January 17, 2023

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

RE: Docket Number 2900-AR78 Advance Notice of Proposed Rulemaking – Loan Guaranty – Loss Mitigation Options for Guaranteed Loans

Dear Director Bell,

The Mortgage Bankers Association[1] and Housing Policy Council[2] thank the Department of Veterans Affairs (VA) for the opportunity to comment on the Loan Guaranty Service's Advance Notice of Proposed Rulemaking (ANPR) regarding the loss mitigation options for guaranteed loans. Throughout the COVID-19 pandemic, mortgage servicers have collaborated with government agencies and other stakeholders to deliver effective loss mitigation solutions to borrowers. Since the pandemic began, servicers have provided payment relief to over 7.5 million borrowers through a COVID-19 forbearance. The primary loss mitigation solutions deployed by the government agencies – the partial claim/payment deferral and modification – have performed well. As a result, financially distressed borrowers have retained homeownership.

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,100 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

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

To build on this success, we request that the VA initiate a rulemaking to preserve several critical features of the COVID-19 loss mitigation solutions deployed by the agencies throughout the COVID-19 pandemic. The ability for servicers to offer flexible loss mitigation solutions has been a hallmark of the program's success throughout the COVID-19 National Emergency, providing tailored assistance to veterans in need of mortgage assistance. Therefore, we recommend that the VA pursue a comprehensive and durable set of programs that can be used to resolve mortgage delinquency under any economic or market conditions, while preserving flexibility as servicers work with their borrowers to find the most appropriate solution for each situation.

We also recommend that the VA build upon the collaborative process we have engaged in over the past two years to offer borrowers solutions consistent with fellow agencies and insurers. As detailed below, a sustainable regulatory framework must allow the VA to administer several permanent loss mitigation programs to address various borrower circumstances and market conditions. We believe an expanded use of the streamlined solutions is the best path forward.

Veteran borrowers should have access to effective and viable loss mitigation solutions when they face an unforeseen financial hardship. Those solutions should prioritize providing favorable outcomes for borrowers that avoid foreclosure and ensure sustainable homeownership while protecting future access to credit and the American taxpayer.

In sum, our recommendations for the VA to implement economically viable loss mitigation solutions are as follows:

I. **Expand VA's Loss Mitigation Options to Preserve Homeownership**
   a. Standalone Partial Claim;
   b. Combination Partial Claim with a Loan Modification;
   c. Extended Modification with Terms up to 40 Years;
   d. Combination Partial Claim with Loan Modification that Permits Additional Deferral of Principal (with VA Reimbursement)
   e. Partial Claims under the First Lien Mortgage

II. **Ensure that an Unreimbursed Deferral is Not Mandated**

III. **Provide a Limited Documentation Application to Help Borrowers Quickly Resolve Their Financial Hardship**

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I. Expand VA's Loss Mitigation Options to Preserve Homeownership

The VA must expand their loss mitigation options, and most importantly, implement a permanent partial claim program. The pandemic and established experience with the FHA partial claim program have demonstrated the benefits of this approach. The deferral of accumulated missed payments until loan payoff (secured by a subordinate lien) enables borrowers to efficiently reperform. Immediate reimbursement by FHA provides servicers with the funds needed to replace the corporate advances used to fulfill required remittances of principal and interest to Ginnie Mae investors.

A key feature of a partial claim program is that it allows borrowers to resume their monthly mortgage payments at their previous level, or even at a reduced level. In addition, when combined with a loan modification, a partial claim offers an opportunity to amplify the monthly payment reduction, using interest rate reduction when it is possible, with a term extension and the partial claim for deferment of missed payments (or additional principal, as recommended below). A partial claim program that utilizes these levers can reliably provide a solution to a borrower's delinquency.

Through the rulemaking process to establish a renewed VA partial claim program, we would like to collaborate with the VA to address the significant operational challenges that occurred in implementing the Veterans Assistance Partial Claim Program (VAPCP). We believe closer alignment with the execution of the FHA program would alleviate many of these issues. Regardless, we stand ready to offer feedback to the VA to improve the program for both the VA and servicers.

Modernizing VA's loss mitigation program is essential.[3] We understand that efforts for the VA to modernize its program are long-term. We also support legislative efforts, if necessary, to fund this permanent program.

a. Standalone Partial Claim

Over the past two years, the industry's widespread adoption of the standalone partial claim has allowed many VA, FHA, and USDA borrowers to resume their regular monthly payments and cure their outstanding arrearage. Industry data consistently shows that the partial claim option is the most common post-forbearance reinstatement option.[4]

The utility of a standalone partial claim is that it allows borrowers who have resolved a temporary hardship to reinstate and resume their monthly payment. Importantly, a partial claim provides an alternative to a repayment plan for borrowers who do not have the surplus income necessary to cure their delinquency, or for borrowers that simply don't want or need to modify their loan.

Additionally, a standalone partial claim is particularly valuable when the note rate on a borrower's mortgage is lower than the prevailing market rate. In this scenario, rate reductions are not available to lower the monthly mortgage payment. Today, almost 80 percent of borrowers in Ginnie Mae's portfolio have note rates well below the prevailing market rate, rendering modifications that rely on interest rate reduction generally ineffective tools for providing payment relief – the strongest driver of mortgage reperformance.[5] In

[3] See Appendix A (outlining our proposed waterfall and the critical features a VA waterfall must preserve).
[4] *See* Mortgage Bankers Association, *November Loan Monitoring Survey*, Dec. 19, 2022, available at https://www.mba.org/news-and-research/newsroom/news/2022/12/19/share-of-mortgage-loans-in-forbearance-remains-flat-at-070-in-november-.
[5] Ginnie Mae, Global Market Analysis Report, December 2022, available at https://www.ginniemae.gov/data_and_reports/reporting/Documents/global_market_analysis_dec22.pdf (showing 77% of borrowers in a Ginnie Mae security originated their loan since 2019. The current weighted average coupon of Ginnie Mae Mortgage-Backed Security is 3.07%).

these circumstances, maintaining the borrower's existing interest-rate achieves a better outcome than modifying the loan to a higher interest-rate.

The available data supports implementing a permanent partial claim program. The program has performed well over the past two years. According to industry data, 80% of loans that completed a VA partial claim have remained current.

b. Combination Partial Claim with a Loan Modification

We recommend the establishment of a permanent partial claim program that permits servicers to combine a partial claim with a loan modification to help borrowers that need to reduce their monthly payments. VA's COVID-19 Refund Modification permitted this arrangement to assist borrowers unable to achieve the target payment reduction through a standalone modification. The ability to extend a loan term - whether to 360 months (or 30 years) or 480 months (or 40 years) - and capitalize arrearage, if necessary, could help borrowers achieve the target payment reduction of at least 20 percent principal and interest. In the absence of a permanent partial claim program, borrowers may not be able to reduce their payments using a term extension alone.

c. Enhance Loan Modifications by Allowing Term Extension Up to Forty (40) Years

We recommend that the VA permit modifications to extend the loan term up to 480 months (or 40 years). The longer amortization period would distribute the remaining outstanding obligation up to an additional ten years beyond a thirty (30) year modification to achieve greater payment relief. For borrowers in recently originated mortgages, where extending the term back to 30 years isn't effective, this is a particularly valuable tool for achieving payment relief. Additionally, this is already a standard option available to GSE and FHA borrowers.

Currently, VA regulations limit this available lever.[6] Therefore, we recommend that VA's regulation adopt an approach that is similar to the approach permitted by COVID exceptions and subject to a regulatory update at FHA to set the maximum modification term broadly up to 480 months.[7] This type of term extension should also be combined with a partial claim and as a standalone feature. We also specifically recommend that VA's permanent modification allow veterans to extend the term of their modified loan to 480 months (or 40-years) **if** a 30-year modification combined with a partial claim and principal deferment (described below) does not achieve the target payment.

[6] 38 CFR § 36.4315(a)(9) (stating explicitly, "the unpaid balance of the modified loan will be re-amortized over the remaining life of the loan, or if the loan term is to be extended, the maturity date will not exceed the shorter of: i) 360 months from the due date of the first installment required under the modification; or ii) 120 months after the original maturity date of the loan . . .").
[7] Increased 40-year Term for Loan Modifications, 87 Fed. Reg. 19037 (April 1, 2022), available at https://www.federalregister.gov/documents/2022/04/01/2022-06875/increased-forty-year-term-for-loan-modifications.

Beyond the payment reduction that a 40-year term provides to veterans, there are also clear benefits to the VA. For the VA, the borrowers who can achieve an affordable payment through a standalone 480-month term (or 40 years) will be less reliant on a partial claim to help reduce their payment. The benefit will limit potential partial claims the VA would have to pay while ensuring a borrower can reperform. For the borrower, a standalone 480-month modification preserves partial claim availability for future financial hardships.

As mentioned, payment reduction is the primary driver of reperformance and lower redefaults. However, because there are drawbacks to extended terms, we recommend this option be used only when necessary and that VA permits servicers to incrementally increase the borrower's term from 360 months to 480 months to achieve a target payment reduction. As we have noted in past comments to FHA on this issue, extended modification terms increase the cost of the loan for a veteran by increasing the amount of interest paid over the life of the loan.[8] Just as important, extended terms also mean slower accumulation of equity and the opportunity for borrowers to continue to build wealth. In addition, some borrowers may not want to extend their term to 480 months (or 40-years), especially for those borrowers who fell delinquent later in their loan after making steady payments (i.e., have less remaining term). That is why we recommend the 40-year term as only one of many solutions that should be made available to veterans.

d. Enhance Loan Modifications to Allow Funds to Cover Deferral of Additional Principal, as well as Accumulated Arrearages

As recommended above, the VA should offer a combination partial claim and modification program and this program should permit the partial claim funds to cover not only missed payments (if any) but also some amount of the outstanding principal balance. This amount would be satisfied at loan payoff. This was a critical element of VA's COVID-19 Refund Modification, because it offers borrowers an additional opportunity to achieve a sustainable payment when a borrower cannot achieve the target payment reduction through just the capitalization of arrearages and term extension.

Of note, when using the partial claim in this manner, principal deferment can be an available feature for modifications with 360-month (or 30-year) or 480-month (or 40-year) terms. Importantly, deferring additional principal under a 360-month (or 30-year) modification/partial claim combination prevents a term extension to 480 months (or 40-years) and the adverse borrower impacts described above. Whereas under a 480-month (or 40-year) modification/partial claim combination, borrowers can achieve a sustainable payment rather than proceeding toward liquidation.

Moreover, when compared to a standalone 40-year modification, principal deferment is also valuable as an additional lever in a rising-interest rate environment. As interest rates climb,

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[8] *See id.*, *see also,* Mortgage Bankers Association and Housing Policy Council, Re: 40-Year Loan Modification COVID-19 Recovery Loss Mitigation Options, pg. 10, Oct. 27, 2022, available at https://www.mba.org/docs/default-source/uploadedfiles/mba-org/files/advocacy/10272021_letter_hpc-and-mba-40-year-fha-mod-comments.pdf?sfvrsn=9afaa98_1. (comparing the additional interest paid for a 30-year modification versus a 40-year modification).

some borrowers that need payment reduction may see their payments increase when completing a modification, even under a 40-year modification. Principal deferment offers an additional lever to prevent that. Also, the opportunity to defer principal provides another available lever for borrowers who, unfortunately, have redefaulted and have remaining funds available.

We recognize that this recommendation adds a higher cost to the VA. However, if viewed as an alternative to foreclosure – which in today's market could be a forced sale for borrowers with equity – this program offers tremendous benefit to veterans. Even for borrowers with equity, while today's home prices remain elevated, there is also a lack of affordable housing supply that limits the alternatives that borrowers may be able to pursue if they are forced to sell their homes to avoid foreclosure. In short, preserving a borrower's homeownership and avoiding foreclosure, even with VA paying additional partial claim funds, is likely more cost-effective to the VA and servicers than later filing a foreclosure under the VA guarantee.

e. Allow Partial Claims under the First Lien Mortgage

We reiterate the industry's preference for missed mortgage payments (and possibly additional principal) to be covered by a partial claim to be deferred balance, rather than secured by a subordinate lien. This change would eliminate the need to execute documents for a non-interest-bearing subordinate lien (i.e., a promissory note and subordinate mortgage). Removing the need to execute those documents would provide a better borrower experience, like the approach taken by Fannie Mae and Freddie Mac with the Payment Deferral and the USDA Mortgage Recovery Advance Pilot.

A simpler approach to executing partial claims would eliminate administrative challenges for both mortgage servicers and the VA and reduce the cost of completing this loss mitigation option. Qualifying a borrower under the first lien mortgage would eliminate the need for mortgage servicers to execute documents, track their delivery with the VA contractor, and record the subordinate mortgage with the county. However, consumer protection would exist because a partial claim amount remains due to the mortgage servicer under a first lien option, and the borrower's monthly statement and final payoff quote would include the partial claim amount for continuous visibility.

Although we strongly prefer a reimbursable deferral, we recognize that a subordinate lien remains a viable alternative. However, if the VA chooses to stick with a subordinate lien approach, it could more closely align with the FHA partial claim model. Specifically, to ensure borrowers can timely resolve their hardships, we recommend that the VA reduce other administrative burdens and reliance on VA staff. For instance, a standard partial claim program can pay the partial claim first and conduct post-claim quality control afterward. In addition, claims should only be denied for material errors, not minor ones, such as default reporting. Lastly, we recommend that the VA devote the necessary resources to the VA Loan Electronic Reporting Interface (VALERI) improvement to implement a sustainable and efficient partial claim program to ensure mortgage servicers do not delay assisting veterans.

II. Ensure that an Unreimbursed Deferral is ***Not*** Mandated

We strongly urge the VA against mandating the use of a deferral option that does not reimburse mortgage servicers for their costs. Despite the operational challenges with the VA partial claim program, it provided meaningful certainty that mortgage servicers would not have to wait until payoff, refinance, or maturity to recover outstanding funds.

As the VA noted in their proposed rule to the VAPCP, an unreimbursable deferral would impose a substantial liquidity burden on servicers, which could harm the viability of the VA home loan program. The reason for this is that a servicer-funded deferral would not be effective in any economic environment, including a low interest rate environment with active refinance volume, but it would be especially ineffective in a higher-interest rate environment, where servicer borrowing costs are a real challenge. This is why very few deferrals were offered to borrowers throughout the pandemic. Additionally, an unreimbursable deferral would further increase the cost of default servicing and could reduce the value of Ginnie Mae Mortgage Servicing Rights (MSRs), because of the direct impact on the expected cash flow of VA servicing. Mortgage servicers would have to evaluate their continued participation in the program, and at the very least would likely need to adjust the front-end pricing of future VA loans to cover the expected costs, which would have negative impacts on access to credit for veterans.

III. Provide a Limited Documentation Application to Help Borrowers Quickly Resolve Their Financial Hardship

Finally, the VA should allow mortgage servicers to continue to qualify seriously delinquent borrowers for a home retention solution based on limited documentation, defined as an incomplete application under the Consumer Financial Protection Bureau's Regulation X. In addition, the regulatory waivers the VA granted throughout the pandemic should be preserved and made permanent.[9]

Seriously delinquent borrowers with accumulated arrearages and negative credit consequences are often unresponsive to servicers' efforts to establish contact. Simplified processes enable a servicer to qualify the borrower quickly, based on minimal and/or verbal information has proven to be an effective alternative. An unnecessary paper chase can delay or even prevent a borrower from qualifying for a home retention solution.

Industry has repeatedly submitted evidence to support the position that streamlined applications do not adversely affect borrowers' performance in their permanent solution once they are qualified. In addition, streamlined solutions were widely adopted throughout the COVID-19 pandemic, including for VA and FHA, and continue to perform well.[10]

[9] 38 CFR § 36.4319(3) (Although we are referring to all home retention solutions – Repayment Plans, Partial Claims, and Modifications – VA's Modification regulation requires mortgage servicers to evaluate a borrower's financial information to determine the credit worthiness), *see also* Agency Information Collection Activity: COVID-19 Refund Modification, 86 Fed. Reg. 63453, (Nov. 16, 2021), available at https://www.federalregister.gov/documents/2021/11/16/2021-25007/agency-information-collection-activity-covid-19-refund-modification.

[10] See VA Performance Data Below, *see also* Mortgage Bankers Association, *November Loan Monitoring Survey*, Dec. 19, 2022, available at https://www.mba.org/news-and-

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In sum, we believe the VA should carefully consider and implement several lessons learned from the COVID-19 pandemic to reform VA's current loss mitigation toolkit with proven solutions that efficiently resolve borrowers' hardships. These enhanced solutions, along with future changes to VA's refunds program, will allow mortgage servicers to pursue the best outcomes and financial interests for veterans.

We appreciate your consideration and the continued collaboration with the VA team. Should you have any questions or wish to discuss further, please contact Brendan Kelleher at Bkelleher@mba.org or (202) 557-2779, or Matthew Douglas at Matthew Douglas at (202) 589-1924 and matt.douglas@housingpolicycouncil.org.

Sincerely,

Mortgage Bankers Association
Housing Policy Council

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research/newsroom/news/2022/12/19/share-of-mortgage-loans-in-forbearance-remains-flat-at-070-in-november-.

Questions Related to Flexibility/Adaptability of VA's Incentivized Loss-Mitigation Options

1. Are VA's incentivized loss mitigation options, outlined at 38 CFR 36.4319, flexible and adaptable, particularly for those traditional times when the market is in flux (e.g., rising interest rate environments, recession, etc.)? Please, where possible provide data and evidence in support of your response. What could VA do to increase the flexibility and adaptability of section 36.4319's incentivized loss-mitigation options?

Answer: The "VA's incentivized loss mitigation options, as outlined at 38 CFR 36.4319" generally work fine in traditional low-interest rate, low-default market, but since they are enshrined in the Federal Register, they are insufficiently flexible when new loss mitigation options are needed in high-interest, high-default markets (i.e., when the market is in flux). Creating the options described above would limit the need to create new options for different interest rate environments in the future.

VA regulations place unnecessary restrictions that limit the delivery of loss mitigation solutions, as well as the ability of VA policy to improve the veteran borrower experience. One example that is not practical in today's environment and adds administrative burden to VA is the prohibition against increasing the veterans interest rate more than 1% (Section 36.4315(a)(8)(ii). As mentioned, we believe the VA should amend their regulations to create greater flexibility.

As we've described above, however, VA's current loss mitigation options themselves are not consistently economically viable and in the best interests of the veteran, servicers, and the VA. MBA and HPC do not support loss mitigation programs that require servicers to carry the cost of the program. The specific challenges of VA's existing modification solutions (including the disaster modifications) are described below:

1. In a high-interest rate environment, redelivering modified loans into Ginnie Mae pool may be prohibitively expensive when a borrower's existing note rate is well below the market while trying to preserve a borrower's lower payment.
2. The VA Affordable Modification allows for principal deferment but at the servicers cost.
3. The Disaster Extend Modification requires the servicer to waive existing interest accrued on the loan because of delinquency.

These examples strongly support why the VA needs to implement loss mitigation solutions that reimburse the servicer for carrying the cost of the solution, including a permanent partial claim program.

Regarding data, we recommend that the VA publish a monthly Loan Performance Trends report, like FHA's that details delinquency trends. FHA's most recent November 2022 report can be found here.

Questions Related to Evaluating VA Loss-Mitigation Options

2. Should VA have a prescribed order of loss-mitigation options that servicers must follow, or would stakeholders like to see VA's regulation to continue to provide VA's preferred order of consideration (i.e., a hierarchy for review)? If VA were to incentivize options such as loan deferment and/or partial loan refunding options (e.g., VAPCP or COVID-19 Refund), where should these options rank among other options, and should they be either prescribed or preferred?

   Answer: We believe it is appropriate for the VA to continue to use its preferred order of loss mitigation until the VA can pursue regulatory reform to implement the loss mitigation options we describe above. Once the VA can pursue a broad regulatory approach to implement durable loss mitigation solutions, then MBA and HPC members support a prescribed loss mitigation waterfall. As mentioned previously, VA's current options are not economically viable for the veteran, servicer, and the VA. We believe regulatory reform is necessary to ensure that VA's loss mitigation options provide a benefit to veterans participating in the VA program.

   Additionally, to reiterate once more, the deferral, as it was currently structured during COVID, should not be an incentivized option that servicers should be required to offer. We do not support any loss mitigation requirement that does not reimburse the servicer for the carrying the cost of the program.

   For reference to the prescribed order, please see below.

3. During the COVID-19 pandemic, veterans were given more opportunity to select the home retention option that they thought would be best for them. Under what circumstances, if any, should veterans retain opportunities to select from VA loss-mitigation options? How would giving veterans the ability to select from VA loss-mitigation options impact servicers? If VA were to switch to a prescribed order of loss-mitigation options that servicers must follow, what limitations, if any, should be placed on veterans' ability to select from them?

   Answer: We support a prescribed order of loss mitigation, where the VA determines the order of loss mitigation options, and there is very limited discretion for servicers or the veteran "to select from VA loss-mitigation options." However, as discussed, for this prescribed order of loss mitigation to be effective, the loss mitigation options must be economically viable for the veteran, the servicer, and the VA. We do believe, and the COVID-19 pandemic has demonstrated, that consumers should receive consistent loss mitigation experience from their servicers. Most importantly, the durable features we describe above allow mortgage servicers to offer loss mitigation options that are in the best financial interests of the veteran to resolving their hardship quickly and effectively.

4. During the COVID-19 pandemic, certain loss mitigation options were offered without the requirement of collecting financial information. Moving beyond the pandemic,

under what circumstances should VA require servicers to collect financial information before a loss-mitigation option is selected? Under what circumstances might a trial payment plan serve as a substitute for the collection of financial information?

Answer: Streamlined loss mitigation options, including modifications, that don't require the collection of financial information should be incorporated into future loss mitigation options. Delinquency is a sufficient indicator of hardship, so servicers should be able to qualify a borrower for a streamlined solution at 90 days delinquent without a trial payment period. However, we recommend that the VA maintain the requirement to evaluate a borrower's financials if they are in imminent default.

Should VA decide to offer additional or change their streamline options, the VA should ensure their rules are compliant with CFPB's Regulation X (12 CFR §1024.41). We recommend the VA engage with the CFPB to urge additional regulatory changes to Regulation X in response to their RFI Regarding Mortgage Refinances and Forbearance.

Questions Related to Loan Deferment, VAPCP, and COVID-19 Refund Modifications

5. How should VA develop a loan deferment option that would assist veterans without placing undue burden on servicers? For example, if VA were to incentivize a hybrid loan deferment/repayment plan in which servicers would defer the missed principal and interest and establish a loan repayment plan for missed taxes and insurance, would that address potential concerns related to short-term lost income from deferring missed mortgage payments? For veterans, what consumer protection concerns should VA be aware of in considering a loan deferment loss-mitigation option?

   Answer: As mentioned, unless a loan deferment is a reimbursable, non-interest bearing first lien partial claim, the VA should not develop a loan deferment program that resembles the current structure. It is not an economically viable solution.

   Likewise, the VA should not incentivize a hybrid loan deferment/repayment plan as outlined above in Question 5. There is no amount of incentive that could substitute for reimbursing the servicer for missed principal and interest payments (and the cost of financing to investors) unless the incentive exceeded the principal and interest payments (per month). The hybrid solution is also not economically viable. Also, a repayment plan would increase the borrowers total monthly payment, which would put the borrower in a worse position than an FHA or GSE borrower who uses a standalone partial claim or the GSE payment deferral.

6. In what way(s), if any, should VA use the VAPCP and/or COVID-19 Refund Modification after the COVID-19 national emergency? VA is particularly interested in data and evidence showing whether the VAPCP and/or COVID-19 Refund Modification programs have assisted veterans, servicers, and taxpayers?

Answer: See response above. The VA should establish a permanent partial claim program to help borrowers who have had a temporary hardship, became delinquent, but who are able to either resume their previous monthly payment or need payment reduction. As industry data has shown, a partial claim program provides far greater benefits than a repayment plan or a modification option alone.

Specifically, the VAPCP and features of the Refund Modification should become part of the standard VA loss mitigation waterfall. The partial claim should be the first option in the waterfall and should be used for veteran borrowers who cannot repay their arrearages but can resume their originally scheduled monthly payments. A modification option, like the Refund Modification, targets a 20% or 25% P&I reduction. The VA should continue to use principal deferral, if needed, to reach target payment reduction by using the Partial Claim.

In addition, there is a gap in the current loss mitigation options, as there is no option that can offer a payment reduction when the mortgage rate is high, as it is today. The current market rate is well above the average note rate on VA loans in a Ginnie Mae MBS. If the partial claim is reinstated, the VA may want to consider introducing alternative solutions to the high-interest rate environment that would allow the borrower to keep their current payment at their existing rate, such as a recast.

7. What challenges would exist for veterans, servicers, holders, and VA, if VA were to develop a loss-mitigation option similar to the VAPCP but with a requirement for repayment at a low-interest rate (rather than the zero percent interest rate under the VAPCP)? What hurdles might servicers face in executing such loan documents on behalf of VA? What if VA required servicers to service such loans on VA's behalf?

Answer: The VA should not include a requirement for repayment at a low-interest rate if VA were to reintroduce a partial claim in the future. Such a requirement would not only hurt borrowers but could discourage participation in the VA program altogether, ultimately damaging future access to credit.

As we submitted in our response to the VA's proposed COVID-19 rule, such a requirement would make veteran borrowers significantly worse off than similarly situated FHA, USDA, and GSE borrowers with higher payments. Specifically, a low-interest rate repayment on a partial claim would effectively create negative amortization with a balloon payment at the end. A borrower could struggle to pay back their partial claim at payoff, refinance, or maturity, because of the accumulated interest. In turn, the borrower could unfortunately be prohibited from completing a potential refinance or payoff.

For the reasons above, we do not expand on the operational complexity, reconfiguring technology or developing disclosures, of implementing a low-interest repayment requirement for partial claims. Allowing servicers to service partial claims on the VA's behalf could improve the process for partial claims, overall, but that doesn't change the industry's position on a low-interest rate repayment requirement.

8. Would a low-interest second loan option similar to the VAPCP be more helpful to veterans and/or servicers than a loan deferment loss-mitigation option, and what data and evidence exist to support your response? What sort of financial evaluation would be appropriate to determine whether a low-interest second loan would be an appropriate loss-mitigation option for a veteran, as opposed to VA's existing loss-mitigation options at 38 CFR 36.4319?

Answer: No. A low-interest second loan option is not more helpful to veterans and/or servicers than a loan-deferment loss-mitigation option for the reasons described in our response to Question 7. However, and we reiterate again, the loan deferment loss-mitigation option is not an economically viable solution without a mechanism to reimburse servicers for the missed payments advanced to investors. Therefore, the VA should not pursue the deferment as an incentivized option.

9. What, if any, limitations should VA place on a deferment-style loss-mitigation option, including minimum/maximum deferment amounts, lifetimes uses, etc.?

Answer: The general loss mitigation rule, consistent with the GSE's, is that a deferral allows a maximum of 12 missed payments for each delinquency. Like the GSEs, the VA could consider limiting the number of lifetime uses for a reimbursable deferral but should not count deferrals received during an emergency (pandemic or natural disaster).

To be clear, if the VA were to pursue an unreimbursed deferral option, servicers should not be required to operationalize the deferral and it should be sunset as soon as the VA is able to introduce a prescribed waterfall.

Questions Related to Incentive Payments

10. What kind of incentive payment might be appropriate to make loan deferment a more viable option for servicers and VA? What kind of incentive payment might be appropriate for a loss-mitigation option similar to the VAPCP or COVID-19 Refund Modification?

Answer: Again, there is no incentive amount that would make a deferment option viable for servicers, unless the incentive was greater than the deferred amount. Mandating the use of deferment is not sustainable for our industry, particularly in times of high-default volume where the industry may face a liquidity crisis. Doing so would greatly harm the value of the Ginnie Mae MSR, adversely effect front-end pricing of future VA loans and borrowers, and limit servicer participation in the VA program.

We also believe that once the VA implements the prescribed waterfall we recommend, the VA should eliminate incentive amounts from being prescribed in federal regulation. However, we do strongly believe that the incentive amounts need to increase. The cost to complete loss mitigation solutions and service loans in default continues to increase, as industry data shows.

For quick reference, an FHA partial claim incentive is $500 and a modification incentive is $750 (plus, $250 for the cost of a title search, title policy, and recording). For the Enterprises, the GSE incentive for a deferral is $500, whereas a modification incentive is $1,000. At a minimum, we would recommend that VA provide for a similar modification incentive as FHA but, again, not in static federal regulation which is overly rigid and hard to adjust.

11. How could VA structure an incentive payment that does not encourage servicers to use one of those loss-mitigation options if more financially feasible options are available to assist the veteran?

Answer: Same answer as above. The VA should implement the prescribed waterfall recommended to provide economically viable solutions to all stakeholders.

Questions Related to Investor Requirements

12. What, if any, Government National Mortgage Association (Ginnie Mae) specific investor requirements should VA consider when evaluating changes to VA loss-mitigation options, including the introduction of a deferment-style loss mitigation option?

Answer: Any loss mitigation option deliverable to a GNMA security will require coordination with GNMA and a solution that is either not interest rate dependent or subsidizes the servicer for secondary sale losses in a rising rate environment.

Regarding a deferral, please refer to Ginnie Mae APM 20-13. This APM reminded Ginnie Mae issuers about Ginnie Mae's prohibition on resecuritizing loans that completed a deferral with a modification.

Finally, to support a 40-year term loan modification, the VA should ensure alignment with FHA, which would provide greater stability for Ginnie Mae securities. Ginnie Mae has made significant progress in creating a securitization option for Issuers to deliver extended-term modifications to investors and maintain sufficient liquidity in the market. Currently, Ginnie Mae pooling restrictions limit extended-term modifications to single issuers.[11] The industry continues to press our belief with FHA and Ginnie Mae on the importance of multi-issuer pools as we move beyond the pandemic to maintain liquidity and provide potentially lower pricing terms to borrowers. First, however, our industry must settle into a 'new normal' where sufficient volume is delivered by mortgage servicers, so the industry can continue to analyze the market. Then, that certainty will be passed on to consumers.

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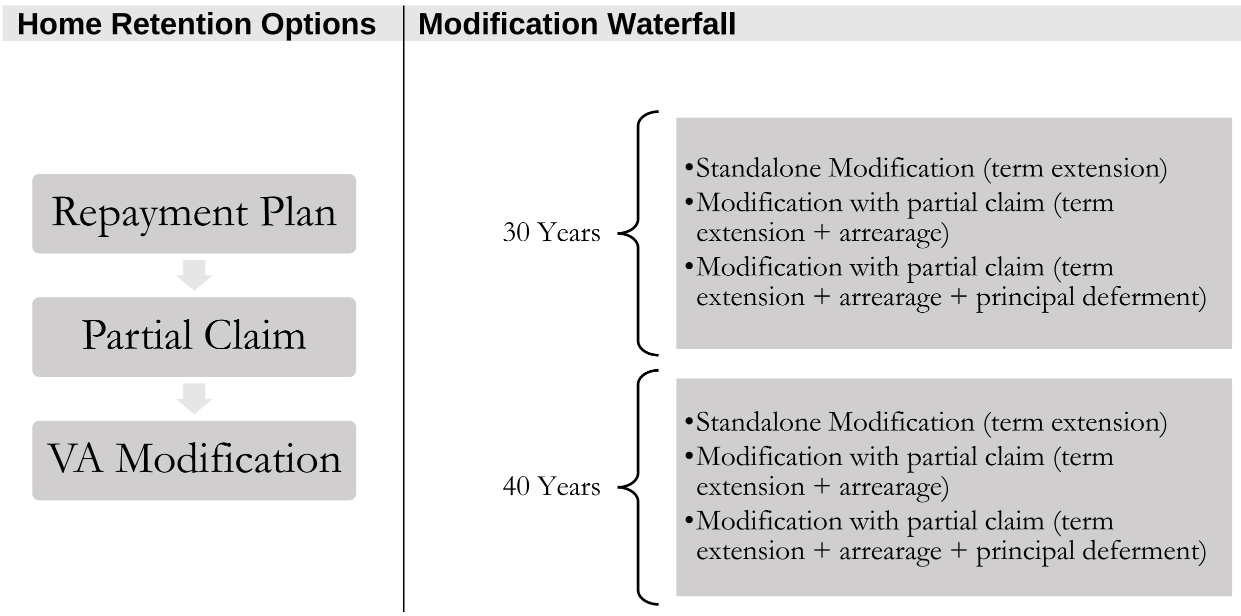
[11] Ginnie Mae APM 21-15, "C ET Pool Type Implementation for Single Family Securities." (October 29, 2021). Microsoft Word - PUBL APM 21-05 C ET Pool Type Implementation for Single Family Securities 21.10.29.docx (ginniemae.gov)

Appendix A: Proposed VA Loss Mitigation Waterfall



VA Completed Loan Workouts in 2020 or After: % Current at End of Reporting Period