MORTGAGE BANKERS ASSOCIATION

HPC | HOUSING POLICY COUNCIL

July 26, 2023

Mr. John Bell III
Executive Director
Loan Guaranty Service
Veterans Benefits Administration
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420

RE: Public Comment Process for Foreclosure Prevention Solution for Veteran Borrowers

Dear Executive Director Bell,

The Mortgage Bankers Associations (MBA)[1] and the Housing Policy Council[2] request that the Department of Veterans Affairs (VA) provide a public process for review and comment on VA's new foreclosure prevention solution, the Veterans Assistance Servicing Purchase (VASP) program. Specifically, the VA should allow a 30-day comment period before finalization of any new policy to be effective in the VA Servicer Handbook with a subsequent appropriate implementation period.

Our teams have been engaged in ongoing conversations in recent months and we greatly appreciate the opportunity to engage in constructive dialogue. Unfortunately, at this point in time, we are unable to support the VASP proposal without additional information to assess the borrower impact and the ability of servicers to deliver it without undue costs or risks (compliance and reputational). With that said, we support the creation of a loss mitigation solution that provides payment relief to seriously delinquent veteran borrowers whose note rates are lower than the prevailing market rate. A solution

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org

[2] The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers; mortgage, hazard, and title insurers; and technology and data companies. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. For more information, visit www.housingpolicycouncil.org

like this is needed because approximately 147,000 veteran borrowers are estimated to be behind on their mortgage payments[3] and those with note rates below the current market rate will not be able to achieve an affordable payment with a traditional loan modification. This issue is particularly acute for VA borrowers as the average interest rate in a Ginnie Mae security is 3.25%.[4]

Although our previous discussions have been helpful, as of yet, they have not led to any concrete, written outlines or process flows of the VASP program. At this stage, given the time pressures under which VA is operating, we believe the VASP program will significantly benefit from stakeholder input based on a written program outline and a public comment period. The complexity of the program as we understand it requires the opportunity for all program participants to evaluate the viability of VASP. Mortgage servicers especially must be able to determine the operational, regulatory, and reputational risks they would be assuming, as well as the efficacy of the program in helping veterans.

Additional details are crucial before the VA announces a new loss mitigation program. Our understanding is that VASP is likely to be introduced as the last option within VA's loss mitigation hierarchy. As a result, the respective roles of the servicer, the VA, and the VA contractor in the VASP process appear to conflict. As we understand VASP, the decision to modify a borrower's loan rests with the VA. Yet, servicers continue to evaluate their borrowers for all available options. In other words, servicers continue to communicate and engage with their delinquent borrowers until the VA approves the purchase the loan *and* accepts transfer of the loan from the servicer. The decision-making role of the VA dislocates the traditional regulatory relationship between the servicer and the borrower, setting up a conflict with the established CFPB regulatory framework. As such, VASP represents a significant departure from prevailing loss mitigation standards and practices, and therefore should be subject to review from all stakeholders.

We also understand the urgency to provide an alternative solution that serves the best interests of veteran borrowers now. The COVID-19 loss mitigation flexibilities are no longer a part of VA's toolkit. Borrowers are unable to resolve their delinquency and resume their regular payment with the expiration of the Veterans Assistance Partial Claim in October 2022. Likewise, the COVID-19 Refund Modification, which utilizes a partial claim mechanism to help borrowers potentially achieve a targeted payment reduction, expired recently on July 1, 2023.

To accomplish our shared goals, VA must clarify how VASP intends to address the following issues to reduce complexity, increase certainty, and enable servicers to implement scalable processes.

1. **Maximize eligible borrowers.** VASP must qualify the maximum possible number of veteran borrowers to retain their homes. To do so, the VA should not consider factors in either the borrower eligibility or VA's approval criteria that would unnecessarily limit the number of borrowers who could receive assistance. For instance, VA should not consider a residual

[3] 3.98% of VA's borrowers are estimated to be delinquent as of Q1 2023, according to MBA's National Delinquency Survey (available at https://www.mba.org/news-and-research/newsroom/news/2023/05/11/mortgage-delinquency-rate-in-first-quarter-2023-declines-to-second-lowest-level-in-mba-s-survey). VA's portfolio data is not publicly available. Our understanding is that the Veteran's Benefits Administration guarantees approximately 3.7 million home loans.
[4] Ginnie Mae, Global Market Analysis Report, June 2023, available at Ginnie Mae Design Features (showing 74% of borrowers in a Ginnie Mae security originated their loan since 2019. The current weighted average coupon of Ginnie Mae-Backed Security is 3.25%)

income analysis to demonstrate affordability. As we've learned from the HAMP experience and most recently during the COVID-19 pandemic, payment relief is the single biggest driver of sustainable loan modifications.

2. **Process borrowers promptly.** Loss mitigation decisions should provide clear outcomes quickly and consistently. The VASP process must eliminate or reduce roadblocks that would delay an opportunity for a borrower to retain their home. To expedite the modification and transfer process, we believe that the VA must utilize clear pre-screening criteria for servicers to identify qualified borrowers, preferably based on a set of data variables that require no additional documentation or validation. Without a simplified, data-driven process, servicers will have to collect, and the VA will have to evaluate a significant volume of documentation to decide whether to purchase a loan. It is important to process the bulk of loans that qualify for VASP promptly.

   Objective, bright line parameters should guide both the servicers' data collection process and the VA's decision to approve a loan for purchase and immediately proceed to transferring the servicing to VA's contractor. Those same parameters should also clearly articulate the guidelines that VA will not approve a loan for purchase. [5] To streamline an efficient process, we also support efforts by the VA to devote technological resources to automating the process.

3. **Clarify compliance with Regulation X.** VA must carefully consider a servicer's obligations under the regulations of the Real Estate Settlement Procedures Act (Regulation X). Specifically, the VA must demonstrate when servicers must send the required notices to borrowers.[6]

   Incorporating VASP as the last option in VA's loss mitigation hierarchy, yet moving the decision-making responsibility to VA, creates tension between VA's role and a servicer's obligation under Regulation X. Because the VA approves delinquent loans to modify and purchase, servicers are displaced for a period of time, waiting for input needed to satisfy the regulatory requirements. Servicers will need to clearly understand when to send the borrower an approval or denial letter and the basis for a denial. This issue is important as it also affects how a borrower potentially understands their appeal rights. We encourage the VA to request the Consumer Financial Protection Bureau to provide public guidance in a compliance bulletin or similar issuance on how servicers can maintain their compliance with Regulation X and VASP.

4. **Facilitate successful servicing transfers.** VA must implement a servicing transfer process that follows industry standards and practices. Namely, VASP should permit monthly servicing transfers to be completed in bulk. Individual loan transfers are not scalable for servicers and raise considerable operational risk issues.

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[5] Our basic understanding is that the VA will modify a borrower's loan if the borrower is able to achieve a lower payment after extending their loan term to 30 or 40 years and reducing the interest rate to 2.5%.

[6] Per VA's regulations, servicers will begin to evaluate borrowers for loss mitigation solutions with complete documentation (38 CFR § 36.4315). Regulation X requires that servicers evaluate borrowers for all available options and provide notice to the borrower of which option it will offer within 30 days of receiving a complete loss mitigation application (12 CFR § 1024.41(c)(1)(ii)).

> At its core, VASP relies on servicing transfers and therefore, this is a significant issue, given the borrower impact. We welcome the opportunity to discuss the servicing transfer process in greater detail, including the servicer and VA's communications with the borrower, the data to be transferred, and documentation needed to complete the transfer process.

We strongly encourage an opportunity for all stakeholders to offer recommendations on ways to improve the design and implementation of the VASP program.

The MBA and HPC appreciate the VA's immense efforts and ongoing dialogue to create an alternative loss mitigation solution for distressed veteran borrowers with note rates that are lower than market rates. MBA and HPC remain committed to preserving affordable homeownership for veteran borrowers facing financial hardship. A public comment process will reduce the risk of unintended consequences, ensure industry consensus, and identify the appropriate implementation timeframes. Should you have any questions or concerns, please contact Brendan Kelleher at Bkelleher@mba.org or Matt Douglas at Matt.Douglas@housingpolicycouncil.org.

Sincerely,

Housing Policy Council
Mortgage Bankers Association