



MORTGAGE BANKERS ASSOCIATION

June 12, 2017

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

RE: RIN 2900-AP62-Loan Guaranty: Revisions to Allowable Charges and Fees Assessed Incident to VA-Guaranteed Home Loans

Dear Mr. London:

The Mortgage Bankers Association (MBA)¹ thanks the U.S. Department of Veterans Affairs (VA) for its issuance of Advance Notice to evaluate the fees a veteran may pay or be charged to obtain a VA-guaranteed home loan. MBA has been a staunch supporter of the Loan Guaranty Program, which has been critical in providing veterans access to affordable housing. MBA commends the VA for its commitment to providing safe and sustainable financing options to veterans who have dedicated their lives to serving our country. MBA also appreciates VA's continued support of veterans through its responsible policies and guidelines.

Given that the allowable fees policy has remained the same for the past 63 years and that the regulatory environment has changed dramatically, MBA believes that it is timely for the VA to re-evaluate its allowable fees policy to ensure that it is still serving its intended purpose in the most effective way. The policy was developed to protect veterans from excessive and unnecessary closing charges, which is still an appropriate goal. However, given the significant recent regulatory changes that have greatly improved consumer protections, the VA should consider whether changes in the allowable fees policy could streamline the home buying process for the borrower and provide improved process efficiencies for lenders, thus encouraging more lenders to participate in the Loan Guaranty Program. Additionally, MBA strongly encourages the VA to undertake a comprehensive review of its definitions and identify those that should be clarified and modernized. MBA recommends that VA provide a strong education component to

¹ 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 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 2,200 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.mortgagebankers.org.

accompany any revisions to ensure that changes are clear and can be applied easily and consistently by lenders of all business models. We also believe increased education about the Loan Guaranty Program will help more lenders, real estate agents and veterans become knowledgeable about the program and increase the number of veterans taking advantage of the benefit.

Market Impact

As stated above, the purpose of the allowable fee policy was to protect the veteran from being charged excessive fees by lenders. In 1954, the administration significantly altered the policy on fees that veterans could pay or be charged. Previously, lenders were able to charge costs and expenses under local lending customs. The VA ultimately decided to make a broad change by restricting the types of allowable and non-allowable charges and fees that could be assessed to a veteran through the creation of an itemized list. The VA's core objective in changing the rule was to provide additional consumer protections to veterans by safeguarding them from unreasonable closing costs.

The allowable fees policy was well-intended and has been effective in keeping closing costs affordable for many veterans. It is important to note, however, that just because the veteran is not able to pay certain fees, in most cases it does not mean that those costs are not incurred. The cost to originate a loan is not less for veterans compared to other homebuyers and veterans end up paying through other means, such as a higher interest rate. In some cases, certain lenders may elect to absorb the costs. As larger lenders may be able to assume these costs, smaller lenders may not be able to do so. Participating in the Loan Guaranty Program is a serious financial decision for some lenders and the costs may be preventing some small-to-midsized lenders from offering this VA benefit.

Additionally, based on some lenders' experiences, the list of allowable and non-allowable charges may not be applied consistently among lenders because of unclear definitions for specific fees. This uncertainty in the fee structure is impacting some veterans' ability to obtain mortgages because sellers and lenders are absorbing many of the customary real estate transaction expenses. On some occasions, especially in markets with tight inventory, sellers and their listing real agents may avoid contracts from homebuyers using VA financing because they do not want to be held responsible for covering disallowed fees.

Policy Considerations

If VA decides to evaluate the allowable fee policy, MBA recommends that it consider the following:

Current Regulatory Environment

The VA should consider that the regulatory environment has changed significantly since 1954, and especially since the implementation of the Dodd-Frank rules. Safeguarding consumers from unreasonable costs and providing additional consumer protections were some of the main objectives of the legislative and regulatory reforms that were enacted after the recent mortgage crisis. Lenders are now operating in a regulatory environment with the safest and strongest

consumer protection regulations in history and some of the concerns that the allowable fees policy were meant to address are dealt with by overarching consumer protection policies that safeguard all consumers. Most notable of the regulations that now provide consumer protections are:

- **TILA-RESPA Integrated Disclosure (TRID)** In addition to its other requirements, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) required the Consumer Financial Protection Bureau (CFPB) to propose disclosures for consumers that combine the loan origination disclosures required under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedure Act (RESPA). According to the CFPB, these disclosures are more useful to consumers because they provide a clearer presentation of loan and settlement costs so consumers can shop and compare loans. The rule also restricts initial estimated loan charges from increasing unduly at settlement.
- **Ability to Repay (ATR)** Under Dodd-Frank, lenders are required to determine that a borrower has a reasonable ability to repay a loan or risk significant liability. Most lenders have determined to meet this requirement by originating Qualified Mortgages (QMs). In order to be treated as a QM and gain a safe harbor for ability to repay compliance, the loan and the borrower must meet several requirements including limiting the APR to 150 bps over the Average Prime Offer Rate (APOR) for the loan and limiting points and fees to 3 percent of the loan amount.
- **Qualified Mortgages (QMs)** The ATR rule provides a presumption of compliance for loans that are originated as QMs, which provides greater certainty to lenders and mortgage investors regarding potential liability where there has been compliance but a claim is made.
- **VA QMs** Under Dodd Frank, the VA is authorized to develop its own QM standards consistent with the Act. The rule requires that VA QMs also have the same limits on their APRs and points and fees.

MBA recommends that the VA take into consideration existing regulations that provide consumer protection, and determine if they can help streamline the home buying process for both the borrower and lender, without compromising veteran protections.

Clarity on Definitions Supports Industry Compliance

As noted in the “Market Impact” section, the industry would benefit from additional guidance on program definitions. Additional guidance would provide clarity to lenders and would help ensure consistent compliance with program guidelines. Geographical and lender differences influence the interpretation of some terminology and it would be beneficial if the VA would provide clear and concise definitions to help the industry apply policies consistently.

Increased Education Supports Program Participation

The VA Loan Guaranty Program is a remarkable benefit for veterans and the industry supports more veterans receiving VA loans and more lenders participating in the program. Increased industry education and outreach would help lenders better understand how the program works, dispel myths and misconceptions, and assist with compliance. MBA offers its services to assist with lender education and outreach.

Additionally, MBA strongly recommends that the VA increase its education and outreach efforts to real estate agents and veterans. Some lenders have experience with real estate agents who have dissuaded prospective buyers from using this benefit because they believe that sellers have to pay more fees with a VA borrower. Unfamiliarity with how the program works makes some listing real estate agents wary of the process, thus they discourage some sellers from accepting offers from veterans using VA loans. Providing accurate information to real estate agents and veterans would increase their knowledge and comfort with VA loans.

Under this new administration and Congress, there are opportunities to streamline VA regulations for VA homebuyers and lenders. MBA appreciates the VA's consideration of evaluating VA processes and for reviewing industry comments regarding the list of acceptable charges and fees a veteran may pay. Should you have questions or wish to discuss these comments, please contact Tamara King, Vice President of Residential Policy and Member Engagement, at (202) 557-2758 or TKing@mba.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Mills". The signature is written in a cursive, flowing style.

Pete Mills
Senior Vice President, Residential Policy & Member Engagement