January 8, 2021

Stephanie Li,
Chief of Regulations
Loan Guaranty Service, Veterans Benefits Administration
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420.

RE: Comments/RIN 2900–AR05—Loan Guaranty: COVID–19 Veterans Assistance Partial Claim Payment Program

Dear Ms. Li:

The Housing Policy Council[1] (HPC) and Mortgage Bankers Association[2] (MBA) appreciate the opportunity to offer comments on the US Department of Veterans Affairs' (VA) Notice of Proposed Rulemaking regarding the implementation of the VA COVID-19 Veterans Assistance Partial Claim Payment Program. As we noted in our feedback to Circular 26-20-33 (See Attachment A), a partial claim is a critical component to the VA deferral program as it would increase the availability of beneficial deferrals to veterans by providing servicers the ability to recover funds advanced to investors in Ginnie Mae mortgage-securities prior to payoff, refinance, or maturity. While the industry applauds the VA for its creation of a partial claim program for veteran borrowers impacted by the COVID-19 National Emergency, we believe that the proposed program requires significant changes before it is in the best interest of veteran borrowers, servicers, or the VA due to its complexity and associated costs.

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[1] 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

[2] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 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 2,300 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org

Summary of Comments

We believe that the Proposed Rule should be substantially changed to improve both the process and terms of the partial claim program. As drafted, the Proposed Rule creates a new program that can only be used after the borrower is evaluated for all other feasible loss mitigation options. Moreover, the Proposed Rule introduces an expense that no other borrower with a Federally-backed loan who takes advantage of a deferral program must incur, in the form of accruing interest and mandatory initiation of repayment at 60 months. HPC and MBA recommend the VA simply add the partial claim feature to the deferral program, offering the borrower a deferred repayment option with no set term and no accrual of interest and that provides servicers the ability to recover servicing advances at the end of the forbearance period.

It is our recommendation the VA adopt a partial claim program similar to the Federal Housing Administration (FHA) and US Department of Agriculture (USDA) and utilize the COVID-19 Regulation X relief implemented by the Consumer Financial Protection Bureau (CFPB) and applied by FHA and the GSEs.

Veteran Experience

There are elements of the proposed partial claim program that are not favorable for veterans exiting forbearance. Of note, since repayments on the partial claim aren't due for five years, but interest starts accruing, the lien created negatively amortizes and loan balance goes up each month, until year six. This raises the possibility that this partial claim lien might be an impermissible loan in those states with prohibitions against negative amortization loans.

Terms of Repayment

Although the proposed rule characterizes the repayment terms as "extremely favorable to veterans,"[3] several of the repayment terms in the partial claim program are onerous, relative to other government and GSE deferred repayment options, including the more consumer-friendly deferral option that the VA authorized in September.

All of these other programs, including the VA deferral option, allow the veteran to defer repayment of the forborne amount until the original loan is paid in full *and* the deferred amount doesn't accrue any interest or fees. In contrast, the proposed partial claim program requires the veteran to pay interest on the deferred amount and to begin repayment after five years (60 months after entering into the partial claim). In essence, the proposal creates a negative amortization loan with a balloon payment.

[3] Federal Register Vol. 85, No.237, Page 79147

The VA says that it has tried to mirror other government deferral programs "whenever feasible."[4] However, the proposed regulation does not explain why these features are necessary. It appears that the core structure of the VA loan refund program, where the VA would service the partial claim, could work just as well without requiring the veteran to pay interest on the deferred amount and requiring the veteran to begin repayment before the original loan is paid in full. In fact, the proposed rule's Economic Regulatory Impact Analysis argues that the more the partial claim program is utilized by veterans, the more money that the VA will actually save. Thus, if the VA partial claim program simply eliminates the need for the veteran to pay interest on the forborne amount, the program will be viable for a greater number of veterans and will very likely end up in saving the VA money. The Economic Regulatory Impact Analysis for the proposed rule shows that the VA considered eliminating the requirement that the partial claim be interest bearing. Under this analysis the VA anticipates "slightly lower values [of transfer payment inflows] …from borrowers to VA from FY 2026 through FY 2031 absent the interest income expected between $44 million and $78 million in the proposed rulemaking." In other words, the VA assumes that the difference between not charging a borrower interest and charging a borrower interest on the forborne amounts (as in the proposed rule) is a reduction of $44M-$78M in revenue.

Significant Paperwork Hurdles for Veterans
According to the proposed rule's Economic Regulatory Impact Analysis, the VA expects between 183,485- 330,259 veterans to enter into a COVID-19 forbearance plan. Enrolling in COVID-19 forbearance is simple for borrowers, requiring verbal attestation of hardship but no documentation. In contrast, loss mitigation offered at the outset of the Great Recession required borrowers to submit large amounts of paperwork, which often delayed relief and sometimes prevented borrowers from resolving their delinquencies. Unfortunately, the proposed partial claim program neglects the lessons learned and may repeat these mistakes.

The proposed regulation creates at least six discrete steps for a veteran to successfully qualify for a partial claim program:

1) Borrower must certify that they can begin making their original payments on time and in full (even if they have already resumed making payments in full).

2) Borrower must certify that they occupy the property securing the loan as their residence.

3) Borrower must submit a full loss mitigation package along with certain financial information to their servicer for the residual income analysis.

4) Borrower must sign new borrower disclosures (TILA-RESPA Integrated Disclosures[5], and National Flood Act Compliance as examples) due to the fact the fact that the veteran is required to pay interest on the deferred amount.

[4] Federal Register Vol. 85, No.237, Page 79146
[5] TRID disclosures are not required in connection with any loss mitigation program in the market today.

5) Borrower must sign a new partial claim payment note and security instrument.[6]

6) Borrower must complete a signed partial claim application form.

The cumulative effect of these rules could slow or suppress the partial claim enrollment process for veterans. At least three of the requirements - the full loss mitigation package, new borrower disclosures, and the need to complete and sign a partial claim application form – are not requirements of any other COVID-19 government loss mitigation program. Further, these measures are more rigorous than is required for other VA loss mitigation options. Neither streamline modifications nor deferral require a loss mitigation package, new borrower disclosures, or an application form.

The complicated process is made more challenging by the timing deadline. If the borrower and servicer fail to complete any of the steps within 90 days after a borrower exits the CARES Act forbearance, the partial claim program is no longer an option for the veteran. In the CFPB's June 2020 Interim Final Rule providing Regulation X exceptions to servicers assisting borrowers impacted by the COVID-19 pandemic acknowledges the need for streamlined procedures for the forbearance process, noting the collection of a full loss mitigation package would not serve the particular needs for the borrower or servicer during the COVID-19 emergency.[7] For these reasons, we recommend that the VA find ways to streamline the process.

In totality, the various features of the partial claim program make it more difficult to offer and more economically burdensome than FHA, USDA, or GSE deferred repayment loss mitigation program. Therefore, we believe that VA should amend the deferral and partial claims programs to mirror the other successful government loss mitigation models.

Structural Problems with the Partial Claim Program

Allow Partial Claim and Deferral Programs to be Combined
Consistent with the joint HPC and MBA letter from October 2020, we appreciate and value the potential of a program that allows for a "reimbursement/partial claim process" [8] and that would enable a servicer to offer a payment deferral option.

We said at that time and continue to recommend a combined deferral and partial claim program that will provide a low-cost and streamlined resolution to forbearance for the veteran *and* an operationally and financially feasible program for servicers. Unlike the deferral program, this new proposed partial claim program includes several requirements that make the program less appealing and more expensive for a veteran and difficult for a servicer to execute. For example, the deferral has no scheduled repayment term and does not charge the veteran interest. However, as our letter in Attachment A highlights, the servicing industry cannot advance large sums of

[6] The VA should clarify whether everyone on the original deed must sign the Partial Claim. We feel that signing of the partial claim should be limited to anyone financially obligated under the original note, not to customers that signed the deed but are not obligated under the note.

[7] Federal Register Vol. 85, No.126, Page 39056
[8] Attachment A- HPC and MBA memo to the VA on October 14, 2020.

money indefinitely, as required by the VA deferral program, which excluded any form of reimbursement. The VA acknowledges as much, "while loan deferment may present the best option for certain borrowers, many servicers are facing a liquidity crunch and lack financial resources to advance large amounts of forborne indebtedness for what can be, depending on the case, two to three decades."[9] However, the current proposal does not adopt the favorable terms of the deferral program in combination with the partial claim reimbursement – limitations that make both programs challenging to offer. Therefore, we recommend that VA simply collapse the deferral and the partial claim programs into one program that provides borrowers a deferred repayment option with no set term and no accrual of interest <u>and</u> that provides servicers the ability to recover the funds advanced on behalf of the veteran at the end of the forbearance period.

Eliminate Requirement that the Partial Claim Program Serve as a Last Resort
Another challenge with the proposal is that the partial claim is the VA loss mitigation "option of last resort."[10] This is a departure from current VA practice where there is no hierarchy of loss mitigation options that a servicer must follow. The current VA practice allows veterans and servicers to find the best loss mitigation option to keep the veteran in the home. With the partial claim program serving as a "last resort," the veteran would have to decline or fail to qualify for every other loss mitigation option, a scenario that is unlikely, if not impossible.

The regulation provides an example to illustrate when the partial claim program could benefit a veteran. The example compares the cost to the veteran of a partial claim with the cost of a loan modification, based on life of loan interest expense. However, the illustrative example does not recognize that a servicer is prohibited from offering the borrower both a loan modification and a partial claim at the same time. Therefore, the veteran will never have the opportunity to compare whether a partial claim is the best option for their situation. By design, the partial claim program is highly unlikely to be offered, as borrowers who are able to successfully resume their regular mortgage payments will likely have already qualified for a different loss mitigation offer, even if they would have been better off in the partial claim program.

VA Deferral Program Should Remain Optional
Another concerning element of the proposal, is that § 36.4804 says that "[s]ervicers must consider ***<u>all</u>*** possible loss-mitigation options" before offering a partial claim. The VA has previously stated that no servicer is required to offer veterans the deferral loss mitigation program, and the preamble of the proposed rule actually goes into detail about why the deferral program, as currently constructed, does not work for many servicers. HPC and MBA assume that the VA does not actually mean that servicers must consider borrowers for the optional deferral program, but this language in the proposed regulatory text is ambiguous on this point. For this reason, we recommend that the VA clarify that servicers do not have to offer a deferral program to borrowers prior to the partial claim payment program. Alternatively, as mentioned above, given that the deferral program (as comparted to the partial claim program) is a better option for veterans in all situations, it would be our preference for the partial claim program to adopt the beneficial features of the deferral program (no set repayment term, no need to pay interest on unpaid balance).

[9] Federal Register Vol. 85, No.237, Page 79145
[10] Federal Register Vol. 85, No.237, Page 79149

Streamline the Partial Claim Process for Servicers

The proposed regulation creates a set of operational requirements for a servicer to perform, including these discrete steps:

1. Evaluate a borrower for *all* VA loss mitigation options that are feasible for a servicer to offer.

2. Certify that the veteran's monthly residual income is adequate to meet living expenses after estimated monthly shelter expenses have been paid and other monthly obligations have been met (although the regulation is unclear whether this must also include the amount needed to repay the partial claim).

3. Analyze and verify the amounts of taxes and insurance that will be due within 31 days of a borrower executing the COVID-VAPCP note and security instrument.

4. Prepare new borrower disclosures (TILA-RESPA Integrated Disclosures, and National Flood Act Compliance as examples) due to the fact that the veteran is required to pay interest on the deferred amount.

5. Send a Partial Claim Approval Letter to the borrower.

6. Prepare and execute the appropriate loan documents.

7. Verify that the borrower has properly completed all required documentation.

8. Complete a signed partial claim application form to the VA.

9. Record the partial claim documents with the local county.

10. Deliver the appropriate loan documents to VA's servicing contractor.

11. Report certain information related to the partial claim into VALERI.

These activities, along with the six steps that a borrower is required to fulfill must be completed no later than 90 days after a borrower exits the CARES Act forbearance to be eligible for the partial claim. The proposal notes that this timeframe is consistent with the FHA partial claim program,[11] but the FHA program requires less paperwork for the borrower and servicer to complete. We strongly recommend that the VA take heed of the lessons learned from Great Recession and streamline the paperwork required of veterans and servicers. If VA does not or cannot simplify the paperwork process, it should extend the deadline to apply for a partial claim, preferably to 180 days after a borrower exits forbearance.

[11] Federal Register Vol. 85, No.237, Page 79149

Significant Operational Hurdles for Servicers
The proposed regulation raises the possibility that the VA may deem the partial claims program effective within seven days of publication of the final regulation. This timeframe is insufficient for servicers to operationalize the program. Absent the broad adoption of our recommendations for alignment and streamlining, updating technology and the protocols to implement other governmental programs, servicers would likely need several months to offer the VA partial claims program. This is because the program parameters-will require the development of paperwork and processes which are not currently part of any servicers program.

For example, servicers will not be able to adopt the FHA Partial Claim documents that already exist. Instead, new partial claim documents will need to be created that outline new repayment terms with a 5/10 year repayment agreement at 1% interest and are payable to VA Secretary.[12] Technology upgrades will need to be appropriately scoped, prioritized, and reviewed by all impacted operational, legal, and business teams before implementing into process.

The operational build-out would be less challenging for servicers if the VA would mirror the USDA and FHA programs, which do not accrue interest, or require repayment of the forborne, second lien amount until the original loan is paid in full.

Servicer Incentives
Existing VA regulations allow the VA to pay an incentive to a servicer whenever the servicer completes one of five borrower assistance actions: repayment plan; special forbearance; loan modification; compromise sale; and deed in lieu of foreclosure. However, this proposed regulation excludes a servicer from receiving an incentive for successfully completing a partial claim. Due to its unique and lengthy requirements, the partial claim program will likely take more work than the other five borrower assistance actions where a servicer can currently receive an incentive payment. Since the work required to complete a partial claim is closest in equivalence to a loan modification, the VA should amend the proposal to provide an incentive payment for completing a partial claim that is equivalent to that of a loan modification ($700 for Tier 1, $500 for Tier 2, and $300 for Tier 3).

Expiration of Partial Claim Program

Although some veterans may remain in a CARES Act forbearance until March, 2022 (the current VA forbearance program is rescinded on April 1, 2021), the VA proposal establishes an expiration that will not accommodate customers who entered forbearance later and/or needed forbearance for a longer period; the VA will not accept a request for a partial claim payment in any case after September 9, 2021.

Compounding this limitation, there is uncertainty as to the proposed program's end date as it can potentially expire 180 days from when the COVID–19 national emergency ends. We recommend that the VA instead commit to accept partial claim requests at least 15 months after

[12] The VA should clarify in detail how it plans to handle veterans that do not make their partial claim payments. For example, under what circumstances would the VA foreclose on the underlying property if a borrower does not make their partial claim payments?

the national emergency ends. This would allow veterans to utilize the statutorily authorized 12 months of forbearance and provide an additional 90 days[13] to complete the required paperwork to submit a partial claim. Lastly, given the operational changes required for servicers to set up a partial claim program, we request that the VA consider accepting partial claim requests after the national emergency ends, revising the text of §36.4809(b) from "may still" to "*shall* accept a request for partial claim payment."

Additional Ways to Improve the Partial Claim Program

Cap on Second Lien Equal to 15 percent of Unpaid Principal Balance (UPB)
The proposed rule caps partial claim payments at 15% of the UPB, as of the date the borrower entered forbearance. Although this may be workable in most situations, it may be limiting for older loans that have amortized substantially or smaller balance loans. For example, using the interest rate scenario from the Economic Regulatory Impact Analysis of the proposed rule, adjusting the outstanding balance from $239,450 to $137,000:

> Average Outstanding Loan Amount $137,000 at time veteran entered forbearance
> Average Annual P& I $13,307 ($1108.91 per month)
> Average Annual T&I $5,747 ($478.91 per month)
> 13 months of P&I ($14,404) and 13 months of T&I ($6,225) = $20,629
> $20,629 exceeds the 15% cap of the UPB as of the date the borrower entered forbearance

The proposal states that the "VA believes that a 15 percent cap would provide sufficient room for servicers to bring the guaranteed loan current,"[14] the analysis doesn't account for payments due within the next 31 days, the time period between when a borrower exits forbearance and resumes making their scheduled payments. To address this concern as well as the possible limitation on smaller balance loans, HPC and MBA recommend that the VA either eliminate the cap for low balance loans, or at the very least adjust the cap upwards.

Impact on Ginnie Mae Securitizations
The proposed rule states that a partial claim payment does not affect the guaranty percentage established at the time the guaranteed loan was made.[15] Our interpretation of this provision is that loans bought out of a Ginnie Mae security will thus be eligible for re-pooling once a veteran has resumed making payments and the servicer has otherwise complied with Ginnie Mae requirements. However, since this is a critical point for servicer's liquidity and advance planning, we would ask the VA to address this issue explicitly.

Impact on Loan Refund Process
The proposed rule states that before initiating a foreclosure, a servicer must provide VA with the option to purchase the loan through a "loan refund." Our members have concerns that this provision potentially conflicts with previous guidance from VA Circular 26-20-12 which notes that the VA should be provided with a loan refund option prior to a short sale or deed in lieu of

[13] As noted above, 180 days is more appropriate.
[14] Federal Register Vol. 85, No.237, Page 79147
[15] § 36.4808

foreclosure. Our request is that the VA clarify when the VA option to purchase occurs, either prior to a short sale or died in lieu of foreclosure, or right before initiating a foreclosure.

Inclusion of Payments Due Within 31 Days

§36.4805(e)(3) of the regulation requires servicers to include not just the forborne amounts of taxes and insurance escrows in the partial claim, but also those amounts that are due within 31 days of the date the veteran executes the COVID–VAPCP note and security instrument. Based on our members experience executing the FHA partial claim program, there is a significant concern that limiting the time period to 31 days will not allow adequate time for the veteran and servicer to execute and process the COVID partial claim note and security instrument. Specifically, servicers have found that they have limited ability to control either when the veteran executes the note and security instrument, or when those items are returned to a servicer. To address this concern HPC and MBA recommend that the VA remove the "31 day" timeframe for what payments must be included in the partial claim.

Conclusion

Thank you for considering these recommendations. Our primary request is that you simply combine the existing deferral program and add a partial claim reimbursement feature, making the VA offering similar to that of the FHA and USDA. We look forward to continuing to work with your team on these issues and others to deliver the help our veterans deserve. If you have any questions or would like to discuss these comments, please contact Matt Douglas, HPC Vice President for Mortgage Policy, at 202-589-1924 or Sara Singhas, MBA Director of Loan Servicing, at 202-557-2826.

Sincerely,

Pete Mills
Senior Vice President
Residential Policy and Member Engagement
Mortgage Bankers Association

Meg Burns
Executive Vice President
Housing Policy Council

Attachment A

HPC and MBA Memo to VA RE Deferment

Sent on October 14, 2020

MORTGAGE BANKERS ASSOCIATION

HOUSING POLICY COUNCIL

October 14, 2020

Jeffrey F. London
Executive Director
Loan Guaranty Service
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

RE: Circular 26-20-33 Deferment as a COVID-19 Loss Mitigation Option for CARES Act Forbearance Cases

Dear Director London:

The Housing Policy Council[1] (HPC) and Mortgage Bankers Association[2] (MBA) are writing regarding the recently published Circular 26-20-33, "Deferment as a COVID-19 Loss Mitigation Option for CARES Act Cases." Our members appreciate that the Veterans Benefits Administration of the Department of Veterans Affairs (VA) is seeking to address the financial hardship faced by many veterans and their families due to the COVID-19 National Emergency. We believe that a deferral option could provide an opportunity for veterans no longer facing a hardship to successfully resume their regular mortgage payment. However, as highlighted in HPC's May recommendation (see Attachment A), HPC and MBA members believe that any deferral program must be accompanied by a reimbursement/partial claim process that ensures that servicers can responsibly offer this option to veterans.

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[1] 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

[2] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 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 2,300 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org

Our members believe that Circular 26-20-33 suffers from two critical defects:

1. The absence of a reimbursement mechanism to allow servicers to recover advances made to cover the borrower's missed loan payments deters servicer adoption. In HPC's May recommendation, we suggested that servicer reimbursement could be achieved using the VA Refunds program authority to create a second lien held by the VA. In "buying" the outstanding amount of missed payment, the VA would pay off the deferred amount due ("partial claim" in FHA parlance) to the servicer who already advanced the amount to the Government National Mortgage Association (Ginnie Mae) to pay investors. This approach would not alter or reduce the existing Loan Guarantee. The second lien would be payable to the VA, generating the full recovery for the VA upon payoff of the loan balance, through refinance or loan maturity, or sale of the property. Regardless, the omission of any form of payment recovery for the servicers altogether inhibits the ability for mortgage servicers to provide this option to veterans and maintain operational liquidity; and
2. The lack of guidance on how to implement the deferral program, forestalls responsible servicers from offering this option to veterans.

HPC and MBA respectfully ask that the VA withdraw Circular 26-20-33 in order to address these two critical deficiencies. We also want to emphasize the urgency of this request as the vast majority of veterans currently on a COVID-19 initial forbearance will be ready to transition to a permanent solution or extend their forbearance by the end of October 2020.[3]

I. Partial Claims Serve Veterans

The deferral option announced in Circular 26-20-33 will not be widely adopted by our members without the ability to recover funds advanced to investors in Ginnie Mae mortgage-securities through a partial claim prior to payoff, refinance, or maturity. The ability of a servicer to recover advanced funds is crucial to maintaining liquidity during an ongoing National Emergency. Our analysis of publicly available Ginnie Mae data shows just how massive a challenge an unreimbursed deferral program could be for servicers (see Attachment B). We estimate that if just 10% of all VA borrowers who are delinquent on their loans were to choose a deferral repayment option, servicers would not be able to recover over $154 million dollars advanced to Ginnie Mae investors until loan payoff.[4] If instead 40% of all delinquent VA borrowers chose the deferral repayment option (which the HPC and MBA believe is a reasonable estimate if offered to all veterans in forbearance), servicers would be unable to recover over $618 million dollars of advances until loan payoff. Even with the current historic levels of refinancing pushing the average duration of a VA loan to just 31 months, servicers would still generally have to wait more than 2.5 years to recover this massive $154-$618 million in advances. Quite simply, the servicing industry was not set up to account for advancing this amount of money and for this length of time without being reimbursed. This is not a sustainable or sound business practice for the majority of VA servicers.

[3] Page 18, MBA Forbearance and Call Volume Survey Results 09.28.2020 edition

[4] The assumptions we used to derive this arithmetic were the following: A) We looked at all VA loans in Ginnie securities. B) Then looked for all loans that were current as of February and went 60 days delinquent any time after March. Assumed all of the loans meeting these criteria were COVID-19 forbearance loans and that deferment eligibility is only for those loan current as of 3/1 – this resulted in a total of 156,889 delinquent veterans. C) Assumed monthly tax & insurance at 35.4% of the P&I payment, which is the average size for one HPC member. D) Assumed that the forbearance would average six months of missed payments.

HPC and MBA are also concerned that unequal utilization of the program will cause confusion and will put some veterans at a disadvantage, based solely on the particular business model of their servicer. Veterans who have their loans serviced by banks that have balance sheet capacity to tolerate the long-term expense of this program could be offered the deferral option, but most VA customers in forbearance will not have access to the program.[5] The disparity in application will likely cause confusion and could damage the relationship between veterans and their servicers, as many veterans will likely be frustrated and skeptical that their servicer cannot provide the deferral option.

The primary alternative to a deferral is to offer loan modifications to repay the payments missed during the CARES Act forbearance. These modification options, however, require the loan to be repurchased from the Ginnie pool to complete the modification and repay/recover advance amounts. Additional flexibility is needed if the interest rate environment makes buyout/resecuritization prohibitively expensive when these long-term CARES Act forbearance periods end. Therefore, our members would prefer to have a deferral option, but one with a reimbursement mechanism that will make the program economically viable for servicers. As noted in HPC's May recommendation, the deferral would offer an alternative to loan modifications that may unnecessarily extend the term of their loans, costs the VA money, and negatively affects Ginnie Mae securities, even in cases where a borrower would have been able to successfully make their original mortgage payment.

In previous discussion with VA officials, HPC and MBA, and our members have come to believe that challenges in developing a partial claim process may be the limitations of the existing regulatory authority and the impact on the veteran's entitlement.

a) Regulatory Authority

Existing regulatory authority has previously been identified as a barrier for VA to establish a partial claim process for veterans and servicers. There are two specific regulatory authority challenges that have been cited most frequently. First, that the regulation at 38 CFR § 36.4324 could be read to mean that a VA Guaranty claim can only be paid after a liquidation event. Second, that the VA Refund Program would need to be modified to allow for purchase of a portion of the outstanding loan balance. HPC and MBA have previously acknowledged that although the VA Refund Program appears to be a viable pathway to paying partial claims, it likely would require utilizing regulatory flexibilities.[6]

Although our members are disappointed with Circular 26-20-33, we are encouraged to see the VA's willingness to waive existing regulations during the COVID-19 National Emergency, and the acknowledgment that VA has the clear authority to do so.[7] We are simply requesting that the VA follow the Circular 26-20-33 precedent to waive existing regulations, and in this case, to either wave 38 CFR § 36.4324 to allow for a claim to be paid prior to a liquidation event, and/or to use waiver authority to make changes to the VA Refund Program.

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[5] A similar disparity has occurred with the VA extend modification program, where there has been an unequal utilization of the program between banks and non-banks. HPC is concerned that the deferral program has the potential to further amplify the disparity between the loss mitigation solutions available to veterans based on the business model of their servicer.

[6] As highlighted in Attachment A, HPC prefers to use the VA Refund Program to allow the VA to purchase the forbearance balance and hold it until loan maturity. Our preference would be to have the forbearance balance treated as a recoverable advance (not requiring a second lien), though the second lien approach used by HUD is also viable. Utilizing either option would create a valid collectable balance for VA.

[7] 85 FR 31353 and 38 CFR § 36.4338(a)

b) Veteran Entitlement

Additionally, the VA has expressed concern that the payment of a partial claim prior to a liquidation event could adversely affect a veteran's entitlement and their ability to meet qualifying criteria for a future purchase/refinance. Although this is an important concern, as established in Circular 26-20-33, the VA has the authority to create an exception to the regulations for the specific purpose of providing relief to veterans under the CARES Act. The VA should use this authority to create an exception to controlling regulations to protect against any impact to a veteran's entitlement.

II. Qualifying Criteria for the COVID-19 Deferment Option[8]

To ensure timely, efficient, and cost-effective implementation of the VA's deferral option, we recommend that VA replicate the FHA COVID-19 Standalone Partial Claim process as released in Mortgagee Letter 2020-06. Fortunately, we believe the VA Loan Electronic Reporting Interface (VALERI) already possesses the functionality for servicers to file partial claims in the Bulk Upload template. Currently, Circular 26-20-33 appears to describe a deferral program that seems to be similar in nature to the GSE deferral programs. However, the VA Circular provides insufficient detail for servicers to understand if the requirements of the VA program will be similar to either FHA or the GSE programs, including the criteria that servicers should apply to approve a veteran for the deferment option. Aside from greater clarity on how to report the deferral in VALERI, we ask that VA provide clarifying guidance on the following issue so that operational processes can be built:

a) Delinquency

Is there a minimum delinquency requirement for a veteran to qualify for a deferral? Both FHA and the GSEs require consumers to be current or, in the case of FHA less than 30 days past due as of March 1, 2020 in order to qualify for their COVID-19 partial claim. If there is no delinquency requirement, the less likely the deferment option will be adopted due to the higher volume of advances servicers will have to absorb, even if a veteran is able to resume their regular mortgage payment. It is not unreasonable to assume VA's intent is to qualify only veterans current or less than 30 days past due as of March 1, 2020, since the CARES Act was signed on March 27, 2020. Regardless, the VA should clearly articulate which veteran borrowers qualify for a deferral.

b) Number of Missed Payments Eligible for Deferral

How many payments can be deferred? The GSEs and FHA both allow up to 12 months of past due principal and interest, but Circular 26-20-33 was silent on this.

c) Amount of Missed Tax and Insurance / Property Advances Eligible for Deferral

What property expenses (that are otherwise covered by the escrow account, but now are advanced by the servicer), can be included in the deferral? FHA's second lien/partial claim program permits inclusion of both the expenses covered by servicer corporate advances and the escrow shortages, to ensure that the borrower can resume payments that are generally similar to their previous mortgage payments. That said, how does the VA want servicers to treat escrow shortages? FHA and the GSEs have different approaches to how to treat escrow eligibility for deferral. Our members can operationalize either approach, but it is important to know if the VA has a rule or will be permissive to either option.

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[8] If the VA adopts our recommendation to establish a second lien/partial claim process, we request that the VA work with HPC and other industry stakeholders to ensure that there are clear operational standards for how the process will work.

d) *Treatment of Deferred Amounts in a Redefault*
What happens to the deferred amount if a borrower later re-defaults on the loan? Similarly, how does a deferred amount work in a subsequent loan modification? Is this outstanding deferred total capitalized back into the loan balance?

e) *Deferred Amounts and IRRL Eligibility*
How does participation in the deferral program affect IRRRL eligibility? Would the deferred amount be capitalized into the IRRRL transaction? If yes, would there be any restrictions on the total amount acceptable?

f) Reporting Payment Deferrals
How should servicers report payment deferrals to VA?

g) Allowing borrowers to Make Periodic Payments on Partial Claim
Circular 26-20-33 if applied to partial claim could be read to potentially allow borrowers to periodically make payments on the deferred amount. This is not something allowed by the FHA partial claim or GSE payment deferral programs and introduces a host of operational challenges. We would like to confirm repayment of the partial claim could only occur at maturity, payoff, refinance, or property sale. Alternatively, we would like VA to lay out the operational guidance for how allowing borrowers to make periodic payments on partial claims would work.

h) Treatment of Deferred Balance
Does VA have any restrictions on where the deferred balance should be housed on the servicing system (the deferred principal balance field vs a corporate advance field) or how the deferred balance should be displayed to the customer on billing, year-end or payoff statements?

III. <u>Conclusion</u>

In sum, HPC and MBA urge the VA to withdraw Circular 26-20-33, which announced a payment deferral option, because it lacks the necessary reimbursement and business rules for servicers to be able to offer it to veterans. However, we believe it is not too late to still help most veterans if the VA acts quickly to build out a partial claim process and provide the necessary operational clarity on how the deferral option works and collaborate with Ginnie Mae on reporting and remitting requirements of such a product. Until both of these deficiencies are resolved, please withdraw Circular 26-20-33.

Thank you for considering these recommendations. We look forward to continuing to work with your team on these issues and others to deliver the help our veterans deserve. If you have any questions or would like to discuss these comments, please contact Matt Douglas, ABA Vice President for Mortgage Policy, at 202-589-1924 or Sara Singhas, MBA Director of Loan Servicing, at 202-557-2826.

Yours Truly,

Meg Burns
Executive Vice President
Housing Policy Council

Pete Mills
Senior Vice President
Mortgage Bankers Association

Attachment A

HPC Memo to VA RE Forbearance
Sent on May 4, 2020

HPC
HOUSING POLICY COUNCIL

Veterans Deserve a VA Guaranty Option Similar to FHA Borrowers

Background – CARES Act Forbearance Mandate: The unprecedented economic impact of COVID-19 has triggered an enormous response from almost all sectors of the Federal government. Policy makers recognized, early on, the potentially devastating consequences for homeowners, and the CARES Act included critical provisions to provide relief to those affected. The key provision of the Act allows borrowers to suspend up to 12 mortgage payments (forbearance) on all loans guaranteed or owned by Fannie Mae, Freddie Mac, HUD/FHA, VA, and USDA.

While forbearance satisfies the immediate short term need to delay payments during a time of financial stress, its' value is limited if not paired with an affordable long term solution. The law made the availability of extended forbearance readily available but appropriately deferred to the government entities the details for what would occur following the end of the forbearance period. The law implied, however, that the Federal government would be responsible for the enormous cost and economic burden associated with this level of forbearance. Existing programs, even those implemented during the housing crisis of the Great Recession, do not contemplate the impact of having a large percentage of US homeowners seeking a 6 to 12 month suspension of mortgage payments.

VA Program Limitations: Most Federal departments and government agencies have responded with programs that provide an option for borrowers to postpone any repayment of the forborne balance, interest free, for the life of the mortgage. Further, each of these programs has substantially all of the costs and economic burden of this Federally-mandated forbearance absorbed by the Federal department or agency that insures or owns the mortgage loan.

Specifically,

- FHA offers a plan whereby the forbearance balance can be converted into a subordinate lien payable to HUD which does not require the original loan to be purchased out of the existing GNMA pool. HUD pays a partial claim to the servicer and collects against this amount, via the second lien, at loan payoff. The HUD subordinate loan accrues no interest, requires no payments, and is only payable upon sale or maturity of the first lien. USDA has a similar program.
- The FHFA has directed the GSEs to develop a proposed approach applicable to FannieMae and FreddieMac which will also allow borrowers to fully defer the forborne balance until maturity.

Impact on Veterans: Without modifications to the law and/or VA policies, the provision of loan forbearance consistent with the requirements of the CARES Act will impose significant burdens on both Veterans and mortgage loan servicers. Veterans will face the burden in repaying the accrued forbearance balance, and servicers will face a burden related to advancing cash for payments to bondholders, taxing authorities, and insurance companies until the forbearance amount is repaid or recovered.

VA has flexibility to amend requirements for loan modifications, which the agency has effectively used in previous disasters (see VA Circular 26.17.39). However, these options, at best, will allow borrowers to add the forborne payments to the existing loan balance resulting in payment increases and interest charges on the forborne balance (see example below for illustrative cost comparison). Further, as loans would need to be purchased from GNMA pools in order to be modified, Veterans could face potentially higher interest rates on the entire balance.

It seems inconsistent with the objectives of the VA home loan insurance benefit for Veterans to have the most expensive and least attractive alternative, post-forbearance, of any government owned or insured mortgage program.

Further, any approach that places the economic costs and liquidity burden of forbearance on the mortgage servicer jeopardizes future VA borrowers, by discouraging lender program participation. This unexpected costs and risks associated with the cost of such forbearance could reduce the number of lenders interested in servicing VA loans and ultimately increase borrower costs.

Proposal: HPC strongly encourage the Veterans Administration to develop a similar approach for VA insured loans based on the same basic premises of the FHA, FannieMae, and FreddieMac program:

- Permit the “missed payments” balance accumulated during the extended forbearance period to be repayable upon maturity and without any additional fees or interest charges to the Veteran
- Accept the economic costs and liquidity demands of this Federal mandate to be covered by VA, similar to the other Federal entities that own or insure these mortgage loans.

Impact – Illustrative Cost Comparison Example*:

The 1st column 'Deferred Option' shows a loan with the HUD or GSE deferred payment option (forborne balance paid at maturity with no additional interest and no change in the Veterans payment or remaining principal balance).

The 2nd column '6 Months Forbearance' shows the exact same loan using the modification option available on VA loans, where the borrower has 180 days of forbearance and the loan is modified with a term of 30 years. In this scenario, the Veteran's monthly payment drops by $42.46 but the interest paid by the Veteran over the life of the loan increases by $29,084.53.

The 3rd column shows the exact same loan with 360 days of forbearance and the loan modified with new 30 year term. In this scenario, the Veteran's monthly payment drops by $3.81 but the interest paid by the Veteran over the life of the loan increases by $59,635.58.

HPC HOUSING POLICY COUNCIL

Deferred Option (paid at end of loan) Forbearance

Modification Options for 6 months and 12 month COVID

Original Loan Amount Remaining:		**6 Months Forbearance - Mod**		**12 Months Forbearance - Mod**	
Remaining Loan amount	$232,543.27	*Loan amount*	$241,106.91	*Loan amount*	$249,202.81
Annual interest rate	4.00%	*Annual interest rate*	4.00%	*Annual interest rate*	4.00%
Loan period in months	315	*Loan period in month*	360	*Loan period in months*	360

Assumes monthly escrows of $583.33

Loan originated 7/1/2016

Scheduled P&I	$1,193.54	*Scheduled payment*	$1,151.08	*Scheduled payment*	$1,189.73
Total interest	$179,673.77	*Total interest*	$208,758.30	*Total interest*	$239,309.34
Total Payments	$429,673.77	*Total Payments*	$466,904.94	*Total Payments*	$496,335.32
Deferred Amount 6 Months (no change)	**$8,146.64**				
Deferred Amount 12 Months (no extra interest)	**$16,242.54**				

Increase in monthly payment	***0***	***$(42.46)***	***$(3.81)***
Increase in Interest	***0***	***$29,084.53***	***$59,635.58***

* *For the purpose of this example, we have used a loan with an original term of 30 years, originated in July of 2016 and with an original balance of $250,000. According to the most recent Annual Benefits Report of the Veterans Administration, the average balance of a VA guaranteed loan is $264,197.*

DISCUSSION DOCUMENT – CARES ACT FORBEARANCE & VA LOANS

Without modifications to the law and VA policies, the provision of loan forbearance consistent with the requirements of the CARES Act will impose significant burdens on both Veterans and mortgage loan servicers. Veterans will face the burden in repaying the accrued forbearance balance, and servicers will face a burden related to advancing cash for payments to bondholders, taxing authorities, and insurance companies until the forbearance amount is repaid or recovered.

VA has substantial flexibility to amend requirements for Loan Modifications, which the agency has effectively used in previous disasters (see VA Circular 26.17.39). We encourage VA to treat Covid-19/CARES Act forbearance similar to other disasters and make access to programs similar to Disaster Modifications and Extended Disaster Modifications available to borrowers who required CARES Act forbearance.

These modification options, however, require the loan to be repurchased from the GNMA pool to complete the modification and repay/recover advance amounts. Additional flexibility is needed in the event that the interest rate environment makes buyout/resecuritization prohibitively expensive when these long term CARES Act forbearance periods end.

We are proposing changes to the law and regulations that would permit accumulated CARES Act forbearance balances to be separately funded by VA, independent of the insured existing first lien balance.

Separate Funding of an accumulated CARES Act forbearance balance (change in law and regulations)

FHA developed a plan whereby the forbearance balance can be converted into a subordinate lien payable to HUD which does not require the original loan to be purchased out of the existing GNMA pool. HUD pays a partial claim to the servicer and collects against this amount, via the second lien, at loan payoff. The HUD subordinate loan accrues no interest, requires no payments, and is only payable upon sale or maturity of the first lien.

Existing law does not appear to provide for such an alternative on VA loans. The existing VA approach with some similarities is the VA Refund program, which allows VA to buy a delinquent loan when all other Loss Mitigation options fail.

It is believed that modifications to the language in the law and regulations related to the VA Refund program would permit a program with benefits similar to the FHA approach for both Veterans and servicers of VA loans.

Section 3732(a)(2) of Title 38 authorizes the VA Refund program. Proposed changes to 3732 (a)(2)(A) would allow the VA to purchase the forbearance balance and hold it until loan maturity. If utilized in the same way the VA Refund is used today, this option could be made available where Loan Modification or other Loss Mitigation tools will not work. Our preference would be to have the forbearance balance treated as recoverable advance (not requiring a second lien), though the second lien approach used by HUD is also viable. In either way, this would be a valid collectable balance for VA.

Section 3732(a)(2) of Title 38:

(2)(A) Before 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,

(i) pay the holder of the obligation the unpaid balance of the obligation plus accrued interest and receive an assignment of the loan and security. Nothing in this section shall preclude any forebearance for the benefit of the veteran as may be agreed upon by the parties to the loan and approved by the Secretary, or

(ii) should the obligation include a balance accrued under a forbearance program provided in accordance with the CARES Act, purchase from the holder of the obligation a note and second lien representing the accrued forbearance balance. The obligation shall remain insured for the full amount permitted under this section without regard to such forbearance balance.

Corresponding changes would need to be made to the Regulations for the Refund program (38 CFR 36.4320 Refunding of Loans in Default).

An alternative to this (2)(A)(ii) language envisions no requirement for a second lien and treats the CARES Act forbearance balance as a recoverable advance. This is proposed due to the industry's experience with the HUD program. As the second lien, which requires no monthly payment, is between the borrower and HUD (not the servicer), borrowers are sometimes surprised to learn this additional amount is due, years later, at payoff. By using a recoverable advance approach, this amount would be listed on statements and payoff letters from the servicer and would be collected by the servicer on behalf of VA.

(ii) should the obligation include a balance accrued under a forbearance program provided in accordance with the CARES Act, pay the holder of the obligation the accrued forbearance balance. If the Secretary makes such a payment, Secretary shall be subrogated to the rights of the holder of the obligation to the extent of the amount paid. The obligation shall remain insured for the full amount permitted under this section without regard to such forbearance balance.

Attachment B

HPC’s Analysis of the VA Deferral Program

% Deferment	Loans	Monthly PITI	6 Months Total PITI
10%	15,689	$25,758,151	$154,548,906
20%	31,378	$51,516,302	$309,097,813
30%	47,067	$77,274,453	$463,646,719
40%	62,756	$103,032,604	$618,195,625
50%	78,445	$128,790,755	$772,744,532
60%	94,133	$154,548,906	$927,293,438
70%	109,822	$180,307,057	$1,081,842,344
80%	125,511	$206,065,208	$1,236,391,251
90%	141,200	$231,823,359	$1,390,940,157
100%	156,889	$257,581,511	$1,545,489,063

Maximum Delq Since March'20

	Feb Non Delq	
Total	**3,123,410**	
1. Non Dlq	2,817,631	
2. 30	84,354	
3. 60	**37,297**	
4. 90	**55,319**	
5. 120	**27,917**	
6. 150	**31,147**	
7. 180+	**5,209**	
9. Unk	64,536	
Total 60+	**156,889**	A
Average PITI	$1,642	B
Average PI	$1,213	C
Average TI	$429	D
PITI		
50% Deferral	78,445	E = A * 50%
Monthly PITI	$128,790,755	F = E * B
Total PITI 6 Months	$772,744,532	G = F * 6
Avg PITI 6 Months	$9,851	H = G / E

Assumptions

PI Calculated Based on Orig Balance / Term / Rate

TI based on 35.4% of PI

6 Month FB Term