legislation also capped certain VA-specific fees, limited the loan-to-value ratio of cash-out loans, and required Ginnie Mae to report to Congress on the health of the VA home loan program.



These policies, combined with historically low interest rates, dramatically reduced cash-out refinancings as a share of new VA originations, which are at record highs. In fiscal year 2019, cash-out refinancings outnumbered IRRRL three-to-two. In fiscal year 2020, IRRRL hit a record \$199 billion and outnumbered cash-out refinancings more than four-to-one.<sup>28</sup> However, new cash-out refinancings hit a low point in July 2020 and have been climbing rapidly ever since.<sup>29</sup>

<sup>25</sup> Congress.gov, “S.2155 - 115th Congress (2017-2018),” <https://www.congress.gov/bill/115th-congress/senate-bill/2155/text>.

<sup>26</sup> A basis point is one hundredth of a percent or equivalently one percent of one percent or one ten thousandth. For example, 0.50% is fifty basis points.

<sup>27</sup> Department of Veterans Affairs, Veterans Benefits Administration, “Circular 26-19-22: Clarification and Updates to Policy Guidance for VA Interest Rate Reduction Refinance” August 8, 2020, [https://www.benefits.va.gov/HOMELOANS/documents/circulars/26\\_19\\_22.pdf](https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_19_22.pdf).

<sup>28</sup> Department of Veterans Affairs, Veterans Benefits Administration, “VA Home Loans: Lender Statistics for FY 2020,” [https://www.benefits.va.gov/HOMELOANS/Lender\\_Statistics.asp](https://www.benefits.va.gov/HOMELOANS/Lender_Statistics.asp).

<sup>29</sup> American Enterprise Institute, “Mortgage Risk Index,” <https://www.aei.org/housing/mortgage-risk-index/>.

## Cash-Out Refis in 2019 and 2020: Less Quantity, Same Quality

### Key Takeaways

New cash-out refinancings are currently at roughly half of their 2019 peak. Though the quantity of cash-outs remains down, the companies that specialize in these loans, and the predatory nature of their mortgages, remain unchanged. This includes companies that have been punished repeatedly in the past for churning and other abuses, such as NewDay USA. In 2020, the average up-front cost of a cash-out refinancing at NewDay was nearly twice that of USAA and higher than all but one major lender. **Among the top ten originators of VA cash-out refinancings in 2020, NewDay's customers were charged the highest average interest rate and the highest average rate spread, even though they also paid the second most in discount points to bring their rates down.** Had these customers sought a streamline refinancing from NewDay, they would have paid competitive market rates and less than half the up-front costs of a cash-out mortgage. **The disparity suggests that servicemembers, veterans, and military families looking for cash-out loans at NewDay may be specifically targeted and exploited for profit.**

Even during the height of churning, a few lenders managed to stand out as especially predatory and abusive. Some of these companies presented themselves as military-focused lenders that veterans could trust. Others were conventional lenders that targeted veterans because they knew they were vulnerable and that the government would cover a portion of their loans if they defaulted. Many of these companies preyed on servicemembers, military families, and veterans, and left taxpayers on the hook for bad VA loans.

**NewDay USA has consistently been one of the worst predators in the VA home loan program.** In 2019, NewDay ranked 3rd among VA lenders in cash-out refinancings, even though it was restricted for part of the year because of churning. NewDay charged the highest interest rates at more than 4.7%. No other lender averaged more than 4.1%. This was despite also averaging the second highest discount points, the money that borrowers pay at origination to bring down their interest rate long term. In addition, NewDay had the highest average rate spread, meaning the difference between the APR that a borrower with good credit should be able to get, and the actual APR of NewDay loans. **In 2019, a 30-year, \$300,000 cash-out loan from NewDay with a 4% APR would have cost the average borrower an additional \$85,000 over the life of the loan compared to the same refinancing from NFCU.**

Compare The Federal Savings Bank or NewDay with USAA, the largest VA lender with an explicitly military brand. The average rate spread on a USAA cash-out refinancing was .052 in 2019, compared to 1.077 at NewDay. The average up-front cost at USAA was \$5,590 and \$10,335 at NewDay. Likewise, the average charge for discount points at USAA was \$1,712 and \$4,529 at NewDay. This is particularly important in the context of 2019 and churning, because discount points reduce interest rates over the life of the loan. NewDay was intentionally churning loans,

which meant that the borrowers who paid excessive discount points and refinanced never even got the discount they paid for.

### Key Terms

**Rate Spread:** Average rate spread is the difference between the average Annual Percentage Rate (APR) and the Average Prime Offer Rate (APOR). As defined in the *Truth in Lending Act*, the APR is a measurement of the total cost of a loan, based on both the interest and non-interest finance charges imposed in the transaction. APOR is the APR a borrower with good credit should be able to obtain.

**Total Loan Costs:** These are the combined up-front costs veterans pay at closing, including origination charges, appraisal and inspection fees, and other charges. Discount points are in addition to these costs.

**Discount Points:** Also known as a “permanent buydown,” discount points refer to the money that borrowers can pay upfront to secure a lower interest rate. In contrast, when borrowers use “negative points,” or lender credits, they can forgo closing costs but instead have to pay a higher interest rate.

This situation might be partially explained by borrowers’ poor credit, but NewDay also had the second highest upfront costs—almost double what a borrower would pay for a cash-out loan from USAA. If the high interest rates were indeed a function of poor credit, then NewDay USA was targeting the most vulnerable consumers with exorbitant fees. If the high rates were arbitrary, it suggests that NewDay USA was charging servicemembers, military families, and veterans higher rates than their credit warranted.

**The quantity of cash-out loans decreased in 2020, both at NewDay and across the VA home loan industry, but the nature of the loans remained the same.** According to data from CFPB, NewDay once again had the highest average rate spread and interest rate. It also continued to have the second highest average discount points and up-front costs.<sup>30</sup> The chart below shows these trends, with the largest VA cash-out originator, Quicken Loans, shown for scale.

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<sup>30</sup> CFPB notes that “In some transactions borrowers receive a rebate, sometimes known as ‘negative discount points’, typically to cover some of the upfront costs of obtaining a loan and/or home, and in exchange the borrower is charged a higher interest rate.” Because discount points are reported as a positive number, these negative discount points may not be reflected in the reported data. However, the average lender credits for cash-out loans from NewDay and The Federal Savings Bank in 2020 were \$64 and \$208 respectively.

## Cash-Out Refinancings from Selected VA Home Loan Program Lenders

Lender	Year	Loan Count	Average Loan Value	Average Rate Spread	Average Total Loan Cost	Average Origination Fees	Average Interest Rate	Average Discount Points
New Day Financial	2019	8,139	\$ 235,603	1.077	\$ 10,335.07	\$ 5,625.77	4.729	\$ 4,529.04
New Day Financial	2020	3,051	\$ 235,531	0.681	\$ 10,234.42	\$ 5,452.67	3.698	\$ 4,344.16
The Federal Savings Bank	2019	6,520	\$ 298,719	0.283	\$ 11,309.73	\$ 5,651.48	3.957	\$ 4,818.63
The Federal Savings Bank	2020	3,710	\$ 311,353	-0.018	\$ 10,791.45	\$ 5,552.53	2.999	\$ 5,032.38
NFCU	2019	5,874	\$ 309,169	-0.348	\$ 6,999.62	\$ 1,985.48	3.468	\$ 3,172.13
NFCU	2020	6,480	\$ 339,980	-0.219	\$ 7,680.56	\$ 2,604.84	2.997	\$ 3,052.90
USAA	2019	4,957	\$ 263,503	0.052	\$ 5,590.46	\$ 1,146.72	3.822	\$ 1,712.20
USAA	2020	3,960	\$ 267,010	0.094	\$ 5,876.88	\$ 1,657.74	3.416	\$ 2,403.71
Quicken Loans	2019	25,242	\$ 234,996	0.315	\$ 8,166.53	\$ 3,844.16	3.912	\$ 2,978.28
Quicken Loans	2020	21,130	\$ 230,584	0.251	\$ 8,643.33	\$ 4,668.36	3.170	\$ 3,288.09

*Source: CFPB HMDA Data, Office of Congresswoman Katie Porter*

"New Day consistently charges veterans exorbitantly high prices for VA guaranteed loans, including higher origination fees and interest rates, when compared to other VA lenders. Since large banks have chosen not to make VA loans, veterans have only a small number of lenders from which to choose. **It is regrettable that New Day has used this opportunity to leverage its outsized role in the market to push a higher-cost product rather than putting veterans on the path to homeownership with a lower-cost loan.**"

-Jason Richardson, Director of Research and Evaluation, National Community Reinvestment Coalition

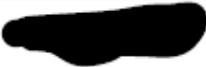
The data shows a similar pattern at The Federal Savings Bank. Unlike NewDay, The Federal Savings Bank offers competitive interest rates and has never been punished for churning. However, it has the highest up-front costs and most discount points of any cash-out originator and was one of nine companies punished by CFPB in the last year for deceptive mailers. Such aggressive marketing tactics were also part of the original justification for suspending NewDay and others in 2018. The Federal Savings Bank is unique in one other way: it is the only VA home loan originator whose CEO is under indictment for trying to bribe his way into the Trump Administration by approving certain loans.<sup>31 32</sup>

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<sup>31</sup> Department of Justice, U.S. Attorney's Office, Southern District of New York, May 23, 2019, <https://www.justice.gov/usao-sdny/pr/bank-ceo-stephen-m-calk-charged-corruptly-soliciting-presidential-administration>.

<sup>32</sup> Bloomberg, Op.cit.

EXPIRATION NOTICE 		 VDC43586981	
R [REDACTED] County: District of Columbia			
671151206101*****MIXED AADC 956 [REDACTED] 	Notice Type:		First
	Notice Number:		VDC43586981
	Requirements:	VA Loan Waiting Period Completion	



**NOTICE:**

VA Guidelines require a waiting period in WASHINGTON, DC to access certain benefits through your VA Loan Benefits.

**STATUS:**

Our review has indicated that the waiting period has been marked as expired as of April 01, 2019 and that you have not accessed your equity reserves of \$4,816.34 or other loan benefits. Please call us at 844-525-4335 by May 10, 2019 to receive a detailed explanation of the benefits available and how to access them.

For details of cash or other equivalent benefits, options, and availability, please contact your TFSB Representative:

TOLL-FREE 844-525-4335  
Monday-Friday 8:00am-7:00pm EST

\*\* Please call before May 10, 2019 and reference NOTICE NUMBER: VDC43586981\*\*

THE FEDERAL SAVINGS BANK



Member  
**FDIC**



Offer for VA Cash Out Refinance Program only and all other offers will have different terms. This is a third party offer from The Federal Savings Bank and is not affiliated with or approved with your current lender or any other government agency. Verification of income, employment and home value may apply. All information herein has been obtained from public record. Equity is based off of an estimated monthly payment. Equity is only an estimate and may be higher or lower depending on market conditions and amortization. New loan with The Federal Savings Bank is required. Terms and conditions may vary. Subject to underwriting approval.

*A sample mailer from the Federal Savings Bank designed to look like an official government document and deceptively labeled "expiration notice."*

2020 was an unprecedented year for many reasons, including historically low interest rates. In the past, lenders that wanted to churn loans had to originate loans with artificially high interest rates so that borrowers would be inclined to refinance. In recent years, the market has done the work for lenders, with falling interest rates encouraging almost all borrowers to refinance. It is not possible to determine based on public data whether consumers who got overpriced NewDay cash-out loans refinanced as interest rates continued to fall. However, the available data and NewDay’s record of exploitation raise the possibility and call for additional scrutiny from federal regulators.

2020 was also an unprecedented year for NewDay, which did approximately \$5 billion in originations, made \$300 million in revenue, and grew its workforce by 50%.<sup>33</sup> Despite this, NewDay was one of the larger Paycheck Protection Program loan recipients, receiving \$7,402,800 on April 13, 2020.

## Conclusions and Recommendations

### Key Takeaways

Ginnie Mae should immediately suspend NewDay USA, The Federal Savings Bank, and any other lender with similar lending patterns from originating new cash-out loans.

VA should strengthen its “net tangible benefit test” rule by capping discount points for borrowers refinancing to a fixed rate mortgage and by eliminating the 90% loan-to-value ratio as a criterion for determining whether veterans benefit from a VA home loan. VA should also add the VA home loan funding fee to the list of closing costs that must be recouped through savings from refinancing.

CFPB should require lenders to include customer credit scores in their *Home Mortgage Disclosure Act* reporting to increase monitoring and transparency of potentially predatory lending.

The Department of Housing and Urban Development should comply with the VA home loan oversight requirements in the *Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018*.

In 2017 and 2018, Congress and federal regulators took significant steps to curb churning and protect veterans from predatory cash-out refinancing loans. The data suggests that these actions, combined with market forces, decreased the incidence of predatory cash-out refinancing. However, while the number of predatory loans decreased, predatory rates and fees remained constant. In 2020, tens of thousands of servicemembers, veterans, and military families refinanced with cash-out mortgages that carried exorbitant fees and put financial

<sup>33</sup> MPA, Op. cit.

**security further out of reach.** The lenders who originated these loans, namely NewDay USA and The Federal Savings Bank, have consistently preyed on vulnerable military consumers over the years and repeatedly been punished for doing so.

“Churning VA loans hurts all veterans. The VA and Ginnie Mae have taken important steps toward addressing this abuse, but more is needed.”

-Andrew Pizor, Staff Attorney, National Consumer Law Center.

The 2019 and 2020 VA home loan program data suggests that previous oversight and enforcement has not been sufficient to deter NewDay USA or The Federal Savings Bank from exploiting veteran borrowers. With VA cash-out refinancing loans up 50% since July 2020, Congress and financial regulators must act now to stop predatory lending.<sup>34</sup>

**First, Ginnie Mae should immediately bar NewDay USA, The Federal Savings Bank, and any other lender with similar lending patterns from originating new cash-out loans. CFPB should conduct an investigation into these companies’ cash-out refinancings.** If CFPB determines that these lenders targeted cash-out customers with excessive fees, it should take into account their previous conduct and consider permanently suspending them from Ginnie Mae securities pools.

**Second, VA should add its funding fee to the list of closing costs that must be recouped through savings on the new loan, strengthen its 2018 rule on the net tangible benefits test, eliminate the 90% loan-to-value ratio as a qualifying benefit, and strengthen protections on discount points.** 1) The VA funding fee is expensive and undermines the requirement that veteran borrowers recoup closing costs through lower monthly payments on their new mortgage. 2) There should be a loan-to-value requirement, but as the National Consumer Law Center wrote in a public comment in 2018, “a loan-to-value ratio (LTV) does not, by itself, have any bearing on whether a transaction benefits the borrower.”<sup>35</sup> A cash-out refinancing with high fees that takes equity out of a home could certainly leave a borrower worse off financially, even if it meets the 90% LTV criteria. 3) With respect to discount points, current regulations take a narrow reading of the law and ignore congressional intent. As a result, borrowers refinancing to a fixed rate loan are vulnerable to paying excessive discount points.

**Third, CFPB should revise the implementing regulations of the Home Mortgage Disclosure Act to require lenders to include customer credit scores in loan level data.** This would allow Congress, academics, and civil society to see whether high-interest loans are in fact a function of poor credit, as opposed to predatory lending. Despite claims from the mortgage industry about privacy risks, HMDA data is far less detailed than the information available on the

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<sup>34</sup> AEI Op. Cit.

<sup>35</sup> NCLC, “Comments to the Veterans Affairs Department: Revisions to VA-Guaranteed or Insured Cash-Out Home Refinance Loans,” February 15, 2019.

commercial market, and there is no evidence of it being used to expose the identity of specific individuals.<sup>36</sup>

**Fourth, Ginnie Mae should complete the required report to Congress on VA home loan program liquidity under the *Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018*.**<sup>37</sup> The interim report delivered in May 2019 does not satisfy the requirements of the law or give Congress the information it needs to conduct effective oversight.

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<sup>36</sup> NCRC, “Rebuttal To Personal Privacy Of HMDA In A World Of Big Data,” January 23, 2018, <https://ncrc.org/rebuttal-personal-privacy-hmda-world-big-data/>.

<sup>37</sup> P.L. 115-174: Economic Growth, Regulatory Relief, And Consumer Protection Act, Sec.3709.

## Methodology

Analysis of lending patterns is based on 2019 and 2020 Home Mortgage Disclosure Act (HMDA) data. Data was collated and summarized in R Studio, then exported and resorted in Excel.

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