

February 22, 2024

VIA ELECTRONIC MAIL

The Honorable Derrick Van Orden
Chairman, Subcommittee on Economic Opportunity
Committee on Veterans' Affairs
364 Cannon House Office Building
Washington, D.C. 20003

The Honorable Mike Levin
Ranking Member, Subcommittee on Economic Opportunity
Committee on Veterans' Affairs
364 Cannon House Office Building
Washington, D.C. 20003

Dear Chairman Van Orden and Ranking Member Levin,

On behalf of the clients, communities, and borrowers we serve, we are writing to follow up on the House Veterans Affairs Subcommittee on Economic Opportunity Oversight [Hearing](#) held on February 15, 2024 and to confirm that VA has the statutory and regulatory authority to operate the VA Servicing Purchase (VASP) program that it has announced. We urge VA to release VASP as soon as possible in order to help borrowers who have faced a dearth of foreclosure alternatives since October of 2022.

VASP involves a VA purchase of defaulted loans that are modified under terms outlined by VA. Congress gave VA this authority in 38 U.S.C. § 3732(a), which states that “[b]efore suit or foreclosure the holder of the obligation shall notify the Secretary of the default, and within thirty days thereafter **the Secretary may, at the Secretary’s option, pay the holder of the obligation the unpaid balance of the obligation plus accrued interest and receive an assignment of the loan and security.**”¹ Once the loan holder sends the VA a notice, the language explicitly gives VA the authority to bring a loan into its portfolio. VA has implemented its authority to purchase loans through a regulation at 38 C.F.R. § 36.4320. While VASP will require VA to issue revised subregulatory guidance, it will not need additional statutory or regulatory authority.

VA has had this authority to purchase loans since 1945,² and courts have upheld VA’s discretion about how to use it.³ In considering the statutory language, the Ninth Circuit stated that

¹ 38 U.S.C. § 3732(a)(2)(A) (emphasis added).

² For a discussion of the history of this provision, see *Gatter v. Nimmo*, 672 F.2d 343, 344-47 (3d Cir. 1982).

³ See *Rank v. Nimmo*, 677 F.2d 692 (9th Cir. 1982); *Gatter v. Nimmo*, 672 F.2d 343, 344 (3d Cir. 1982).

“Congress intended to leave the decision when, if ever, to apply the assignment-refunding remedy within the sound discretion of the Administrator.”⁴

It is clear that VA has the authority under 38 U.S.C. § 3732(a) to operate VASP. We urge it to release the program as soon as possible to help borrowers in need, and also to develop additional options for VA homeowners facing hardship.

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)

⁴ Rank v. Nimmo, 677 F.2d 692, 700 (9th Cir. 1982)