MORTGAGE BANKERS ASSOCIATION

June 26, 2019

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

Industry Observations Regarding Solicitations for VA Home Refinance Loans

Dear Mr. London:

As you know, the Mortgage Bankers Association (MBA)[1] is committed to promoting the strength and sustainability of the home loan program operated by the U.S. Department of Veterans Affairs (VA). The ability to obtain a purchase or refinance home loan on competitive terms, typically without a required down payment or private mortgage insurance, is an important earned benefit that must be protected for servicemembers, veterans, and surviving spouses.

In the course of providing feedback on efforts to address elevated Ginnie Mae prepayment speeds, we have become concerned about increasing anecdotal reports of solicitations for refinances of VA loans that may be designed to mislead consumers regarding the nature of the loan or the institution providing the loan. Such solicitations can be very harmful to veterans, as they may lead them to obtain refinances that they do not fully understand or are not in their financial interest. MBA therefore encourages VA to use its existing authorities to deter these misleading solicitations in accordance with its mission to ensure appropriate consumer safeguards in its 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 280,000 people in virtually every community in the country. Headquartered in Washington, DC, 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 over 2,300 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, credit unions, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

MBA has been alerted to refinance solicitations with one or more of the following problematic features:

- Vague language or symbols such as logos or stamps to imply affiliation with, or endorsement by, the Federal government;
- False sense of urgency or a strict deadline to imply that the borrower will face some type of penalty if (s)he does not take action; and
- Misleading descriptions of interest rates or other loan terms, such as representing an adjustable-rate loan as a fixed-rate loan or promising the ability to skip one or more payments.

While these solicitations appear to be coming from a very small subset of program participants, they are nonetheless having an adverse effect on veterans. Further, if such solicitations are allowed to continue unchecked, they may only increase in volume, which could threaten broader confidence in the program.

MBA is encouraged, however, by the fact that VA's existing authorities appear sufficient to curtail such practices. For example, VA's regulations provide specific authorities to guard against false associations with the Federal government:

> "Any advertisement or solicitation in any form (e.g., written, electronic, oral) from a private lender concerning housing loans to be guaranteed or insured by the Secretary…must not include information falsely stating or implying that it was issued by or at the direction of VA or any other department or agency of the United States, and…must not include information falsely stating or implying that the lender has an exclusive right to make loans guaranteed or insured by VA."[2]

In other contexts, such as the marketing of properties by homebuilders, VA Pamphlet 26-7 (the Lenders Handbook) grants VA the ability to penalize program participants for unethical practices:

> "VA may impose sanctions, such as debarment, suspension, or LDP [limited denial of participation] against participants who use contracts of sale, or methods or practices in the marketing of properties, which are unfair or prejudicial to veteran-purchasers. Unethical practices…are barred by VA and grounds for sanctions."[3]

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[2] 38 CFR § 36.4370, "Advertising and Solicitation Requirements."

[3] VA Pamphlet 26-7, Chapter 17.07, "Unfair Contract Provisions or Marketing Practices." Available at: https://www.benefits.va.gov/WARMS/docs/admin26/pamphlet/pam26_7/ch17.doc.

Together, these and other similar provisions are evidence that VA is equipped to take any necessary actions to deny participation, in whole or in part, by those institutions that engage in blatantly misleading solicitations. Such actions are more likely to have the desired effect if they are taken by VA, rather than by other entities such as state regulators, because VA has the ability to address problematic activity stemming from differing types of institutions operating across differing geographies.

MBA therefore encourages VA to more closely examine the refinance solicitations in the market and take proactive steps to deter the use of those that contain misleading features. VA can do so in a targeted manner, using existing authorities that would not result in new requirements or standards for the vast majority of program participants. MBA stands ready to collaborate with VA in this effort to achieve our shared objectives of strong consumer protection and a robust VA home loan program.

Thank you in advance for your consideration of these comments. Should you have questions or wish to discuss further, please contact Dan Fichtler, Director of Housing Finance Policy, at (202) 557-2780 and dfichtler@mba.org.

Sincerely,

Robert D. Broeksmit, CMB
President and Chief Executive Officer
Mortgage Bankers Association