



January 21, 2025

Mr. John Bell, III  
Executive Director  
Loan Guaranty Service  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, D.C. 20402

**RE: Loan Guaranty: Loan Reporting and Partial or Total Loss of Guaranty or Insurance**

Dear Executive Director Bell,

The Mortgage Bankers Association (MBA)<sup>1</sup> appreciates the opportunity to offer comments on the Department of Veterans Affairs' (VA) Notice of Proposed Rule Making concerning the VA's loan reporting requirements. MBA commends the VA for prioritizing improvements that strengthen the program's operational framework and for considering stakeholder input to drive impactful changes. MBA is committed to working collaboratively with the VA to support its mission of providing comprehensive and accessible benefits to those who have served our country.

**VA API Implementation Timeframe**

MBA supports the VA's ongoing efforts to adopt new technologies to better serve our nation's Veterans. Our members support the VA's initiatives to implement systems that streamline the loan process, namely its rollout of the multiple Application Programming Interfaces (APIs). However, MBA requests that the VA allow sufficient time for these new systems to be integrated with lenders' existing loan origination systems.

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<sup>1</sup> 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](http://www.mba.org).

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MBA urges the VA to allow no less than 180 days, from announcement in the Federal Register, to implement new requirements that require technology or document changes, rather than the proposed 60 days.

Over the past year, the VA has provided minimal lead time for lenders to implement its mandated APIs. The lack of a clear timeline for the implementation of multiple system updates has left many lenders and vendors struggling to comply while managing ongoing operational demands and other system programming demands. Lenders typically allocate resources to planned system upgrades on an annual basis, leaving little room for unanticipated changes. When lenders are required to implement unscheduled system changes on short notice, the risk of incomplete or flawed execution increases, potentially disrupting the loan review process and negatively impacting service to Veterans. This especially impacts smaller lenders, who may lack the resources to adjust their workflows within the proposed timeframe.

To address these challenges, MBA also requests that the VA publish planned release dates for upcoming APIs at least six months in advance. This will allow lenders and servicers to plan technology upgrades accordingly.

### **Reporting Loans Closed on an Automatic Basis**

#### **1. Loan Reporting Timeframe**

MBA urges the VA to maintain the current 60-day timeframe for reporting loans, rather than reducing it to 15 days as proposed. The 60-day timeframe is critical to ensuring the integrity of the post-closing process, allowing lenders to complete thorough audits that identify and rectify potential errors or compliance issues. Post-closing reviews are essential for confirming that loans meet regulatory and program standards, safeguarding both borrowers and the VA from the risks of noncompliant or defective loans. Furthermore, the existing 60-day timeframe aligns with other federal housing programs, such as the FHA. By maintaining the 60-day reporting period, the VA can ensure accurate loan file submissions and protect all stakeholders from avoidable risks.

#### **2. Late Reporting of Closed Loans**

MBA urges the VA to remove the proposed requirement to submit a late notice for loans reported more than 15 days post-close or post-remittance, as this timeframe is far too short to account for the realities of post-closing processes. One critical issue that imposes additional time is the regular occurrence of trailing documentation that borrowers fail to submit at or before loan closing.

Trailing documents, such as final verification of income or missing signatures, are often discovered during the post-closing quality control review. These missing items are typically beyond the lender's immediate control, as borrowers and/or third parties may delay or overlook submitting necessary paperwork. Resolving these issues requires time to contact borrowers and/or third parties, obtain the required documentation, and ensure all elements are complete and compliant with VA requirements.

## **Enforcement Action Appeals Process**

MBA recommends that the VA incorporate a process allowing lenders to formally contest determinations of misrepresentation, particularly in cases where the VA believes no corrective actions can resolve the issue. This process should include formal notification, where the VA clearly communicates the basis of its determination, provides specific details about the alleged misrepresentation, and outlines the rationale for ruling out corrective actions. Furthermore, there should be an appeals process allowing lenders to submit additional documentation, evidence, or arguments to contest the determination.

## **VA Loan Auditing Scope and Criteria**

The VA should provide additional clarification regarding its approach to auditing loans under the proposed rule, particularly as it pertains to the scope and focus of these audits. Specifically, MBA requests guidance on the following points:

- **Extent of VA Auditing:**
  - Will the VA's audits be limited to underwriting deficiencies, forgery, or falsification of documents, as explicitly noted in the proposed rule, or will the scope extend to other compliance areas, such as servicing practices or borrower certifications?
  - What thresholds or triggers will be used to initiate these audits? For instance, will audits focus on loans with clear red flags or be conducted randomly across all reported loans?
- **Evaluation of UCD / ULAD Data:**
  - Will the VA audit the mapping and accuracy of every data point submitted through the Uniform Closing Dataset (UCD) and Uniform Loan Application Dataset (ULAD)?
  - How will discrepancies in data mapping or formatting—potentially caused by system integration issues or lender technology limitations—be categorized? Will these be considered material misrepresentations or require corrective actions?
- **Material Misrepresentation Criteria:**
  - Can the VA provide specific examples or criteria to define what constitutes a "material misrepresentation" in the context of UCD / ULAD data submissions? For instance:
    - Would errors in minor fields, such as formatting or optional data points, be treated as material misrepresentations?
    - Is there flexibility for lenders to correct data errors without facing guaranty reductions or penalties?
- **Define Material Misrepresentation:** MBA recommends that the VA adopt a definition of "materiality" similar to the framework used by the FHA. The FHA's definition ties materiality to issues that would have altered the decision to approve

the loan,<sup>2</sup> offering a practical and transparent standard for evaluating compliance. Moreover, the VA should provide clear illustrative examples of what constitutes a "material misrepresentation" or "material finding" within the context of the proposed rule.

- **Notification Process:** How should lenders inform the VA electronically about post-closing issues that arise after the certification window? Will the VA establish a formal reporting mechanism for such instances, and will the VA respond via the same method?

### **Penalties for Servicing Non-Compliance**

VA should provide additional clarity on the penalties servicers may face for non-compliance with servicing requirements under the proposed rule. Specifically, MBA seeks further guidance on the following:

- **Reduction in Claims Payable:** What types of non-compliance with servicing requirements would result in a reduction of the amount payable on a claim? Will penalties vary based on the severity or materiality of the servicing violation, such as administrative errors versus systemic issues that harm VA's subrogation rights?
- **Opportunity for Remediation:** Will lenders or servicers have the opportunity to remedy servicing issues before penalties, such as claim reductions, are imposed?
- **Application of Penalties:** Will penalties for servicing non-compliance apply retroactively to loans already under guaranty or only to new loans originated after the implementation of the proposed rule?
- **Examples of Servicing Violations:** Can the VA provide examples of specific servicing violations that would lead to reductions in claim amounts? For instance, would delays in initiating foreclosure, failure to maintain the property, or borrower communication errors qualify as grounds for penalties?
- **Indemnification Liability for Originators No Longer in Business:** VA should clarify how indemnification liability will be handled in situations where the originating lender is no longer in business or unable to cover the indemnification expense. Specifically, the VA should confirm that liability in such cases will not transfer to the lender or servicer to ensure fairness and protect parties who were not responsible for the original noncompliance.

### **Define "Knew or Should Have Known"**

MBA urges the VA to provide a clear definition of the term "should have known," particularly as it relates to determining a servicer's recognition of material misrepresentations. The current language, which states that the VA may adjust the guaranty if the lender "knew or should have known" of a material misrepresentation, raises concerns due to its ambiguity

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<sup>2</sup> [FHA Single Family Housing Policy Handbook 4000.1 Appendix 8.0 – FHA Defect Taxonomy: II.C](#)

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and the potential for subjective interpretation. A “should have known” standard should incorporate a showing of a disregard of known facts or a deliberate choice to not obtain relevant information. Without a clear standard and explicit guidance, servicers may face challenges in evaluating and documenting their awareness of issues. By outlining specific criteria and providing examples of what constitutes “should have known,” the VA can ensure consistency in enforcement, reduce compliance risks, and provide servicers with a clear understanding of their responsibilities under the rule.

**Reduction of Loan Guarantee Implication**

Reducing the Loan Guaranty Certificate (LGC) to one dollar triggers significant downstream implications for lenders, particularly concerning their obligations if they are a Ginnie Mae issuer. Specifically, such a reduction would require issuers to self-report that the loan no longer adheres to Ginnie Mae’s 25% coverage requirement, which is mandatory for eligibility of VA loans within Ginnie Mae mortgage-backed securities (MBS). While MBA acknowledges that this practice is already used in certain cases of fraud or severe noncompliance, MBA believes it should be viewed as a last resort due to the significant financial and operational burden it imposes on lenders. Such a measure should be applied only when no other corrective actions are viable, ensuring that loans with resolvable issues are not unnecessarily removed from the secondary market.

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The MBA appreciates the opportunity to provide feedback on VA's proposed rule to modernize loan reporting requirements and acknowledges its willingness to engage with the industry. Should you have questions or wish to discuss these issues further, please contact Darnell Peterson, Manager, Loan Production Policy, at [dpeterson@mba.org](mailto:dpeterson@mba.org).

Sincerely,



Pete Mills  
Senior Vice President  
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Mortgage Bankers Association