



June 21, 2022

John E. Bell, III
Acting Executive Director
Loan Guaranty Service
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

RE: Veterans Assistance Partial Claim Payment Programs

Dear Acting Executive Director Bell:

As you know, many veterans remain in an active COVID forbearance, and the COVID-19 Veterans Assistance Partial Claim Program (VAPCP) is set to expire on October 28, 2022. The Mortgage Bankers Association¹ and Housing Policy Council², on behalf of our members and the veterans we serve, are writing to request that the United States Department of Veterans Affairs (VA) extend the COVID-19 VAPCP past the current October 2022 expiration date, as well as encourage the VA to make several program enhancements based on lessons learned from the experience to date. These requested changes will allow veterans the opportunity to continue to

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 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 more than 2,100 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 and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. 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

receive the partial claim as a valuable loss mitigation tool to help them stay in their homes. Even now, reports show about 249,000, or 2.1% of FHA and VA loans remain in forbearance and that 20,000 of these plans are expected to expire per month through 2022.³ Following this current emergency, our members believe that an amended partial claim process would be a valuable tool for ensuring that veterans have access to the help they need and loss mitigation options that align with those available to FHA and USDA borrowers.

The Partial Claim Should Remain Available Throughout the COVID National Emergency

We believe that President Biden's most recent extension of the COVID-19 national emergency in February 2022 warrants extension of the VAPCP. The preamble to the Final Rule recognized that "if there are additional extensions of forbearance periods in VA's home loan programs, VA may consider a new rulemaking to adjust the sunset date."⁴ In setting the sunset date for October 28, 2022, the VA noted that the date was tied to a June 30, 2022, deadline for exiting forbearance, which no longer is in effect.

We believe veterans are entitled to start a CARES Act forbearance until February 28, 2023, when the COVID-19 national emergency terminates, unless the national emergency is terminated sooner or extended again.⁵ As a result, even if the national emergency ended today, veterans could be in statutory forbearance well beyond the current VAPCP expiration date. In recognition of this, VA should set a new expiration date to ensure veterans have consistent access to the help they need during the national emergency and its aftermath.⁶

Action is needed now given the number of veterans that remain in an active forbearance today and the extended opportunity available to receive a CARES Act forbearance. Servicers may have to stop enrolling veterans towards the end of July to provide sufficient time to complete the partial claim submission process in advance of the expiration. Due to the urgency of the problem, we recommend that the VA should promptly extend VAPCP through an Interim Final Rule that is effective immediately and allows an opportunity for public comment simultaneously. A swift extension of the VAPCP will ensure that veterans can continue to benefit from the program without interruption.

³ See Black Knight Mortgage Monitor March 2022 Report, pg. 6, 11.

⁴ Federal Register Vol. 86, No. 102, pg. 28697; *see also* Federal Register Vol. 85, No. 237, pg. 79153 ("VA finds it prudent to publish a termination date that is tied to the one-year anniversary and also provides sufficient notice for VA and servicers to close out any actions related to the program. It also provides sufficient time for VA to extend the sunset date via rulemaking, depending on VA's continued monitoring of the national emergency and its impact on veterans.").

⁵ Federal Register Vol. 87, No. 36, Page 10289 ("The COVID-19 pandemic continues to cause significant risk to the public health and safety of the Nation. For this reason, the national emergency declared on March 13, 2020, and beginning March 1, 2020, must continue in effect beyond March 1, 2022."); *see also* 50 U.S.C. 1622(d) ("Any national emergency declared by the President in accordance with this subchapter, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.").

⁶ VA Circular 26-21-20 ties the approval of COVID-19 forbearance to the National Emergency. However, the Circular expires October 1, 2022 on VA's expectation that the National Emergency will end by then. MBA and HPC believe the Circular may soon be in conflict with the CARES Act and should be revised.

To avoid this result, an Interim Final Rule could simply recodify 38 C.F.R. § 36.4809 as follows below. We respectfully reiterate our recommendation to VA’s original December 2021 proposal that the VA accept partial claim requests for at least 15 months after termination of the COVID-19 national emergency.⁷ This will allow veterans to benefit from the VAPCP during the 12 months of forbearance statutorily authorized by the CARES Act that is currently in effect, plus an additional 90 days to complete the required paperwork to submit a partial claim.

§36.4809 Expiration of the COVID-19 Veterans Assistance Partial Claim Payment program.

~~(a) Subject to paragraph (b) of this section,~~ The Secretary will not accept a request for a partial claim payment after the date that is ~~180~~ 455 days after the date the COVID-19 national emergency ends under the National Emergencies Act, 50 U.S.C.161.

~~(b) If a veteran's COVID-19 forbearance does not end until after the date described in paragraph (a) of this section, the Secretary shall accept a request for a partial claim payment, provided that such request is submitted to the Secretary not later than 120 days after the date the veteran exits the COVID-19 forbearance.~~

~~(c) Notwithstanding paragraphs (a) and (b) of this section, the Secretary will not accept a request for a partial claim payment after October 28, 2022.~~

VAPCP may be the only viable path for some veterans to remain in their homes and is a necessary component of the loss mitigation success from which veterans have benefited during the pandemic. Without VAPCP, servicers can only offer certain veterans - those who can resume payments but cannot pay arrearages - the Disaster Extend Modification or loan deferment as part of the COVID-19 Home Retention Waterfall.⁸ As noted by the VA, some servicers are financially unable to offer deferment.⁹ Additionally, with the rapid rise in interest rates, modification options are not a viable alternative for many VA borrowers. Another challenge is that servicers must request pre-approval directly from the VA to exceed the 1% maximum cap on rate increases above the existing rate, and sometimes those requests are denied, leaving the veteran with limited options.¹⁰ VAPCP provides a unique workable solution for many veterans and should be extended for all the same reasons it was originally implemented.

In short, veterans exiting forbearance and veterans that may enter a forbearance deserve access to the partial claim as much as FHA and USDA borrowers. Veterans facing challenges in the future

⁷ Mortgage Bankers Association and Housing Policy Council, Comment Letter on Proposed Rule on Loan Guaranty: COVID-19 Veterans Assistance Partial Claim Payment Program (Jan. 8, 2021), [d315af_2c15f5d5489348e6ad617a3aa86ad8de.pdf](https://www.housingpolicycouncil.org/wp-content/uploads/2021/01/d315af_2c15f5d5489348e6ad617a3aa86ad8de.pdf) ([housingpolicycouncil.org](https://www.housingpolicycouncil.org)).

⁸ VA Circular 26-21-13 (“If the borrower indicates the borrower can resume normal monthly guaranteed loan payments but cannot repay the COVID-19 arrearages, the servicer offers a VA Disaster Extend Modification, loan deferment, or a COVID-VAPCP.” (footnotes omitted)).

⁹ Federal Register Vol. 85, No. 237, pg. 79145 (“While loan deferment may present the best option for certain borrowers, many servicers are facing a liquidity crunch and lack financial resources to float large amounts of forbore indebtedness for what can be, depending on the case, two to three decades.”).

¹⁰ See 38 C.F.R. § 36.4315(a)(8)(ii) (Loan modifications) (“The loan as modified will bear a fixed-rate of interest, which . . . is not more than one percent higher than the existing rate on the loan . . .”).

should also have the same options as any veteran who has already received a partial claim to date. Servicers, VA, as well as the CFPB have promoted and communicated the availability of the partial claim as a loss mitigation solution throughout COVID-19 to help veterans get back on track to making their affordable payment. Also, like the VA initiated updates to the VALERI system, servicers have implemented changes to the operational process to offer the VAPCP to veterans. The option should remain available to veterans throughout the national emergency.

VA Should Adopt Enhancements to the VAPCP Based on Lessons Learned from Program Experience

As part of extending the VAPCP sunset date, our members request that the VA also implement several lessons learned to enhance the program. Launching a program as significant as the VAPCP was necessarily going to place burdens on the VA as well servicers. Now that there has been over a year of data and experience, we believe some adjustments should be made to streamline the process and improve outcomes. These enhancements include the following:

- **Eligibility:** Allow borrowers who have not previously been in forbearance to qualify for the VAPCP if they have been impacted by COVID. Veterans will continue to fall delinquent to the ongoing COVID-19 pandemic. Existing regulation should otherwise allow new delinquencies who have not yet received a forbearance to be eligible for a partial claim solution based on one missed and unpaid payment, among other factors.¹¹
- **Process:** Eliminate the requirement to record the documents. Local counties continue to experience recording delays outside the control of the servicer to meet VA's requirement to submit partial claim documents timely. Removing the recording requirement will also eliminate an unnecessary step in VA's internal review process.
- **Claims:** VA should improve the claims payment process by 1) establishing public metrics for paying claims in a timely manner in less than 30 days; and 2) limiting the denial of claims to only material mistakes, rather than ministerial errors. Ensuring the timely review of the process and payment of claims will provide certainty to servicers that the program is successful and can be more widely adopted. A review of VA's data may find that claims were delayed in payment for non-material issues, such as default reporting, that may influence VA to reduce or eliminate partial claim reviews by implementing systematic checks in the VA Loan Electronic Interface (VALERI) and completing a quality control process after the claim is paid, instead of conditioning claim payment on successful completion of the process.

Our members believe that these modest changes will serve to significantly enhance the tool to make it more effective for veterans, servicers, and the VA.

The VAPCP Should Be a Permanent Part of Standard Loss Mitigation Guidance

MBA and HPC support efforts for the VA to take steps to establish a partial claim program as permanent part of standard loss mitigation. While recognizing that the VA does not have the same explicit statutory authority as do FHA and USDA for a partial claim program, we believe the broad legal authorities VA identified to establish VAPCP as an emergency measure may allow

¹¹ 38 CFR § 36.4302 and § 36.4303

VA to create a long-term program through regulation.¹² Although our members are strong supporters of a partial claim program, there have clearly been lessons learned from the implementation that should be addressed through future rulemakings. The rulemaking process will provide the opportunity for stakeholders to submit to the VA recommendations to improve and streamline the partial claim program process for VA staff, reimburse servicers for bearing the cost of the program, and encourage wider adoption of the program across the industry to help veterans as a valuable tool, especially in higher interest rate environments.

In the alternative, we support the VA seeking legislative action and additional funding authority that would provide VA the comfort it needs for a standard partial-claim option.

Conclusion

MBA, HPC, and our members have appreciated VA's direct engagement with industry and servicers throughout the past two years of the COVID-19 pandemic to implement important policy to help veterans. We look forward to continuing to work together to ensure that veterans are receiving the assistance they deserve and welcome the opportunity to discuss this letter and coordinate further on structuring an effective permanent partial claim program.

Thank you in advance for your consideration of these comments. Should you have any questions or wish to discuss further, please contact Brendan Kelleher at (202) 557-2779 and Bkelleher@mba.org, or Matthew Douglas at (202) 589-1924 and matt.douglas@housingpolicycouncil.org.

Sincerely,

Mortgage Bankers Association
Housing Policy Council

¹² Federal Register Vol. 85, No. 237, pg. 79146 ("Under 38 U.S.C. 3732(a), VA has the legal right to prevent a foreclosure by purchasing indebtedness that VA has already guaranteed. . . . VA also has broad powers under 38 U.S.C. 3720, "notwithstanding the provisions of any other law," to purchase assets and pay any claim, however acquired . . .").