



**Statement for the Record
Housing Policy Council**

House Committee on Veterans' Affairs
Subcommittee on Economic Opportunity

Legislative Hearing on Pending Legislation
June 12, 2024

On behalf of the Housing Policy Council¹ (HPC), thank you to Chairman Van Orden and Ranking Member Levin for the opportunity to submit a statement for the record at the June 12 hearing on: “Pending Legislation.”

We recognize that there are two bills under consideration but will dedicate more time in this statement to the VA Home Loan Program Reform Act, which addresses a critical concern for the financial services industry – VA’s existing set of loss mitigation programs do not adequately address the needs of Veterans. As the volume of VA home loans has grown,² the number of Veterans who face financial distress and need assistance has also grown and the VA loss mitigation programs have not kept pace.

Given the important mission of the VA Home Loan Program, the exponential growth of the program, and changes in state and Federal foreclosure policies over the last decade, the VA could benefit from additional authorities and resources, which would enhance the agency’s capacity to fulfill its critical mission. Thus, HPC supports the VA Home Loan Program Reform Act’s expansion of the VA’s loss mitigation toolkit by authorizing the VA to establish a permanent “Partial Claim” program similar to the program that expired in October 2022, which successfully provided many Veterans with the assistance needed to make up missed payments while keeping their original mortgage rate. However, with this support, HPC would like to offer three recommendations for strengthening the legislation to make the VA’s powers more like those of the Federal Housing Administration (FHA), so that Veterans have equivalent access to loss mitigation options when they run into trouble.

HPC also supports the VA Housing Loan Forever Act but would similarly recommend some enhancements to strengthen the legislation – primarily through targeting the benefit transfer more narrowly to only spouses and children of the Veteran.

VA Home Loan Program Reform Act

FHA’s historical experience demonstrates that the partial claim program is effective for borrowers who sustain a temporary loss of income but subsequently recover their economic stability and can resume making their mortgage payments at the previous level. It may also be used in combination with a loan modification to lower monthly payments. However, this solution is a challenge for the VA, with its 25 percent maximum guaranty structure. The reason for this is that any missed payments associated with delinquency or forbearance must be advanced to mortgage-backed security holders. The servicer covers this risk and cost initially,

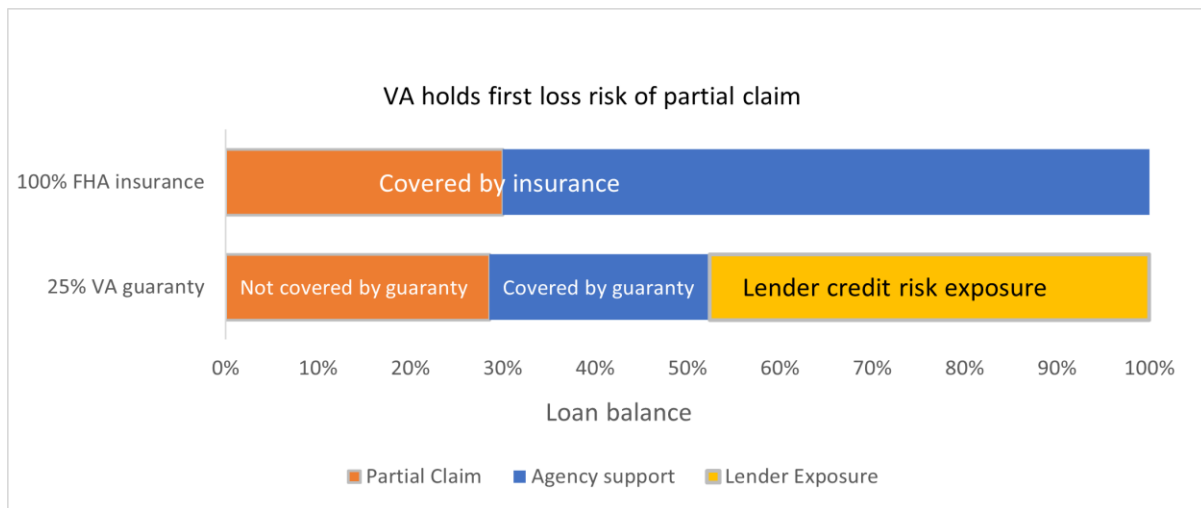
¹ HPC is a trade association comprised of the nation’s leading mortgage lenders, servicers, mortgage insurers, and title and data companies. HPC advocates for the mortgage and housing finance interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promoting of lending practices that create sustainable home ownership opportunities leading to long-term wealth-building and community building for families. www.housingpolicycouncil.org

² Between 2011 and 2021, the number of VA originations quadrupled from just over 350,000 to over 1.4 million loans.

with the expectation of future reimbursement from VA. For FHA, with its 100 percent loan insurance, there is no issue as this coverage amount easily covers the servicer reimbursement. For VA, however, with only a 25 percent guaranty, this is more difficult. VA loans are pooled in Ginnie Mae mortgage-backed securities and Ginnie Mae requires a sufficient level of government guaranty coverage to protect the Ginnie Mae financial interest.³ We too, think that it is critically important to protect the guaranty. Yet, the limited guaranty and the coverage requirements make the math difficult for a VA partial claim program. If the partial claim amount is set at the level that we think is optimal of up to 30 percent – the amount that VA allowed under the previous COVID Partial Claim Program and what is allowed under FHA and USDA Programs – and the claim offsets the VA 25 percent loan guaranty, there would be no insurance available to cover future losses.

This is in direct contrast to FHA, with its 100 percent insurance coverage. One of the great benefits of the FHA partial claim is that it is roughly budget neutral because the partial claim has proven over time to save the government money on unnecessary foreclosures.

Because budget neutrality is not easily replicable with the VA 25 percent loan guaranty, the VA decided to take a first-risk loss on the COVID Partial Claim Program. In other words, the VA allowed the missed payments to be folded into a subordinate lien held by the VA and did not tap its guaranty at all to pay for this expense. VA was forced into this program design because they chose not to offset the 25 percent loan guaranty with a 30 percent partial claim. Had VA instead chosen to reduce the 25 percent loan guaranty by the amount of a partial claim, the partial claim could consume the entirety of the VA guaranty and make these loans ineligible for placement back into Ginnie Mae securities. That also is an untenable outcome for the program and its borrowers, and we appreciate that the VA chose to protect the guaranty.



³ Ginnie Mae 5500.3, Rev. 1, Chapter 24: For a VA-guaranteed loan to be eligible for pooling, the following additional requirements apply: The amount of cash down payment and/or equity, plus the amount of available VA guaranty must equal at least 25% of (i) the purchase price of the property or (ii) the Certificate of Reasonable Value (CRV), whichever is less. The guaranty fee charged by VA must not be included in this calculation.

If VA had not accepted the first risk loss, ahead of the guaranty, in the COVID Partial Claim Program, the risk would have been borne by servicers. The VA recognized that such a model was entirely uneconomical; servicers could not be expected to hold all of the credit risk and forgo re-pooling the loans into Ginnie Mae securities. Such a program would lead to massive disruptions to the VA lending market.

The VA Home Loan Program Reform Act recognizes this challenge by capping the partial claim amount at 20 percent of the loan balance. The legislation is silent on whether this will offset the 25 percent maximum loan guaranty, or whether it will be in addition to the 25 percent maximum loan guaranty. If the partial claim does not tap into the 25 percent guaranty, the risk and cost of the partial claim will shift to the VA, similar to the COVID Partial Claim Program. This means that, under the Veterans Housing Stability Act of 2024, the VA's actual risk position changes from a maximum loss of 25 percent to a maximum loss of 45 percent (the 20 percent partial claim is in the first-loss risk position, as a subordinate lien that is to be repaid at the time of the first lien payoff). The additional VA risk exposure is not budget neutral as it is in the FHA program.

However, if the Partial Claim amount of 20 percent is offset against the 25 percent loan guaranty, then the cost of the program will be shifted to servicers and will lead to massive disruptions to the VA lending market, including restrictions on access to VA credit for Veterans and lender withdrawal from the VA program. We find such an outcome to be untenable and would oppose this approach. In other words, we consider it paramount to set up the Partial Claim program in manner that doesn't jeopardize the guaranty.

We recognize that standing up a Partial Claim program that introduces a new form of first-risk loss creates significant costs that must be funded. The options for absorbing the costs of a Partial Claim are limited, and include:

1. Offset the costs of future claims against the guaranty;
2. Generate additional revenue through charges or fees to the borrower to cover some or all the losses (VA Home Loan Program Reform Act adopts this by obligating the borrower to repay the partial claim);
3. Appropriate funds to VA to offset the losses;
4. Increase the guaranty fees for future Veteran homeowners;⁴ or
5. Shift the cost of the losses to servicers, by not reimbursing servicers.

We acknowledge that all these options are challenging, and some are simply infeasible. We also note that the FHA program does not have to confront these unfortunate policy/budgetary options, as the FHA is a 100 percent insurance program and has the flexibility

⁴ This same policy goal could be achieved by reducing the number of borrowers who are entirely exempt from paying the VA guaranty fee or allocating more of the guaranty fee to VA housing programs.

to pay for unexpected losses by adjusting future mortgage insurance premiums. We support the expansion of loss mitigation assistance to Veterans, such that Veterans can access options similar to those available to FHA borrowers. But, without similar loan guaranty authority or without separate funding for a Partial Claim, the VA does not possess the budgetary *resources* to do so. Therefore, consideration of enhancing and expanding the VA home loan program is warranted.

With that as background we will provide suggested technical amendments for funding the costs of a Partial Claim program:

Recommendation #1: Borrower Repayment of Partial Claim Advance

Suggested Technical Amendments: We recommend delaying the borrower repayment window from one year to three years.

The bill, as drafted, requires borrower repayment of the Partial Claim advance in monthly installments beginning one year after the execution of the Partial Claim. The incoming cash flows from borrower repayments will provide a partial source of funding to support a permanent program.

While we would prefer alignment with the FHA and USDA programs, which allow a zero-interest subordinate lien due upon loan payoff, we recognize that this may not be possible without a funding mechanism, like an appropriation. Therefore, we acknowledge that charging the formerly delinquent borrower a minimal interest rate with an established repayment term could be an effective method to cover at least a portion of the program cost. This is an idea worthy of consideration. However, if Congress pursues this approach to funding the program, we believe that it is critical to consider the impact of that repayment on the Veteran borrower. To prevent any sort of payment shock while a borrower is still financially recovering from their delinquency, we recommend that the repayment begin three years after the subordinate lien is established, rather than the one-year proposed in the current legislation.⁵ The 3-year timeline will still allow the VA to recover money in a timely fashion but will more closely align the FHA Payment Supplement Program which similarly allows a formerly delinquent borrower's mortgage payment to increase after three years.

Although the bill text does not address the operational aspects of Partial Claim implementation, the collection of payments for the subordinate lien held by the VA would be different from the VA's previous program operations (and different from FHA and VA). The VA must have sufficient resources to instruct, monitor, and oversee the performance of the

⁵ Another reasonable option is to delay payment until six years after the subordinate lien is established, as this is the current expected payoff period for VA loans. This means that most VA loans will pay off in six years, and thus the VA could be made whole on the majority of loans without spending the time and resources trying to collect repayment of the partial claim.

subservicer that the VA procures to manage the collections. Further, the VA must have established policy in place to address how the vendor-subservicer will handle borrower delinquencies on the subordinate lien. The legislation need not prescribe how the VA manages this responsibility, but Congress should be aware that the success of the program will depend on diligent supervision of the VA subservicer contractor, and the VA needs adequate resources to perform this oversight.

Recommendation #2: Increase the maximum amount of the VA guaranty and the maximum available Partial Claim.

Suggested Technical Amendments: We recommend that the amount of the Partial Claim be set at 30 percent of the unpaid principal balance of the guaranteed loan, but only after the VA guarantee itself is raised to 50 percent of the unpaid principal balance.

It will be no surprise that the industry prefers a Partial Claim program that sets a higher cap, up to 30 percent of the unpaid principal balance, to align with the program terms offered by FHA and the USDA. However, we acknowledge that a 30 percent Partial Claim, when the VA currently only provides a 25 percent maximum guaranty is not viable as an offset against the maximum guaranty. And, as mentioned above, it is critical that the Partial Claim program not threaten the Veterans entitlement, the guaranty itself.

Thus, we recommend that Congress consider increasing the VA maximum guaranty to 50 percent, which would be a return to its historical structure,⁶ and which will enable Congress to institute a more effective 30 percent Partial Claim program that closely mirrors the terms offered by FHA and the USDA. Raising the maximum guaranty would potentially increase the guaranty fees that future Veteran homeowners pay, but it would also provide the resources necessary to pay for meaningful loss mitigation programs in a fiscally responsible way. This would provide the best financial results for the VA, as the program would be paid for in full, and provide Veterans with equivalent loss mitigation options that are available under other government lending programs and help increase the Veteran homeownership rate (by decreasing unnecessary foreclosures).

Recommendation #3: Eliminate the prescribed, mandatory sequence of loss mitigation options.

Suggested Technical Amendments: We recommend eliminating the following subsection from section 2(d) of the legislation: “The Secretary may prescribe loss mitigation procedures, including a mandatory sequence in which the holder of a loan guaranteed

⁶ Legislative History of the VA Home Loan Program (<https://www.benefits.va.gov/homeloans/documents/docs/history.pdf>).

under this chapter shall offer loss mitigation options to Veterans, to help prevent the foreclosure of any such loan.”

We oppose the authorization for the VA to establish a “mandatory sequence” or hierarchy for the application of loss mitigation programs.

Given that the FHA and other federal entities do not rely on any statutory authority to establish their loss mitigation hierarchies, the VA does not need this type of statutory authority. However, if the Congress wants to leave such a provision in the bill, we recommend removing the word “mandatory” from the legislative text.

VA Housing Loan Forever Act

HPC supports the purpose of the VA Housing Loan Forever Act. However, with this support, HPC would like to offer one recommendation that we believe would improve the success of such a program.

Recommendation #1: Limiting the definition of a Legatee.

Suggested Technical Amendments:

We are concerned about the VA’s ability to operationalize this legislation, given the broad set of potential beneficiaries and the need for valid, accessible records that will serve as evidence that some Veterans did not exercise their right to the VA home loan guaranty benefit. It is no secret that many veterans’ records, particularly those from before 1970, were destroyed in a fire. Therefore, we are unsure how the VA can efficiently and accurately identify whether a qualifying veteran “has” or “has not” received housing loan benefits. This could result in eligible descendants being unjustly denied benefits, fraudulent claims being approved, or just an overall unacceptable timeline for real estate transactions.

VA capacity issues could be compounded by an influx of thousands of new loan applications. Extending the home loan benefit to descendants might negatively impact currently eligible veterans by overloading the system, lead to longer processing times, or delays in accessing benefits.

Another concern is that the expansion of the eligible population could change the risk profile and performance of the VA Home Loan Program. Currently, the VA Home Loan Program has a significantly lower mortgage default rate than other government lending programs. Some of this is likely attributable to the VA’s residual income underwriting process, which requires lenders to verify that the borrower has sufficient income to afford their new housing payment and also satisfy other obligations. Yet, it may also be attributable to the stability of Veteran disability payments. And it is likely that the military culture of honoring commitments also serves the program well. By significantly expanding the eligible population that the VA is expected to serve,

it could introduce new risk into the program, and the propensity for default could begin to look like other government lending programs; such a change would likely require an increase in the need for future Veteran homeowners to pay higher guaranty fees.

The simplest way to address these operational and risk factors is by narrowing the pool of descendants that could qualify for a VA loan. Under the current legislation, eligible legatees can include spouses, children, grandchildren, and “any other direct descendant.” This very broad proposed definition of legatee could overwhelm the VA’s ability to provide certificates of eligibility, add significant complexity for lenders marketing and operationalizing which borrowers qualify, and introduce unnecessary risk into the VA Home Loan Program.

To limit these concerns, we recommend that a qualifying legatee definition be limited to a spouse or child of the qualifying Veteran, and that only one legatee can use the program at a time, so that the eligible population is significantly smaller and more feasible for the VA to validate. Validation will be more practicable because the VA will have a reasonable and potentially documentable way to determine that a borrower might qualify as a legatee (through a marriage license or a birth certificate). It will also be smaller because the certificate of eligibility will be available to only one person at a time.⁷

These minimal changes will still serve the core objective of compensating descendants of those who suffered from past discrimination, while minimizing very real operational and risk issues to the VA.

Conclusion

HPC appreciates the House Committee on Veterans’ Affairs interest in the VA Home Loan Program Reform Act and the VA Housing Loan Forever Act. As discussed above, we support these efforts, but do believe that both bills could benefit from some changes. Should you have any questions about the suggestions we make here or the VA Home Loan program more generally, please do not hesitate to reach out to HPC.

Chairman Van Orden and Ranking Member Levin, thank you again for bringing needed attention to Veteran housing issues. The Housing Policy Council looks forward to working with you.

⁷ We support the certificate of eligibility being restored when the borrower pays off their original loan, consistent with how the program currently works for Veterans.