

Testimony of the  
**Mortgage Bankers  
Association**

U.S. Senate Committee on Veterans' Affairs

For the Hearing Titled:  
**“Pending Legislation”**

August 1, 2018

Chairman Isakson and Ranking Member Tester, the Mortgage Bankers Association (MBA) appreciates the opportunity to submit written testimony on the pending legislation being considered before the Senate Committee on Veterans' Affairs. In particular we are pleased to share our views on H.R. 299, the *Blue Water Navy Vietnam Veterans Act of 2017*.

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. 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. MBA's membership of over 2,300 companies represents all elements of real estate finance, including firms serving both the single-family and commercial/multifamily markets. Our membership features commercial banks, community banks, credit unions, independent mortgage bankers, investors, brokers, and industry vendors, among others.

We applaud the Committee for its efforts to provide adequate medical benefits for veterans who were exposed to dangerous chemicals in the course of their service. And while H.R. 299 contains a number of provisions relevant to such healthcare-related concerns, MBA will limit its views to Sections 6 and 7 of the legislation, which address the U.S. Department of Veterans Affairs (VA) Home Loans program. We also wish to draw the Committee's attention to another pressing problem in the market for VA-guaranteed refinances, which has prevented some loans from serving as collateral in Government National Mortgage Association (Ginnie Mae) pools.

### **Section 6(a)**

Section 6(a) of H.R. 299 adjusts the size of the VA loan guaranty for a subset of loans. Under existing law, the VA guaranty on loans greater than \$144,000 cannot exceed the lesser of: 1) 25 percent of the government-sponsored enterprise (GSE) conforming loan limit, reduced by the amount of entitlement previously used and not restored; or 2) 25 percent of the loan. The proposed changes in the legislation would adjust the VA guaranty on loans greater than \$144,000 to 25 percent of the loan, reduced by the amount of entitlement previously used and not restored.

For veterans who have not used their entitlement, or have had their entitlement fully restored, the new calculation would not change the VA guaranty on loans at or below the GSE conforming loan limit. It would, however, increase the VA guaranty on loans above the GSE conforming loan limit. We believe this adjustment is warranted, as it will promote access to credit for veterans living in higher-cost areas of the country.

However, the proposed adjustment would have the effect of lowering the VA guaranty on second properties purchased by the veteran, in cases in which the second loan is at or below the GSE conforming loan limit. As such, this adjustment would make it more difficult for veterans to obtain zero-down payment financing for many second properties. Given the frequency with which veterans may be required to relocate due to a permanent change of station, it is common for veterans to purchase a second home in their new station, while continuing to own and rent their first home. In such a scenario, we believe it is appropriate to allow for zero-down payment financing for the second home, particularly if the loan is at or below the GSE conforming loan limit.

In order to address this concern while maintaining the increased VA guaranty on more expensive properties, we recommend that the language in Section 6(a) be further amended so as to use the existing calculation for loans at or below the GSE conforming loan limit and the new calculation contained in Section 6(a) only for loans above the GSE conforming loan limit. This amendment would not change the VA guaranty for veterans who have not used their entitlement or have had their entitlement fully restored, relative to H.R. 299. It would, however, allow veterans greater opportunity to use zero-down payment financing for their second homes. We would also recommend that such amendments clarify the application of existing VA policies regarding restoration of entitlement, including any changes to this process.

We therefore support this section of the legislation, provided that it is amended per the recommendations described above.

### **Section 6(b)**

Section 6(b) of H.R. 299 changes the VA loan fee schedule. The changes to the schedule, which are summarized below, would increase the overall fees collected from veterans in association with VA-guaranteed loans. The changes would also equalize the fees paid by active duty veterans and reservists, as reservists often pay higher fees in the current system.

It appears that these increased loan fees are serving to offset other expenditures contained in the legislation. And while we are not offering comments on the efficacy of the healthcare provisions of the legislation, we firmly believe that mortgage borrowing costs should not be increased to pay for non-housing-related expenditures. The loan fees charged to veterans should reflect the credit risk associated with the VA guaranty, and any fee increases that are unrelated to this risk unnecessarily raise the cost of mortgage credit for veterans. As such, we oppose any changes to VA loan fees that do not correspond to the credit risk associated with the VA guaranty.

The table that follows displays the change in VA loan fees from the existing baseline for each loan type, borrower type, and closing date.<sup>1</sup>

| Type of Loan                          | Active Duty Veteran | Reservist        |
|---------------------------------------|---------------------|------------------|
| <b>Initial loan with 0-5% down</b>    |                     |                  |
| Prior to 9/30/2027                    | 2.15 → 2.40         | 2.40 (unchanged) |
| Between 9/30/2027 and 11/30/2027      | 1.40 → 2.40         | 1.65 → 2.40      |
| Between 12/1/2027 and 9/30/2028       | 1.40 → 2.15         | 1.65 → 2.15      |
| On or after 10/1/2028                 | 1.40 (unchanged)    | 1.65 → 1.40      |
| <b>Subsequent loan with 0-5% down</b> |                     |                  |
| Prior to 9/30/2027                    | 3.30 → 3.80         | 3.30 → 3.80      |
| Between 9/30/2027 and 11/30/2027      | 1.25 → 3.80         | 1.25 → 3.80      |
| Between 12/1/2027 and 9/30/2028       | 1.25 → 3.30         | 1.25 → 3.30      |
| <b>Loan with 5-10% down</b>           |                     |                  |
| Prior to 9/30/2027                    | 1.50 → 1.75         | 1.75 (unchanged) |
| Between 9/30/2027 and 11/30/2027      | 0.75 → 1.75         | 1.00 → 1.75      |
| Between 12/1/2027 and 9/30/2028       | 0.75 → 1.50         | 1.00 → 1.50      |
| On or after 10/1/2028                 | 0.75 (unchanged)    | 1.00 → 0.75      |
| <b>Loan with at least 10% down</b>    |                     |                  |
| Prior to 9/30/2027                    | 1.25 → 1.45         | 1.50 → 1.45      |
| Between 9/30/2027 and 11/30/2027      | 0.50 → 1.45         | 0.75 → 1.45      |
| Between 12/1/2027 and 9/30/2028       | 0.50 → 1.25         | 0.75 → 1.25      |
| On or after 10/1/2028                 | 0.50 (unchanged)    | 0.75 → 0.50      |

### Section 6(c)

Section 6(c) of H.R. 299 requires VA loan fees to be collected from veterans with service-connected disabilities rated as less than total, surviving spouses of such veterans, or veterans that receive a loan in excess of the GSE conforming loan limit. This section also exempts veterans serving on active duty who were awarded the Purple Heart from paying VA loan fees. Under existing law, VA loan fees are not collected from veterans receiving compensation (or eligible to receive compensation) due to a service-connected disability or from surviving spouses of veterans who died due to a service-connected disability.

As noted above with respect to Section 6(b), it is unclear that this provision, which would have the effect of increasing the overall fees collected through the VA Home Loans program, is being proposed due to a commensurate change in the credit risk profile or the financial health of the program. Veterans with service-connected

<sup>1</sup> Fees are expressed as a percentage of the total amount of the loan guaranteed, insured, or made, or, in the case of a loan assumption, the unpaid principal balance of the loan on the date of the transfer of the property. Red cells indicate an increase in the fee. Green cells indicate a decrease in the fee. Yellow cells indicate no change in the fee.

disabilities have sacrificed for their country, and the existing waiver from paying VA loan fees is an appropriate benefit. We would strongly oppose removing this benefit for the purpose of raising funds to offset non-housing-related expenditures.

Similarly, the purchase of a home with a loan that exceeds the GSE conforming loan limit is unrelated to the veteran's service-connected disability. Because the VA loan fees are expressed as a percentage of the loan, veterans who purchase more expensive homes already pay higher absolute fees than comparable veterans who purchase homes using loans below the GSE conforming loan limit. The proposed legislation would prevent veterans with service-connected disabilities from utilizing their fee waiver if they purchase a more expensive home, but the purpose of the waiver is not influenced by the size of the loan. If Congress determines that veterans with such disabilities warrant a fee waiver, the size of the loan should not be a relevant factor in that determination. In other words, we believe that veterans with similar disabilities should be treated equally, regardless of the value of their home or the size of the loan that is used. As such, we oppose Section 6(c)(2) of the legislation.

## **Section 7**

Section 7 of H.R. 299 allows VA-approved appraisers to conduct appraisals solely on the basis on information gathered and provided by a third party. Under existing law, VA maintains a list of approved appraisers who are selected on a rotating basis to conduct appraisals for properties to be financed with loans that will feature a VA guaranty. Such appraisers must meet minimum qualifications to obtain approved status, which are verified through written testing, sample appraisals, training experience, and recommendations from other appraisers. This process better ensures that the VA guaranty is properly protected from inflated or otherwise inaccurate valuations.

In recent years, however, VA-guaranteed financing has been inhibited in certain parts of the country due to appraiser shortages or other difficulties in obtaining appraisals from approved individuals. This problem is often more acute in rural communities where it may take an approved appraiser many hours of travel to reach the property. In these situations, appraisal "turn times" can be lengthy, which can then delay closings, force extension of rate locks, or result in penalty fees or the loss of earnest money deposits should the borrower opt for a non-VA-guaranteed loan.

Allowing appraisers the ability to receive property information from third parties could effectively address this problem by scaling back the travel time required of appraisers. This provision could also allow appraisers to make better use of the improved technology that is facilitating large-scale data collection by industry vendors. Importantly, while the appraiser is relying on information provided by a third

party, the responsibility for conducting the appraisal remains with the approved individual.

However, the legislation as currently drafted provides that VA “may” issue guidance prior to prescribing regulations to implement this change. We would recommend that VA instead be required to issue guidance ahead of any regulations that are prescribed. This guidance should include details regarding the standards that must be met in terms of the collection of property information by third parties. VA has already issued similar guidance with respect to third parties that provide loan underwriting services, such as verification of borrower income, employment, and assets.<sup>2</sup> And while VA may clarify standards for the use of third parties in any implementing regulations, it is important that there be no confusion in the market prior to the issuance of these regulations, and therefore guidance should be required prior to the effective date of this section.

Similarly, to allow for additional flexibility in VA’s implementation of this provision, we would recommend that the language be amended to clarify that VA may also enter into such agreements with third parties.

We therefore support this section of the legislation, provided that it is amended per the recommendations described above.

### **Further Improvements to the Seasoning Requirements for VA Refinances**

We also respectfully urge the Committee to support technical amendments to the recently passed S. 2155, the *Economic Growth, Regulatory Relief, and Consumer Protection Act*. In particular, Section 309 of the legislation, which provides enhanced requirements on VA refinances that we believe will effectively address the problem of loan churning, has caused inadvertent disruptions in this market and is in need of revision.

We appreciate and endorse the urgent need to respond to the increased churning of veteran borrowers in recent years. In many situations, borrowers are the target of aggressive and potentially misleading advertising that encourages them to continually refinance their VA-guaranteed mortgage so as to lower their interest rate, even if only by a small amount. However, when fees are then added to the principal balance of the loan, the borrower may be put in a position in which there is no realistic possibility that the fees can be recouped through the lower monthly payments. This practice directly harms veterans and lowers demand for Ginnie Mae

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<sup>2</sup> VA, “Clarification of Third-Party Verification Requirements,” Circular 26-17-43, December 29, 2017. Available at: [https://www.benefits.va.gov/homeloans/documents/circulars/26\\_17\\_43.pdf](https://www.benefits.va.gov/homeloans/documents/circulars/26_17_43.pdf).

mortgage-backed securities (MBS), thereby raising borrowing costs for loans guaranteed or insured through a wider array of government mortgage programs.

To address this problem, MBA supported Section 309 of S. 2155, which includes new requirements on refinanced loans to achieve eligibility for a VA guaranty and Ginnie Mae pooling. One such requirement is a minimum seasoning period for the prior loan. For both VA and Ginnie Mae eligibility, at least 210 days must have passed between the date of the first payment made by the borrower on the prior loan and the note date of the refinance. This seasoning period is intended to slow the pace of refinances, thereby deterring extreme cases of serial refinancing.

While we support the use of a minimum seasoning requirement, the implementation of Section 309 has led to unexpected disruptions in the market. This result has occurred because the seasoning calculation described above differs from—and is longer than—that of the seasoning requirement instituted by Ginnie Mae through a prior All Participant Memorandum.<sup>3</sup> Ginnie Mae's existing standard requires 210 days to pass between the first payment due date of the prior loan and the first payment due date of the refinance. The seasoning calculation in Section 309 differs in both the start point and end point for this timeline.

Because there was no effective date provided in the legislation, the new requirements took effect immediately. Notably, VA implemented the requirements of Section 309 for all loans with applications taken on or after May 25, 2018.<sup>4</sup> Ginnie Mae, however, has followed a Department of Housing and Urban Development (HUD) interpretive rule which states that, while Ginnie Mae securities issued in May 2018 or earlier are unaffected, no VA refinances can be included in issuances in June or later unless they are compliant with the new requirements.<sup>5</sup>

As a result, some VA refinances that were in process or recently closed at the time the legislation was signed into law in late May lost their eligibility to serve as collateral for Ginnie Mae MBS. These “orphaned” loans cannot be delivered to Ginnie Mae

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<sup>3</sup> Ginnie Mae, “APM 17-06: Pooling Eligibility for Refinance Loans and Monitoring of Prepay Activity,” December 7, 2017. Available at: [https://www.ginniemae.gov/issuers/program\\_guidelines/Pages/mbsguideapmslibdisppage.aspx?ParamID=82](https://www.ginniemae.gov/issuers/program_guidelines/Pages/mbsguideapmslibdisppage.aspx?ParamID=82).

<sup>4</sup> VA, “Policy Guidance Update: VA Refinance Loans and the Economic Growth, Regulatory Relief, and Consumer Protection Act,” Circular 26-18-13, May 25, 2018. Available at: [https://www.benefits.va.gov/HOMELOANS/documents/circulars/26\\_18\\_13.pdf](https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_18_13.pdf).

<sup>5</sup> HUD, “Government National Mortgage Association: Loan Seasoning for Ginnie Mae Mortgage-Backed Securities – Interpretive Rule,” July 3, 2018. Available at: <https://www.federalregister.gov/documents/2018/07/03/2018-14354/government-national-mortgage-association-loan-seasoning-for-ginnie-mae-mortgage-backed>.

despite carrying a valid VA guaranty and being fully compliant with the requirements in place at the time the applications were taken and (in some cases) the loans were closed. This situation has caused liquidity strains for some lenders, particularly if they have originated a significant volume of affected loans.

MBA has noted in formal comments to HUD that this outcome does nothing to advance the legislative aim of the statute, actively frustrates the purpose of the statute, and ignores both congressional intent and the historical relationship between VA and Ginnie Mae.<sup>6</sup> To effectively address this problem, we strongly urge Congress to undertake technical corrections needed to restore Ginnie Mae eligibility for the orphaned loans and align the VA seasoning requirements with those of the other government mortgage programs.

These technical corrections would entail two components. First, the Ginnie Mae seasoning requirement in Section 309(b) of the legislation should be eliminated. By striking this language, Ginnie Mae would no longer be prohibited from guaranteeing MBS backed by the orphaned VA refinances, which would effectively restore the eligibility of the loans for pooling. This correction would not diminish the anti-churning purpose of the legislation, as the seasoning requirements would remain a condition of the VA guaranty, which itself is a condition of Ginnie Mae pooling. Therefore, VA loans that do not meet the seasoning requirements prior to refinancing would not be eligible to serve as collateral for Ginnie Mae MBS.

Second, the seasoning period defined in Section 309(a) of the legislation should be amended to match that of the earlier Ginnie Mae requirements. That is, 210 days should be required to pass between the first payment due date of the prior loan and the first payment due date of the refinance. This amended calculation would align the VA seasoning requirement with those of the other government mortgage programs. And importantly, it would also facilitate improved adoption in the market, as the current calculation suffers from the fact that many lenders are unable to determine the date on which the first payment on the prior loan was made by the borrower. Without this information, it is impossible for lenders to be certain that they are compliant with the new requirements.

These technical corrections would address a pressing need in the current market and would allow for more sensible implementation of these important anti-churning provisions on an ongoing basis. We strongly urge the Committee to work with the

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<sup>6</sup> MBA, "Re: Government National Mortgage Association: Loan Seasoning for Ginnie Mae Mortgage-Backed Securities – Interpretive Rule [Docket No. FR-6112-IA-01]," July 12, 2018. Available at: [https://www.mba.org/Documents/MBA\\_HUD\\_Interpretive\\_Rule\\_Ginnie\\_Mae\\_Loan\\_Seasoning\(0\).pdf](https://www.mba.org/Documents/MBA_HUD_Interpretive_Rule_Ginnie_Mae_Loan_Seasoning(0).pdf).



Committee on Banking, Housing, and Urban Affairs and other relevant stakeholders to enact these corrections as soon as possible.

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MBA appreciates the opportunity to provide our views regarding H.R. 299, as well as the ongoing problems related to VA refinances that are ineligible to serve as collateral for Ginnie Mae securities. We look forward to our continued work with the Committee as it undertakes issues that are critical to maintaining veterans' access to safe, reliable, and affordable mortgage credit.