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on behalf of its low-income clients

On

"Sink or Swim? A Deep Dive into the Current State of VA's Home Loan Program in a Competitive Market."

Before the United States House Committee on Veterans' Affairs,
Subcommittee on Economic Opportunity

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[1] Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC's expertise includes policy analysis and advocacy; litigation; expert witness services, and training and advice for advocates. NCLC publishes a series of consumer law treatises including Mortgage Lending, Mortgage Servicing and Loan Modifications, and Home Foreclosures. NCLC attorneys provide assistance on a daily basis to the attorneys and housing counselors working with distressed homeowners across the country.

1. Introduction

Chairman Van Orden, Ranking Member Levin, and Members of the Committee, thank you for the opportunity to testify on behalf of the low-income clients of the National Consumer Law Center (NCLC) regarding the state of the VA Home Loan Guaranty Program.[2] I am a Senior Attorney at NCLC, and I manage our federal mortgage servicing policy work. I will focus my testimony on VA mortgage servicing issues.

It is a bedrock principle of federal housing policy that borrowers who are facing financial hardship should have access to workout options to bring their loans current and avoid foreclosure. These home retention policies provide stability for homeowners by giving them a path to recovery after financial hardships and provide stability for neighborhoods that suffer when foreclosure hits.[3] These policies also help investors avoid losses from unnecessary foreclosures, which supports the health of the programs. These policies do not guarantee that all borrowers who fall behind can avoid foreclosure, but they help prevent avoidable losses.

Unfortunately, since October of 2022, homeowners with VA-guaranteed mortgages facing hardship have had severely limited options to retain their homes and avoid foreclosure. This is the result of the combination of the recent dramatic increase in mortgage interest rates and a decision by VA to discontinue a program that had allowed homeowners who can resume their mortgage payments to repay the missed payments at the end of their loans.

The rise in mortgage interest rates has created significant challenges for FHA, USDA, and the Government Sponsored Enterprises (GSEs), but they all have retained programs to allow borrowers to resume regular payments and pay the arrearage at the end of the mortgage without an increase in their interest rates. In contrast, VA no longer has such a program, and we have seen VA's current flagship loan modification program result in increased monthly payments, which are generally not affordable for borrowers facing hardship.

As a result, the mortgage relief options available for Veteran borrowers are less favorable than the options available to other federally-backed borrowers. The VA Home Loan Program is a benefit program that Veterans have earned through service and sacrifice and that is meant to give them housing stability. As VA states, "[t]he objective of the VA Home Loan

[2] In my work at NCLC, my duties include serving as a resource to private and legal aid attorneys, as well as to federal and state regulators and enforcement agencies, on complex housing finance issues. Before joining NCLC, I worked for the Legal Aid Society of Southwest Ohio and Indiana Legal Services where I represented low-income homeowners facing the risk of foreclosure since 2005. I am also a contributing author of National Consumer Law Center's Mortgage Servicing and Loan Modifications and Home Foreclosures legal treatises. Thanks to Kanav Bhagat, consultant to the Center for Responsible Lending, and Sarah Mancini, Carolyn Carter, Alys Cohen and Andrew Pizor of NCLC for their help in preparing this testimony.

[3] *See, e.g.*, 42 U.S.C. § 1441 (establishment of national housing policy); 38 U.S.C. § 3732(a)(4)(A) (requiring VA-guaranteed servicer to notify borrower of "alternatives to foreclosure"); 12 U.S.C § 1715u (establishing requirement to evaluate FHA-insured borrower for alternatives to foreclosure); 42 U.S.C. § 1472(h)(13) (establishing requirement to evaluate USDA-guaranteed borrowers for alternatives to foreclosure).

Guaranty program is to help eligible Veterans, active-duty personnel, surviving spouses, and members of the Reserves and National Guard purchase, retain, and adapt homes in recognition of their service to the Nation."[4] To meet this goal, there must be a system in place to effectively assist Veterans when they fall behind on their loans. We recognize that VA may need to adopt criteria and terms that meet the specific aspects of its program, but that should not result in VA borrowers having worse options than other federally-backed borrowers.

We applaud VA for recognizing the problems that its borrowers are facing and for implementing a foreclosure pause until May 31, 2024 to give VA-guaranteed borrowers who are facing a dearth of options a chance to access programs that are in development.[5] However, the pause is only meaningful if VA puts options in place that Veterans can access before losing their homes. We urge the agency to take several key steps:

- VA must immediately release the previously-announced VA Servicing Purchase (VASP) program and ensure that the program is easily accessible, includes criteria that account for the recent lack of options which have led to growing arrearages, and provides targeted payment relief for VA-guaranteed borrowers;

- Because VASP will not be a one-size-fits-all solution, VA needs to develop further options, including the reestablishment of a partial claim program that allows borrowers resume their payments without a change in interest rates, so that its permanent system for helping borrowers provides meaningful relief in all market conditions and secures the financial health of the VA Home Loan Program;

- In developing these alternatives, VA must work with elected officials, Veteran Service Organizations (VSOs), consumer advocates, industry representatives, and other stakeholders to identify any additional resources it needs to implement these options, so that Congress can ensure that funding constraints do not stand in the way of enabling Veterans to save their homes; and

- VA must start releasing timely and consistent data on VA-guaranteed loan performance, using FHA's reporting system as a model.

These steps are necessary to provide Veteran borrowers what they deserve–a program that honors their service by providing housing stability even in the face of financial hardships.

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[4] U.S. Dep't of Veterans Affairs, Annual Benefits Report, Fiscal Year 2022 - Home Loan Guaranty at 1 (Feb. 2023), available at https://www.benefits.va.gov/REPORTS/abr/docs/2022-loan-guaranty.pdf.
[5] U.S. Dep't of Veterans Affairs, VA Circular 26-23-25 (Nov. 30, 2023), https://www.benefits.va.gov/HOMELOANS/documents/circulars/26-23-25.pdf.

2. Today, VA borrowers have limited options to avoid foreclosure when they face financial hardship.

The sharp increase in mortgage rates has challenged the VA's system for assisting delinquent borrowers. Since the 2008 financial crisis, the mortgage industry's primary method for helping delinquent borrowers who cannot afford a simple, short-term repayment plan involves modifying the terms of the mortgage loan to reduce the borrower's monthly payment. Depending on the program, the modification can include adding missed payments to the loan balance, possibly deferring a portion of the loan balance, and adjusting the interest rate and the length of the repayment term.

Research on loan modification performance provides compelling evidence that targeted payment relief is the most cost-effective means for providing loan modifications that reduce redefault rates.[6] VA, FHA, Fannie Mae, Freddie Mac, and USDA all developed loan modification programs that generally seek to provide borrowers a 20% to 25% reduction in monthly payments. These systems do not guarantee payment relief for borrowers because there are limits on how long a servicer can extend a mortgage term and how much of the amount owed a servicer can defer. Moreover, because VA, FHA, and USDA are pooled in Ginnie Mae securities after modifications, agency guidance refers servicers to the prevailing market interest rate in determining the modified interest rate.[7]

The VA modification programs generally worked well when market rates were below or at least near the typical interest rate of outstanding VA loans. However, when market interest rates started to dramatically increase around December 2021, the VA modification systems started to buckle.[8] We estimate that average interest rate for VA-guaranteed loans is currently 4%, which is significantly lower than the Freddie Mac Primary Mortgage Market Survey (PMMS) rate of 6.64% as of February 8, 2024.[9] Many borrowers have rates around 3%.

Because VA ties its foreclosure relief options to the market interest rate, once interest rates started to increase dramatically, some borrowers received loan modifications offers that increased their interest rates and, as a result, increased their post-modification payments. A recent NPR story reported a Veteran borrower receiving a modification that increased his

[6] The replication kit in the online appendix to Peter Ganong and Pascal Noel, *Liquidity Versus Wealth in Household Debt Obligations: Evidence from Housing Policy in the Great Recession*, American Economic Review, 110(10): 3100-3138 (2020) shows that the causal impact of a 25% reduction in monthly principal and interest payments is to reduce subsequent 5-year redefault rates by 36%. It is available at: GitHub - ganong-noel/mtg_mods_public: Repkit for Liquidity vs. Wealth in Household Debt Obligations: Evidence from Housing Policy in the Great Recession.

[7] U.S. Dep't of Veterans Affairs, VA Circular 26-23-25 (Nov. 30, 2023), https://www.benefits.va.gov/HOMELOANS/documents/circulars/26-23-25.pdf; U.S. Dep't of Hous. & Urban Dev., Mortgagee Letter 2023-03 at 15 (Feb. 13, 2023), https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-03hsgml.pdf;

[8] Freddie Mac, Mortgage Rates (Feb. 8, 2024), https://www.freddiemac.com/pmms.

[9] *Id*. The estimated outstanding interest rate is based on a report run from Recursion Analytics.

mortgage payment from $1750/month to $2400/month.[10] More broadly, with the PMMS rate at 6.64%, if the average seriously delinquent VA borrower received a VA modification today, they would be provided with approximately a 2% reduction in their monthly payment, well short of the 20-25% that has been proven to reduce redefaults, while also substantially increasing their interest rate. Of the population of seriously delinquent VA borrowers who are eligible for a VA modification today, the vast majority would receive a payment reduction of less than 10% under VA's existing modification program. [11]

In this elevated interest rate environment, however, programs that defer past-due payments to the end of the loan term at 0% interest work well. These programs do not require a change in the interest rate of the primary mortgage. And while they do not provide payment relief, borrowers generally face little to no payment increase, depending on the escrowed taxes and insurance. The Fannie Mae and Freddie Mac programs are called payment deferrals. The USDA-guaranteed version of this is the Mortgage Recovery Advance, and the most established version of this program is FHA's Partial Claim program.

VA had a partial claim program from May 2021 through October 28, 2022. In May 2021, the agency finalized its COVID–19 Veterans Assistance Partial Claim Payment (VAPCP) program, which provided a 0% interest rate loan to borrowers that came due at the end of the loan term.[12] In its announcement of this program, VA required all VA partial claims to be entered into by October 28, 2022.[13] It did state, however, that "VA notes 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."[14]

On October 28, 2022, despite the fact that relief from VA's modifications was severely limited by a PMMS rate that was over 7%, VA allowed the VAPCP to lapse. It did so even though many VA borrowers were still in forbearance plans throughout 2023,[15] which is a factor it had identified in 2021 as a reason to consider extending the program. This decision removed a workable option for maintaining a borrower's present interest rate and payment when they have fallen behind on their loans, and put VA-guaranteed borrowers in a worse position relative to other federally-backed borrowers.[16]

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[10] Chris Arnold & Quil Lawrence, NPR, *Veterans fear the VA's new foreclosure rescue plan won't help them* (Dec. 1, 2023), available at https://www.npr.org/2023/12/01/1216213793/veterans-fear-the-vas-new-foreclosure-rescue-plan-wont-help-them.
[11] We base this on a Center for Responsible Lending calculations and estimates based on data purchased from the Mortgage Bankers Association. While VA's regulations impose a 1% cap on interest rate increases connected with loan modifications, we have seen VA waive that cap on interest rate increases in modifications. 38 C.F.R. § 36.4315(a)(8)(ii).
[12] U.S. Dep't of Veterans Affairs, Final Rule, Loan Guaranty: COVID-19 Veterans Assistance Partial Claim Payment Program, 86 Fed. Reg. 28692 (May 28, 2021).
[13] *Id*. at 28697.
[14] *Id*.
[15] Pursuant to VA Circular 26-23-8, VA borrowers with pandemic-related hardships are entitled to forbearance as long as they made their requests by May 31, 2023. U.S. Dep't of Veterans Affairs, VA Circular 26-23-8 (Apr. 21, 2023).
[16] While VA left its deferment option in place, it is not mandatory and imposes significant costs on mortgage servicers; therefore, it is our understanding that it is not frequently used.

This decision has had a substantial impact. The series of stories from National Public Radio show borrowers struggling to reach a foreclosure alternative that is affordable, and highlight borrowers who have faced a dramatic increase in their mortgage payment after modification.[17] We are seeing the same pattern in our work with legal aid attorneys across the country – borrowers shut out of affordable options and struggling to keep up with higher payments. For example, a non-profit attorney in North Carolina reported that her client in January of 2024 received a loan modification offer that increased the interest rate from 3.25% to 7.00% and increased the payment from around $1400/month to $2165/month.

Because we lack comprehensive and timely data reporting from the VA, as discussed below, we can only estimate the scope of this problem. As of the end of December 2023, we estimate that there were about 150,000 VA borrowers who were behind on their mortgage and, of those, approximately 74,000 are either seriously delinquent or in the process of losing their home to foreclosure.[18] Unfortunately, these issues are likely to persist as long as the market interest rate is significantly higher than the interest rates that VA borrowers currently have and there is no VA partial claim available.

3. VA must immediately release its VA Servicing Purchase program

The VA has recognized the need to provide foreclose alternatives for its guaranteed borrowers that are effective when mortgage rates are elevated, and in October of 2023, the White House announced that the VA Servicing Purchase (VASP) program was forthcoming.[19] It is our understanding based on conversations with VA that VASP will involve the VA purchasing loans from servicers after the loans are modified, and VA will establish criteria for the loan modifications that servicers will employ. The critical feature of this loan program is that the modified interest rates will not be tied to the market rate because the loans will no longer be pooled in Ginnie Mae securities and instead will be held on VA's balance sheet.

We urge VA to release the details of this program and make it available to VA borrowers as soon as possible. Borrowers who have been in limbo need relief. Moreover, the end of the foreclosure pause that VA put in place to ensure that borrowers do not lose their homes unnecessarily is approaching on May 31, 2024. Finally, loan servicers need to have a period of time to implement VASP. Once they implement it, stakeholders also need time to evaluate the system and see if further policy changes are needed.

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[17] NPR, *The VA loan fiasco — NPR investigation stops foreclosures on thousands of veterans*, https://www.npr.org/series/1218572761/va-loan-foreclosure-crisis.

[18] Our estimate is based on the 2023 Q4 Mortgage Bankers Association's National Delinquency Survey, and our assumption that there are approximately 3.7 million VA-guaranteed loans outstanding.

[19] The White House, White House Announces New Actions on Homeownership (Oct. 16, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/16/white-house-announces-new-actions-on-homeownership/#:~:text=The%20President%20has%20also%20proposed,or%20low%20wealth%20first%2Dtime.

Of course, VASP must also be substantively impactful, and we believe VASP must include three fundamental components to be effective. We are hopeful from our conversations with VA that the program will meet these guidelines; however, there have not been full criteria placed on any public drafting table despite our urging VA to do so.[20]

First, VA should not impose unnecessary barriers in the VASP evaluation process. Veterans have had no viable loan modification options for almost 18 months, and we know there will be many borrowers seeking access to the program as soon as it is available. VA should release detailed program requirements and should give servicers authority to approve modifications based on those criteria. VASP should not require documentation of income or create a lengthy approval process. VA should empower servicers to make firm VASP offers based on clear guidelines.

Second, VA should ensure that the eligibility criteria do not exclude borrowers who have fallen farther behind because there have been no workable options available. VA should account for how long borrowers have been without reasonable options and factor that period of time into any contemplated cap on the number of months of arrearage that a borrower can have to enter the program. Veterans should not be penalized for the fact that this program has taken time to formulate and launch.

Third, VASP should offer targeted payment relief instead of imposing a uniform interest rate for all VASP borrowers. As discussed in our joint letter with industry trade associations,[21] we are concerned that the VASP Program will do the opposite. Targeting a fixed interest rate for all borrowers, rather than targeting a certain percent payment reduction, is inconsistent with the approach deployed by the GSEs and government agencies over the last several years and could create substantial inequities and unintended outcomes for VA borrowers. Borrower payment reductions will vary widely and in ways that are unrelated to borrower need or the likely effectiveness of the modification. Similarly situated Veterans facing similar hardships will receive different benefits. Veterans with comparable needs for payment reduction may get minimal or no payment relief because their mortgage already has a low interest rate, while others may get some of the most generous payment relief that any government lending program has ever offered because they have a much higher interest rate on their mortgage. Moreover, research has shown that insufficient payment reductions lead to redefaults while excessive reductions could produce surplus benefit, relative to need, for some borrowers.[22] In short, offering the same

[20] Letter to U.S. Dep't of Veterans Affairs from Housing Policy Council, Mortgage Bankers Association, and National Consumer Law Center, Re: Public Comment Process for Foreclosure Prevention Solution for Veteran Borrowers (Aug. 31, 2023), https://www.nclc.org/wp-content/uploads/2023/08/Joint-VA-letter_8.31.23.pdf.

[21] Letter to U.S. Dep't of Veterans Affairs from Center for Responsible Lending, Housing Policy Council, Mortgage Bankers Association, and National Consumer Law Center, Re: Concern with Key Element in the Veterans Assistance Servicing Purchase Program (Dec. 14, 2023), https://www.nclc.org/resources/joint-industry-advocacy-letter-on-the-veterans-assistance-servicing-purchase-program/.

[22] In Laurie Goodman & Jun Zhu, Urban Institute, *Analysis and Evaluation of Loss Mitigation Efforts*, HUD Office of PD&R (Dec. 5, 2023) the authors find that providing payment reduction beyond 30% has diminishing marginal returns. Borrowers who received 10 – 20% payment reductions redefaulted at a rate

interest rate in all VASP modifications does not effectively or equitably distribute the resources available to the VA to help borrowers.

4. VA should develop a system for providing mortgage relief options that work in all market conditions that includes a partial claim and loan modification program along with VASP.

    a. VA should, through a process allowing public input, develop options in addition to VASP.

Once released, we hope that VASP will help to fill the significant gap in home retention options for VA-guaranteed borrowers. We do not, however, believe VASP can stand alone as the primary foreclosure alternative for borrowers who fall significantly behind on their loans. Having VASP as the primary option for borrowers who want to retain their homes would mean that loans that require more intervention than a simple payment plan would go on VA's balance sheet. This would put pressure on VA's finances, and FHA's history with its HUD Assignment Program shows that a full agency takeover of loss mitigation comes with serious risks.[23] Moreover, every loan that goes through VASP will require a transfer of the mortgage servicing rights, and transfers of servicing often lead to accounting problems for borrowers.[24]

We urge VA to evaluate its loss mitigation program and add further options in addition to VASP. At a minimum, the mortgage relief options available for Veteran borrowers should be as favorable as the options available to other borrowers. The options VA developed should work in all market conditions and should include an option that simply allows borrowers to resume their

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of 39% whereas those who received 20 – 30 payment reductions redefaulted at a rate of 27%, an improvement of 12 percentage points. However, those who received payment reductions of 30 – 40% redefaulted at a rate of 22%, suggesting that the additional payment reduction only decreased subsequent redefault rates by 5 percentage points. Moreover, borrowers who received more than 40% payment reductions also redefaulted at a rate of 22%, indicating that payment reductions beyond a certain point have no impact on redefault rates. A study from Milliman finds similar results, as Appendix Figure 11 shows that borrowers who received a payment reduction of less than 10% had higher redefault rates over the next 2 years than borrowers who received no payment reduction at all, and that increasing payment reduction beyond 30% had little marginal impact on 2-year redefault rates. Ryan Huff, Milliman, *Assessing the Effectiveness of Payment Reduction on Preventing Borrower Re-default for Mortgages* (Sept. 2023), available at https://www.milliman.com/-/media/milliman/pdfs/2023-articles/9-25-23_assessing-the%20effectiveness-of-payment-reduction_20230925.ashx.

[23] U.S. Government Accountability Office, Homeownership: Mixed Results and High Costs Raise Concerns About HUD's Mortgage Assignment Program, RCED-96-2 (Oct. 1995), https://www.gao.gov/products/rced-96-2.

[24] Consumer Financial Protection Bureau, Compliance Bulletin and Policy Guidance: Handling of Information and Documents During Mortgage Servicing Transfers, Bulletin 2020-02 (Apr. 24, 2020) ("In supervisory examinations conducted since 2014, the Bureau has continued to find weaknesses in compliance management systems and violations of Regulation X related to mortgage servicing transfers."), available at https://files.consumerfinance.gov/f/documents/cfpb_policy-guidance_mortgage-servicing-transfers_2020-04.pdf; *see also* J.D. Power, *Press Release: Trust is Crucial in Determining Satisfaction with Mortgage Servicers*, J.D. Power Finds (July 28, 2022), https://www.jdpower.com/business/press-releases/2022-us-mortgage-servicer-satisfaction-study (JD Power customer satisfaction survey shows MSR transfers hurt customer satisfaction, erode trust, and create administrative headaches for customers)

regular payments if that's what they need, or to modify and reduce the payment if greater assistance is necessary. We believe additional programs will be complementary to VASP.

In developing alternatives, we urge VA to develop a system for posting policy documents prior to release in a manner that gives stakeholders an opportunity to comment. FHA does this through its Office of Single Family Housing Drafting Table.[25] Posting draft policy in advance allows for stakeholders to discuss ideas with each other and give feedback to the agency on what will work and what needs further development or refinement. It also improves transparency by showing the steps the agency is planning to take to resolve issues. In developing its VASP program, VA did not post draft policy guidance, and as a result, stakeholders still do not have a full understanding of what specific criteria VASP will include.[26]

b. VA should reactivate and update its partial claim program.

As discussed in our recent comment to VA,[27] once VASP is released, the next step the VA should take is to reactivate and update its partial claim program to allow borrowers to retain their contractual interest rates and resume their monthly payments. As discussed above, a partial claim is a non-interest bearing loan from the agency to the borrower that becomes due and payable once the primary mortgage is paid in full or another specified event occurs.[28] It can be used to reinstate a borrower without any change to their other loan terms or it can be incorporated into a loan modification.

The increase in interest rates would impact fewer borrowers if VA had an effective partial claim program today that allowed borrowers to keep their market rates when they can afford to resume their original payments. An effective partial claim program would allow Veteran borrowers to cure their delinquency, retain their below-market interest rate, and resume making their monthly payments when feasible. The lack of a VA partial claim program puts Veteran borrowers in a worse position than FHA-insured, USDA-guaranteed, and GSE borrowers who have access to partial claim programs.

If VA reinstates a partial claim program, it can also explore ways of using it to give a borrower payment relief without modifying the terms of the loan. As described above, the current elevated interest rates make it challenging for servicers who rely on Ginnie Mae securitization to provide payment relief because modified loans carry the prevailing market mortgage rate. However,

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[25] U.S. Dep't of Hous. & Urban Dev. FHA's Office of Single Family Housing "Drafting Table," available at https://www.hud.gov/program_offices/housing/sfh/SFH_policy_drafts.

[26] Letter to U.S. Dep't of Veterans Affairs from Housing Policy Council, Mortgage Bankers Association, and National Consumer Law Center, Re: Public Comment Process for Foreclosure Prevention Solution for Veteran Borrowers (Aug. 31, 2023), https://www.nclc.org/wp-content/uploads/2023/08/Joint-VA-letter_8.31.23.pdf.

[27] Comment of National Consumer Law Center and Center for Responsible Lending, Advance Notice of Proposed Rulemaking, Loan Guaranty: Loss Mitigation Options for Guaranteed Loans, 87 Fed. Reg. 62752 (Oct. 17, 2022), https://www.nclc.org/resources/nclc-crl-letter-to-the-va-regarding-loss-mitigation-options-for-guaranteed-loans/.

[28] National Consumer Law Center, Mortgage Servicing and Home Foreclosures, § 8.2.3.1 (2d. ed. 2023).

providing payment relief is crucial to helping borrowers with significant financial hardships avoid foreclosure.

Because FHA-insured lenders also rely on Ginnie Mae securitization, FHA is facing the same challenge of providing payment relief in the current, high-rate environment. FHA has proposed an option that would use partial claim funds to first bring borrowers current and then provide borrowers with monthly payment relief.[29] Under this program, known as a "payment supplement," FHA would deposit the partial claim funds needed to reduce the borrowers' monthly payment in an account held by the loan servicer.[30] The servicer would then draw from the account each month the amount necessary to supplement a partial payment from the borrower, in order to submit the full contractual payment to Ginnie Mae. This system avoids increasing the borrower's interest rate through a loan modification while still providing payment relief. Reinstating the partial claim program would give VA the flexibility to establish a payment supplement program.

VA has the authority to reinstate a partial claim program. In its December 9, 2020 proposed rule regarding the VAPCP,[31] it relied on its authority to purchase indebtedness to prevent foreclosure under 38 U.S.C. § 3732(a) and its broad powers to purchase assets and pay claims under 38 U.S.C. § 3720(a).[32] The purchase authority in 38 U.S.C. § 3732(a) is the same statute that would allow it to operate VASP; however, a partial claim would involve a much smaller purchase. While VA tied its use of its broad powers to disaster in the December 9, 2020 proposed rule, we do not believe the statute has these limitations.

Although we believe VA has the authority to establish a partial claim, we have also supported a Senate bill seeking to clarify VA's partial claim authority.[33] VA's establishment of the partial claim is a high priority and we urge VA to take the measures needed to do so.

c. VA should retain a version of the loan modification program it created in response to the pandemic.

In addition to developing a partial claim program, VA should retain the loan modification program it developed in response to the pandemic. As described above, loan modification programs are successful in avoiding foreclosure when they can provide substantial payment relief to borrowers who have faced significant financial hardships. VA recognized the benefits of payment relief when it implemented the COVID-19 Refund Modification that included a payment

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[29] U.S. Dep't of Hous. & Urban Dev. FHA's Office of Single Family Housing "Drafting Table," available at https://www.hud.gov/program_offices/housing/sfh/SFH_policy_drafts.
[30] U.S. Dep't of Hous. & Urban Dev., Draft Mortgagee Letter - Payment Supplement (posted Nov. 16, 2023), https://www.hud.gov/sites/dfiles/SFH/documents/Draft_ML_Payment_Supplement_11_16_23.pdf.
[31] U.S. Dep't of Veterans Affairs, Proposed Rule, Loan Guaranty: COVID-19 Veterans Assistance Partial Claim Payment Program, 85 Fed. Reg. 79142 (Dec. 9, 2020).
[32] *Id*. at 79146.
[33] U.S. Senate Committee on Veterans Affairs, *Press Release: Tester, Brown Team Up to Help Veterans Keep their Homes*, (Feb 2, 2024), available at https://www.veterans.senate.gov/2024/2/tester-brown-team-up-to-help-veterans-keep-their-homes.

reduction of 10 to 25% of the borrower's monthly principal and interest payment, based on the borrower's assessment of an affordable payment. In order to hit the target, VA allowed for the combination of a modification and a partial refund so that arrearages and a portion of the borrower's loan could be purchased by the VA and held at 0% interest. As was the case over the second half of 2021, the refund modification can provide ample payment reduction when the prevailing mortgage rate is low, keep the Veteran borrower in their home, and avoid the foreclosure-related claims on the VA.

VA should make a modification like the COVID-19 Refund Modification a permanent feature of its loss mitigation waterfall. Should interest rates once again fall to levels below the note rate on outstanding VA loans, the refund modification can provide significant payment relief. In addition, VA should explore allowing for a 480-month term to provide additional payment relief when needed to reach the target. FHA's current COVID-19 waterfall, as described in Mortgagee Letter 23-03, provides a useful example of how to incorporate a 480-month term into a waterfall.[34]

d. VA should create a mandatory order in which servicers evaluate borrowers for loss mitigation after it develops the options.

Once the VA revamps its loss mitigation program to include options that are economically viable for Veterans, servicers, and the VA now and going forward, the VA should set out a mandatory order in which servicers should evaluate Veterans for available options. A mandatory waterfall that prescribes the specific steps servicers must take in evaluating foreclosure alternatives will give servicers and borrowers important clarity. Once VA improves its loss mitigation options as discussed above, servicers should be required to follow the prescribed order of the new waterfall, as it would help ensure a consistent loss mitigation experience for all Veteran borrowers and remove any incentives for servicers to offer one loss mitigation option over another.

5. VA should seek the resources it needs to operate effective foreclosure alternatives.

Once the best options for helping Veteran borrowers are determined, it is critical for VA to identify the resources the agency needs to implement its plan. The relevant resources should include any funds that are necessary to provide relief to borrowers and additional personnel that the agency needs to implement and operate the plans. Congress should ask VA to provide it and the public a clear statement of any additional funding that is needed to implement the VASP program, and any funding needed for the other foreclosure prevention options we recommend. This analysis should include any internal staffing needs. VA needs to evaluate its financial situation and work with the Administration, Congress, and other stakeholders to ensure VA has the necessary resources to meet its goals.

[34] U.S. Dep't of Hous. & Urban Dev., Mortgagee Letter 2023-03 (Feb. 13, 2023), https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-03hsgml.pdf.

We do know that the VA loan program has grown substantially in recent years,[35] and we recognize that some borrowers do not pay a guarantee fee at origination if they are "receiving VA disability compensation (or who would be receiving compensation, but for the receipt of retirement pay or active service pay) or recipients of a Purple Heart who are currently serving on active duty."[36] These trends will certainly impact VA's finances and further illustrate the need for VA to assess and share its resource needs.

6. VA should provide more comprehensive data reporting for its Home Loan Guaranty Program.

The lack of public information regarding VA's loan portfolio underscores the need for the agency to provide more information to stakeholders about the Home Loan Guaranty Program. In order for stakeholders to provide effective feedback, VA should publicly report timely data about its loan portfolio, including how VA-guaranteed loans are performing. Releasing loan performance data to the public would also ensure transparency.

FHA's systems for reporting data to stakeholders provides a clear model. On a monthly basis, HUD issues the FHA Single-Family Loan Performance Trends Report,[37] which lists the total number of FHA-insured loans, the rate of seriously delinquent loans, and the foreclosure rate by month.[38] Because of this report, we can see whether the delinquency rate and foreclosure rate are trending up or down. It provides data about the common reasons borrowers fall delinquent on their loans and the characteristics of the loans that are in default. For example, it is possible to compare how loans originated in 2009 perform in comparison to loans originated in 2023. FHA's system provides a floor of data transparency. Moreover, through its Neighborhood Watch platform,[39] FHA allows the public to search information about loan performance by geography and by servicer.

VA's reports are not as robust as FHA's. VA provides data about foreclosure avoidance, but it only does so on an annual basis. VA's annual reporting cycle makes it more difficult to track trends that occur throughout the year because all of the months are aggregated together.

Moreover, the information that VA reports is less useful than FHA's reports. The categories that VA provides annual data for are: Borrowers saved from foreclosure, Potential claim savings, Foreclosures completed, Claim payments, Borrower contact, Servicer contact, and Default

[35] Ginnie Mae, VA Report at 2 (Nov. 10, 2022) ("Numerically, the proportion of VA loans in Ginnie Mae's portfolio has steadily increased over the past decade, going from 23 percent of issuances in 2011 to nearly 45 percent of all newly issued MBS in Fiscal Year 2021."), https://www.ginniemae.gov/newsroom/publications/Documents/ginnie_mae_report_on_va_liquidity.pdf.
[36] U.S. Dep't of Veterans Affairs, Annual Benefits Report, Fiscal Year 2022, Home Loan Guaranty at 3 (Feb. 2023), available at https://www.benefits.va.gov/REPORTS/abr/docs/2022-loan-guaranty.pdf.
[37] U.S. Dep't of Hous. & Urban Dev., FHA Single-Family Loan Performance Trends Report, available at https://www.hud.gov/program_offices/housing/hsgrroom/loanperformance.
[38] U.S. Dep't of Hous. & Urban Dev, FHA Single-Family Loan Performance Trends Report at 2-3 (Nov. 2023), available at https://www.hud.gov/program_offices/housing/hsgrroom/loanperformance.
[39] U.S. Dep't of Hous. & Urban Dev., HUD Neighborhood Watch, https://entp.hud.gov/sfnw/public/.

resolution rate (percentage). These categories are not precise. For example, the “Borrowers saved from foreclosure” category does not indicate when these borrowers fell behind, how long they were behind, how the number reported compares to the total number of VA borrowers, and how they were saved from foreclosure. VA’s “Defaults reported” category does not break down how serious the defaults are and whether the numbers are increasing or decreasing. The remaining categories involve similar imprecision. By contrast, FHA provides a monthly statement of how many total borrowers there are in the program and then it gives a percentage of those borrowers that are 30, 60, and 90 days behind and also a percentage of how many foreclosure starts there are relative to the larger group. Through the Neighborhood Watch system, the public can see what particular foreclosure alternatives were provided.

We urge VA to follow FHA’s model and report more data to stakeholders on a monthly basis so we can better understand the status of the VA guaranteed loan program.

7. Other issues facing VA loans

With respect to home appraisal issues, we appreciate VA’s release of the recent Advance Notice of Proposed Rulemaking regarding appraisals. But we urge VA to recognize that the broad discretion allowed in the Condition Rating increases the risk of appraisal discrimination and to conduct the appropriate analysis under fair lending laws and the Fair Housing Act’s Affirmatively Furthering Fair Housing (AFFH) provision.

With respect to Interest Rate Reduction Refinancing Loans (IRRRLs), we generally support VA’s recent proposed rule that limits when it can guarantee IRRRLs; however we urge VA to include additional protections.[40] The definition of “monthly payment” should not include amounts owed as part of a repayment plan. VA should ensure that IRRRLs are not pushed on distressed borrowers when a loss mitigation option would be better. VA should update the Lender’s Handbook to prevent lenders from using escrow account balance refunds to evade the prohibition on receiving cash out in IRRRLs.

8. Conclusion

Thank you for the opportunity to testify today. We applaud VA for recognizing the problems that borrowers are facing and for implementing the foreclosure pause until May 31, 2024 so that VA borrowers who are facing a dearth of options have a chance to access programs that VA is developing before they face unnecessary foreclosure. Now it is essential for VA to release programs that will help borrowers avoid unnecessary foreclosures. In developing plans, it is critical for VA borrowers to have options that work in any market condition and that provide relief that is at least as effective as that which FHA-insured and other federally-backed borrowers

[40] Comment of National Consumer Law Center and Center for Responsible Lending, Loan Guaranty: Revisions to VA-Guaranteed or Insured Interest Rate Reduction Refinancing Loans, 87 Fed. Reg. 65,700 (Nov. 1, 2022), available at https://www.nclc.org/wp-content/uploads/2023/01/comments-va-npr-87-fr-65700.pdf.

receive. We look forward to working with VA in developing these ideas. I am happy to answer any questions.