MORTGAGE BANKERS ASSOCIATION

Statement of
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On Behalf of the Mortgage Bankers Association

U.S. House of Representatives
Committee on Veterans' Affairs
Subcommittee on Economic Opportunity

Legislative Hearing on Pending Legislation

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Chairman Van Orden, Ranking Member Levin, and members of the Subcommittee, thank you for the opportunity to testify today on behalf of the Mortgage Bankers Association ("MBA").[1]

My name is Karen Kreutziger Powell, and I am the Chief Executive Officer at Flat Branch Home Loans, an independent residential mortgage lender licensed in thirty-six states. I am appearing today in my capacity as a member of MBA's Residential Board of Governors – and as a former Co-Chair of MBA's Independent Mortgage Banker (IMB) Executive Council.

As a lender with deep personal experience originating, securitizing, and servicing Department of Veterans Affairs (VA) Home Loan Program mortgages, I am honored to appear today before this panel.

Specifically, MBA appreciates the focus of today's hearing on proposed legislation that would improve the available suite of VA Home Loan benefits by authorizing a permanent partial claim program – one designed to give our nation's heroes a set of loss mitigation options comparable to those offered through other federal housing programs.

I am also prepared to comment on proposed legislation designed to expand access to the VA Home Loan program to include legatees of Veterans who never used their housing benefit, and I am happy to continue to elaborate on MBA's strongly held belief that the VA funding fee should not be used to as a budgetary offset for expenses unrelated to the Home Loan program.

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 275,000 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 2,000 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.

In recent weeks, MBA has enjoyed the opportunity to work closely with House Veterans' Affairs Committee staff on the topic of partial claims. The industry is grateful for the progress made during those discussions. Accordingly, I am pleased to offer recommendations aimed at improving the proposed legislation. It is important to note the VA may require additional resources from Congress to implement some of these suggested program improvements and changes.

As noted in appearances by prior MBA witnesses before this panel, I want to underscore that our industry, including the many individual MBA member firms who originate and service VA loans, continues to have a positive and productive working relationship with the agency.

The VA Home Loan Program is one of the most significant benefits our nation's heroes earn through their sacrifice and service. MBA recognizes the need to help make this important program more accessible, operationally efficient, flexible, and competitive against other loan options. This is particularly important during times of individual crisis for Veterans and their families – in keeping with the topics and challenges being discussed here today.

We understand this work will involve reaching a bipartisan consensus with the members of this Subcommittee (and full Committee), the full House, your Senate counterparts, the agency itself, and all other key market participants and advocates. MBA looks forward to playing a constructive role as part of this ongoing dialogue.

The VA Home Loan Reform Act (H.R. 8647)

As noted, MBA welcomes legislation that authorizes a permanent partial claim for the VA Home Loan Program. A partial claim is a standard, simple, and time-tested foreclosure prevention solution available to borrowers in other federal housing programs but is sorely missing from the VA's loss mitigation toolkit.[2] A partial claim allows a borrower who has resolved a financial hardship to move their missed payments to the back of the loan following a period of forbearance. Through a partial claim, borrowers can get back on track with their regular monthly mortgage payments or pursue a modification to achieve a more affordable payment.

Despite the recent introduction of the VA's newest loss mitigation program that attempts to combat today's high interest rate environment, the Veterans Affairs Servicing Purchase (VASP) program, MBA believes Veteran homeowners facing a short-term, temporary financial hardship deserve access to this vital tool to reinstate their loan and

[2] The COVID-19 Veterans Assistance Partial Claim (VAPCP) was discontinued in October 2022. The VAPCPC was modeled after the Federal Housing Administration's (FHA) and Rural Housing Service's (RHS) partial claim, as well as Fannie Mae and Freddie Mac's Payment Deferral.

remain in their homes.[3] It seems contradictory that the reward of their sacrifice and service is access to a loan program that offers less of a safety net than other broadly available government loan programs. Access to both solutions will provide Veteran homeowners with a more durable set of loss mitigation options to preserve affordable homeownership in times of financial stress.

While MBA appreciates the legislation's recognition of the need for a partial claim, we are concerned that certain provisions of the bill, namely the repayment plan, will adversely affect Veteran homeowners, mortgage servicers, and the VA. As drafted, H.R. 8647 adds certain hurdles that may negatively impact the borrower benefits of a partial claim. These changes may be motivated by a desire to generate revenue from a partial claim through interest income, but VA will recoup the initial outlay the vast majority of the time as a partial claim requires a borrower to repay their arrearage at payoff, refinance, or maturity of the underlying first lien mortgage.[4] No other government program requires a repayment of the partial claim with interest and we urge amendments to the bill to achieve parity with other federal housing programs.

To do so, the bill should remove Section 3(c), which requires a borrower to agree to enter a monthly repayment within one year of receiving the partial claim funds or face potential interest (0.5%) for failing to do so. While the terms of repayment are undefined, such a provision is not in the best interest of the Veteran borrower and creates unnecessary risk. By definition, a repayment plan does not help borrowers return to the same, if not better, financial position than before their financial hardship.[5]

Additionally, creating a repayment plan raises complications around how to treat the (otherwise performing) first lien mortgage if the borrower is delinquent on the repayment plan. The VA would also need to pay for and manage a complex payment processing operation to collect the interest paid on the partial claims, which could cut into the revenue generated under this approach. To address these issues, we suggest defining a partial claim as a subordinate, non-interest-bearing junior lien that does not require repayment during the mortgage term, similar to the FHA program's partial claim or the GSE payment deferral.

Second, Section 3 should specify that a partial claim is not a claim against the guaranty. The loan guaranty is a fundamental statutory protection against the risk of default a lender receives at loan termination. Currently, H.R. 8647 defines a partial claim as a purchase of a portion of the indebtedness to resolve a default, consistent with VA's existing purchase authority that allows VA to pay a claim before loan termination. Paying

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[3] The Veterans Affairs Servicing Purchase Program allows the servicer to modify qualifying borrowers to 2.5% over 30 or 40 years after the loan is purchased by the VA.

[4] The average life of a mortgage loan is under 7 years, which will fluctuate with market interest rates.

[5] An interest penalty – while nominal - also creates the risk of negative amortization creating a greater financial burden to the Veteran than underlying delinquency itself.

the guaranty portion before termination will adversely affect credit losses for lenders and servicers, and because of the impact on Ginnie Mae security pricing, would also adversely impact affordable financing for Veterans in the future. We recommend that the bill affirmatively state the guaranty cannot be used to fund a partial claim and that, instead, it is a direct purchase of a portion of the indebtedness.

MBA appreciates your consideration of the recommendations for improvement to the bill outlined here. Our association – and its members that originate, service, and securitize VA Home Loan Program mortgages – looks forward to continuing to work with the agency, this committee, and other key stakeholders on H.R. 8647.

The VA Housing Loan Forever Act of 2023 (H.R. 8607)

The *VA Housing Loan Forever Act of 2023* is a well-intended piece of legislation meant to redress the harm that historical discrimination inflicted on Veterans of color – including World War II Veterans – during a period of time stretching from the 1940s to the 1970s. MBA supports the bill's intent, which is to transfer the VA housing benefit to the legitimate heirs of those brave service members who were wrongfully denied the benefit they earned.

For this legislation to become a successful policy that best supports the families of those Veterans' whose benefits were not realized, we recommend several changes be made to the legislation in its current form. These changes are offered to address potential implementation concerns, as well as mitigate concerns that the bill, as drafted, could expose the VA Home Loan program to a considerable threat of fraud and abuse without proper safeguards in place.

As the legislation is currently drafted, VA would be responsible to confirm legatee status on an application-level basis, validate and authenticate the transfer of the benefit, validate and authenticate revocations of the transfer, and maintain a database of such transfers and revocations. MBA fears these new cumulative set of responsibilities will prove to be difficult to track and administratively unwieldy for the agency.

Therefore, we are concerned that the requirements needed to verify the legatee will lead VA to ultimately delegate this responsibility to lenders in a similar fashion to the way the agency currently delegates credit underwriting approval. Without an appropriate "safe harbor" for lenders, this potential responsibility would present a major liability risk for participating lenders who make good faith efforts to ascertain and validate claimed legatee status – but may not always get it right.

The VA program is unique among federal programs in that it offers a competitively priced "zero-down" mortgage. This is an especially attractive option in a market where down payment funds remain the biggest hurdle for first time home buyers, and VA does not have a cap on loan limits for higher-income homebuyers. Taken together, an overly broad transfer of benefits will be ripe for abuse and/or invite instances of outright fraud, such as forged signatures of a Veteran or signatures made under duress, in addition to the anticipated difficulties of dealing with an elderly population of potential new beneficiaries. MBA is concerned about the burden this would impose on the VA — and potentially the lender by delegation — to police these anticipated program changes.

Existing data consistently shows that loans to Veteran borrowers perform better than loans to other borrower cohorts when factors like FICO score and debt-to-income ratio are taken into account. If the VA program is expanded to include a much larger and potentially unpredictable non-veteran population, we anticipate the VA program would begin performing similarly to, or perhaps even worse, than the FHA loan program over time, meaning higher delinquency rates and greater claim volume. This, in turn, could lead to higher Funding Fees, more aggressive lender credit overlays, or the VA itself tightening the program credit requirements. We worry that these potential changes would reduce the overall value of the VA loan benefit over time and diminish the advantage that it affords Veterans over other loan programs.

Other Potential Policy Options

NAR Litigation Settlement Impacts on VA Borrowers

As you are aware, the National Association of Realtors® (NAR) entered a proposed settlement agreement, pending court approval, to settle numerous class action lawsuits alleging violations of antitrust law. If approved, the key changes required by the settlement are projected to take effect in August and could impact the decision made by some sellers to cover the cost of the buyer agent commission. In some instances, sellers may decide to forego covering a buyer's broker commission – particularly if buyers are offering to cover the cost themselves. Today, the VA prohibits Veterans from paying fees or commissions to real estate agents or brokers in relation to a VA home loan. Thus, without the ability to potentially match competing purchase offers that are willing to cover buyer agent commission, Veteran borrowers face a distinct disadvantage.

MBA is glad that VA has now taken a temporary measure to address this prohibition. We urge the VA to permanently amend its regulations to allow Veteran borrowers to pay reasonable and customary fees and commissions to retain agents that will represent their interests in the transaction.

Drafting Table

As we have noted in prior testimony before this Subcommittee, MBA encourages Congress to ensure the VA has the necessary resources to implement a permanent public input process for the development of transformative policies before they are required to be implemented. Similar to FHA, a "Drafting Table" for interested stakeholders would allow the VA to receive thoughtful comments on the impact of changes to a lender and servicer's operations prior to implementation and enforcement. Transparency and collaboration in policy development will ensure VA's mission is best achieved, will result in a more efficient mortgage program, and will improve outcomes for veterans.

VA Funding Fees

MBA remains concerned about the repeated use of VA home loan funding fee increases to pay for non-housing related veterans' benefits. As Congress considers several wide-ranging pieces of legislation that would expand or alter veteran benefits across a range of programs, I want to make clear that MBA opposes legislation that increases or extends VA funding fees to offset the costs associated with new and/or unrelated expenditures.

Simply stated, these funding fee increases and extensions implemented in recent years (and being considered once again) are not in any way correlated with the actual credit risks of Veteran homebuyers. If that were the case, the actual funding fee would be a fraction of where it currently sits today, meaning that far more Veterans would be able to qualify to purchase a home. Instead, it is out of reach for many Veterans today. Those who *can* access the benefit today are paying far more, in the midst of a housing affordability crisis, to help subsidize other federal programs.

These continued increases and extensions of previous increases severely threaten the VA home loan program. While any individual funding fee increase may be small, the cumulative impact of the many hikes and extensions over the past decade is worrisome and significant. We recognize that in many instances the funds diverted from the home loan program fund worthy and important initiatives, but firmly believe that Congress should fund that work separately rather than diminish the strength of the home loan program to achieve those ends.

We urge Congress to work with the Biden Administration to ensure that VA funding fees are set at levels commensurate with the risks associated with VA-guaranteed home lending. Congress should conduct appropriate oversight and analysis of past funding fee increases before simply defaulting to the practice of levying further increases or extensions.

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Conclusion

Once again, MBA appreciates the opportunity to comment on the many critical issues that impact the VA Home Loan Program, including the specific legislation before the Subcommittee at this hearing today. We value our partnership with Congress and the VA on these subjects – and our shared mission to help Veterans utilize their earned benefit to achieve homeownership.

Our association looks forward to continuing to work with this Subcommittee – and the full Committee – to forge practical solutions including, but not limited to, the legislation to make permanent a VA partial claim option to help distressed borrowers. We also look forward to working with Congress to help provide the VA with the resources necessary to implement changes and improve the delivery of the Home Loan Program benefit to our nation's heroes.

I look forward to answering any questions you may have.