

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 36**

RIN 2900-AM87

Loan Guaranty: Assistance to Eligible Individuals in Acquiring Specially Adapted Housing**AGENCY:** Department of Veterans Affairs.**ACTION:** Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs' (VA's) Loan Guaranty regulations concerning assistance to eligible individuals in acquiring specially adapted housing. These proposed changes would improve the readability of the regulations, provide further detail about program policies, and incorporate legislation, policy changes, and a VA Office of the General Counsel legal opinion.

DATES: Comments must be received on or before December 4, 2009.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to RIN 2900-AM87 "Loan Guaranty: Assistance to Eligible Individuals in Acquiring Specially Adapted Housing." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Katherine Faliski, Assistant Director for Loan Policy and Valuation, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9527. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:**I. Introduction**

Veterans and servicemembers with severe disabilities may be eligible under 38 U.S.C. chapter 21 for specially

adapted housing (SAH) grants. In administering the SAH program, VA helps these eligible individuals to purchase, construct, or adapt a home that suits the individual's living needs. This document proposes to amend VA's regulations in 38 CFR Part 36, Subpart C, Assistance to Certain Disabled Veterans in Acquiring Specially Adapted Housing, §§ 36.4400 through 36.4410, which implement the SAH grant program. Because eligibility for SAH grants includes certain disabled servicemembers, the proposed rule would revise the heading of Subpart C to refer to "Eligible Individuals" rather than "Certain Disabled Veterans."

The proposed amendments are necessary for three reasons. First, VA believes the regulations should be written in a reader-focused style. Second, detailed guidance about program policies and an easy-to-follow organizational structure will help applicants and eligible individuals (and those acting on their behalf) to navigate the program. Third, substantive changes are necessary to incorporate legislation, policy decisions, and a legal decision of VA's Office of the General Counsel. Pursuant to 38 U.S.C. 2101(d), the Secretary may prescribe regulations applicable to the SAH program. In revising these regulations, VA intends that applicants, eligible individuals, other program participants, and other interested parties will be better informed about the legal requirements and Department policies that guide the administration of SAH grants.

II. Regulatory Overview

The following is a section-by-section analysis of VA's proposed rule. We outline briefly for each section the current rule and the proposed rule, as well as the reasons for the changes, noting the objectives and intended effects of the proposed rule. VA welcomes comments on every aspect of its proposal, but is particularly interested in drawing attention to three sections: (1) § 36.4404, in which VA proposes to ease the requirements for satisfying the SAH eligibility criteria; (2) § 36.4405, VA's proposed two-staged approval process intended to reduce eligible individuals' out-of-pocket expenses, thereby increasing the number of eligible individuals who may use the SAH program; and (3) § 36.4406, a more structured process for reimbursing eligible individuals who have expended personal funds toward authorized grant expenses.

Section 36.4400 Authority

Current § 36.4400, "Applicability," states that any references to chapters 21

and 37 of title 38 U.S.C. are deemed where applicable to refer also to the prior corresponding provisions of the law. At the time the current rule was promulgated, Congress had recently consolidated into title 38 all of the laws administered by the then Veterans Administration. Almost 50 years have passed since Congress moved the statutes governing SAH to 38 U.S.C. chapter 21, and VA believes the reference to the former provisions may confuse readers. Therefore, the proposed rule would delete the reference to the former codification of the SAH authorizing statutes. The section's heading would be changed to "Authority" to reflect changes in its content. The proposed rule would no longer contain the current rule's applicability provisions. No substantive change is intended by the changes to this section.

Section 36.4401 Definitions

Currently, definitions of eight terms are found in § 36.4401: "Secretary," "chapter 21," "movable facilities," "necessary land," "special fixtures and necessary adaptations," "housing unit," "remodeling," and "veteran's family." The proposed rule would add 16 terms and delete six terms. These changes would: (1) Replace certain terms with more reader-friendly ones; (2) add new terms, providing SAH-specific meanings where everyday usage might require additional clarification; (3) define terminology unique to the SAH program; (4) provide new definitions as a result of both established and proposed VA policies; and (5) delete terms that would be rendered unnecessary by the new rule. The terms would also be reordered to appear in alphabetical order.

First, the definition of "Housing unit" would be expanded to make it easier for the general public to understand the rule. The term "Housing unit," which would be defined to include "any residential unit, including all necessary land, improvements, and appurtenances, together with such movable equipment or special features as are authorized by 38 U.S.C. 1717 and 2101," would incorporate the current definitions of "movable facilities," "necessary land," and "special fixtures and necessary adaptations."

Second, the proposed rule would expand the list of definitions and provide SAH-specific meanings for some commonly-used words. For example, the term "reside," which would mean "to occupy (including seasonal occupancy) as one's residence," would reflect VA's current policy of allowing seasonal occupancy

under the SAH program. Other new terms include: “Adapt,” “braces,” “disability,” “eligible individual,” and “eligible individual’s family.”

Third, a few of the proposed definitions reflect terminology that has developed over time with the SAH program: “Paralegic housing grant or PH grant,” “adapted housing grant or AH grant,” and “temporary residence adaptations grant or TRA grant,” would mean grants authorized under 38 U.S.C. 2101(a), 2101(b), and 2102A, respectively. “Specially adapted housing grant” would be defined to clarify that the term refers collectively to PH, AH, or TRA grants. “Aggregate amount of assistance available” would mean the grant amount available to an eligible individual based on the annual adjustments required by 38 U.S.C. 2102(e).

Fourth, the proposed rule would add several definitions that are the result of substantive policy decisions. The term “ownership interest” would: (1) Ensure that an eligible individual will not be denied SAH benefits because he or she chooses a less traditional method of property ownership, (2) account for the fact that trends in property ownership vary based on geographic region, and (3) incorporate statutory language expressly permitting the Secretary to provide SAH grants outside the United States. A definition of “beneficial property interest” has also been added to facilitate provision of SAH grants outside the United States by accounting for different laws and customs related to property ownership in various countries. The preamble explanation of § 36.4405 describes more fully the effects of this change.

Note: Though not required by this proposed rule, VA recommends that eligible individuals seek professional estate planning advice when determining the type of legal interest that best suits the eligible individual’s needs.

Three other new defined terms would be “construction-related cost,” “preconstruction cost,” and “reimburse.” VA believes that these terms are necessary in explaining VA’s policy of reimbursing eligible individuals (or, where applicable, their estates) for costs related to the preparation for adaptations and for the actual adaptations. An in-depth explanation of this policy is provided below, in the discussion of § 36.4406.

Finally, the proposed rule would render certain terms unnecessary. Such terms are “chapter 21,” “movable facilities,” “necessary land,” and “special fixtures and necessary adaptations,” “remodeling,” which

would be considered part of the definition of “adapt,” and “veteran’s family,” which would be replaced with “eligible individual’s family.” Therefore, VA proposes to delete these terms.

Section 36.4402 Grant Types

Chapter 21 of title 38, U.S.C., authorizes the Secretary to provide three types of SAH grants. The PH grant is available to the most severely disabled veterans and servicemembers who meet the criteria set forth in section 2101(a). The monetary cap on PH grants, currently \$60,000, is higher than that for the other grants. The AH grant is for severely disabled veterans and servicemembers who satisfy the requirements of section 2101(b). Its statutory cap is currently \$12,000. The TRA grant, authorized by Public Laws 109–233 and 110–289, is a grant that allows eligible individuals who temporarily reside in a housing unit owned by a member of the eligible individual’s family to receive assistance to adapt that home.

Currently, the regulations do not describe in detail the various SAH grant types. Instead, they cite only the basic information codified at 38 U.S.C. 2101. Moreover, the regulations give few particulars about the various grant types available to eligible individuals, but specifically reference the maximum grant amounts, which are subject to annual adjustments and, thus, easily outdated.

Therefore, under the proposed rule, § 36.4402, “Grant types,” would explain the PH grant, AH grant, and TRA grant. More specifically, the section would describe the respective plan options under which an eligible individual may obtain assistance. The statute provides formulas for calculating the amount of grant assistance, based on the type of grant and the nature of the property to be adapted. By outlining these detailed formulas in the regulation, VA would make it easier for the public to understand how VA determines the amount of assistance it is to provide. VA also clarifies its interpretation of 38 U.S.C. 2102(a)(3), which governs the amounts of assistance available for the remodeling of a dwelling acquired prior to the application for SAH assistance. This provision requires the Secretary to pay the greater of (A) the cost to the veteran of such remodeling or (B) 50 percent of the cost to the veteran of such remodeling, plus other costs as prescribed by statute. These other costs may be either 50 percent of the costs of the dwelling and land or the full amount of any unpaid principal loan balance, whichever is less. Since

Congress expressly limited 38 U.S.C. 2102(a)(2) and (a)(4) to the smaller of the available sums, but did not impose a similar limitation on option (a)(3). VA has always interpreted Congress’s omission as being intentional, meaning the Secretary should pay the greater of the available sums to eligible individuals who choose option (a)(3). This is consistent with the policy of the Specially Adapted Housing program which “is intended to be of the highest beneficial character and, within reasonable legal bounds, should be liberally construed.” VAOPGCPREC 13–95. The section would also tie the grant amount to the “aggregate amount of assistance available” rather than explicitly mentioning a dollar figure. In addition, the section would clarify the restrictions on duplication of benefits that currently exist in § 36.4402(b)(1) and (b)(2). These restrictions are intended to reflect the limitations imposed by 38 U.S.C. 2104(b) without imposing any additional limitation. Finally, the section would correct the citation of section 1712 by referring instead to 38 U.S.C. 1717.

The proposed changes in § 36.4402 are necessary for three reasons. First, by discussing the specifics of the PH grant, AH grant, and TRA grant plans, the proposed rule would better inform eligible individuals about their SAH options. Second, since the TRA grant was authorized by Public Laws 109–233 (“Veterans’ Housing Opportunity and Benefits Improvement Act of 2006”) and 110–289 (“Housing and Economic Recovery Act of 2008”), which were enacted after VA issued the current SAH regulations, the proposed rule would update the SAH regulations to include relevant information about this benefit. Finally, eliminating specific dollar amounts from the regulatory text would allow the Secretary to adjust grant amounts, in accordance with applicable statutory provisions (38 U.S.C. 2102(e)), without amending the regulations. The intended effect of this action is clear, detailed, accurate regulations that will further assist eligible individuals in obtaining their SAH benefits.

Section 36.4403 Subsequent Use

Currently, the SAH regulations do not provide any information about subsequent use of SAH grants. Prior to the enactment of Public Law 109–233 in 2006, an individual could receive only one grant of assistance under the SAH program. Therefore, even if an individual had used only half of the aggregate amount of assistance available, the individual was unable to preserve the balance of assistance in order to reuse the benefit at a later date.

With the enactment of Public Law 109-233, the program was expanded to allow for up to three grant usages per eligible individual, subject to the aggregate amount of assistance available. Accordingly, we are proposing that § 36.4403, "Subsequent use," would describe the restrictions on obtaining more than one SAH grant. The section would discuss the number of times each grant may be used and the aggregate amount of assistance available. Additionally, the section would note that funds from subsequent grant usages may not be used retroactively; in other words, even if the eligible individual has not used the aggregate amount of assistance available, subsequent use funds may not reimburse for costs incurred prior to the enactment of the enabling legislation (June 15, 2006) or prior to the eligible individual's subsequent use grant approval. The intended effect of this action is regulations that are up to date and that will educate applicants and other interested persons about opportunities available through the SAH program.

Section 36.4404 Eligibility for Assistance

38 U.S.C. 2101 sets forth the eligibility requirements for obtaining SAH assistance by dividing such requirements into two categories: (i) Disability requirements and (ii) feasibility and suitability requirements. The former prescribes the medical criteria necessary for eligibility; the latter establishes minimum standards for determining whether the proposed adaptations are consistent with the purpose of the SAH program and the applicant's unique circumstances. Applicants must satisfy the requirements of both statutory categories before being considered eligible to receive a grant of assistance.

Currently, the regulations implementing the eligibility requirements are found at 38 CFR 36.4402. In that section, there is no discussion of the medical disability requirements for SAH eligibility, merely a reference to 38 U.S.C. 2101. Current § 36.4402 details the feasibility and suitability requirements located at 38 U.S.C. 2101(a)(3) and (b)(3), but it also lists the legal property interests, non-discrimination certifications, and flood insurance certifications that are acceptable to VA for the purpose of the SAH program. Although these last three requirements are important aspects of the SAH program, their placement in § 36.4402 may be confusing, as one might infer that such considerations factor into an applicant's eligibility.

Therefore, proposed § 36.4404, "Eligibility for assistance," would revise current § 36.4402 by limiting its scope only to those criteria necessary for SAH eligibility: Disability requirements and feasibility and suitability requirements. In terms of disability requirements, the section would outline the statutory requirements. In terms of feasibility and suitability requirements, this section would outline the requirements set forth for PH grants in 38 U.S.C. 2101(a)(3), for AH grants in section 2101(b)(3), and for TRA grants in section 2102A.

The statutory meaning of PH grant feasibility is that an applicant's medical condition does not prevent him or her from living in the proposed housing unit, in the proposed locality, and that the applicant's present or anticipated income and expenses bear a proper relation to the proposed housing unit. Evidence of such feasibility might include, among other things, doctors' orders and credit reports.

PH grant suitability means that the nature and condition of the proposed housing unit are suitable to the applicant's living needs. In most cases, the proposed rule would simplify the evidence one must submit at this stage by allowing him or her to provide materials as basic as non-scaled drawings and a specific list of the proposed adaptations. Depending on the applicant's condition and the proposed adaptations, however, a determination may require more detailed documentation, such as scaled plans and specifications. Additional aspects of this policy are discussed in the analysis of §§ 36.4405 and 36.4406.

Like the PH grant, the AH grant's feasibility and suitability requirements in this proposed rule mirror the statute. Such requirements are based on residency and can be satisfied by the applicant certifying that he or she resides, and reasonably intends to reside, in the proposed housing unit. If the applicant's residence is not yet constructed, then the applicant must certify that he or she will be residing in, and reasonably intends to be residing in, the housing unit. An applicant may also be eligible for an AH grant if the existing housing unit, or the housing unit to be constructed, is owned by a member of the applicant's family.

Proposed § 36.4404 would also address another important aspect of eligibility. Because ownership interests, non-discrimination certifications, and flood certifications are not part of the eligibility determination, all references to such issues would be moved to other sections, as explained below. This action is necessary for two reasons. First, it is important that the SAH

regulations state as clearly as possible which disability conditions make an individual eligible for which grant. Second, it is necessary to state expressly to the public that eligibility cannot be established (and, consequently, neither preconstruction costs nor construction costs may be incurred) until both the disability requirements and the feasibility and suitability requirements have been confirmed and documented. VA has authority to take this action pursuant to 38 U.S.C. 2101 and 2102A. The intended effect of this action is regulations that are up to date and that accurately describe all of the requirements that may make an individual eligible for SAH assistance.

Section 36.4405 Grant Approval

Currently, the regulations provide little information regarding the SAH grant approval process. While regulations are not always the proper medium through which to explain detailed administrative procedures, it is important for applicants, eligible individuals, and other affected members of the public to understand the chronology of the program and what it means to them as far as incurring costs and moving forward with planning and construction. Thus, VA is proposing that the regulations contain details about the meanings, requirements, and implications of the SAH grant approval process.

Under the current grant approval process, SAH agents at field facilities counsel applicants, in accordance with the program's operating manual (*VBA Manual M26-12*, "Specially Adapted Housing Grant Processing Procedures, Loan Guaranty Operations Regional Office Manual," available at http://www.warms.vba.va.gov/M26_12.html), at each point in the application process. Changes to the SAH program (specifically, the subsequent use and TRA grant provisions of Public Laws 109-233 and 110-289) have rendered the program complex enough that specific regulatory guidance in the area of grant approval will simplify the process for all participants.

Under proposed § 36.4405, "Grant approval," VA would formalize a two-staged grant approval process. The first stage of the approval process would lead to what proposed § 36.4405(a) calls "conditional approval," at which point the Secretary may authorize certain preconstruction costs. The second stage, as set forth in proposed § 36.4405(b), would culminate in "final approval," and the Secretary's disbursement of the full grant proceeds.

Conditional approval would be the Secretary's authorization for an

applicant to move forward with more detailed planning of adaptations. An application would be approved conditionally on the date the Secretary determines that the individual has met all eligibility requirements, as set forth in proposed § 36.4404, and that the applicant has not exceeded the grant usage and dollar limitations set forth in proposed §§ 36.4402 and 36.4403.

Once an applicant has obtained conditional approval, the Secretary may authorize him or her, in writing, to incur certain preconstruction costs pursuant to § 36.4406. Such preconstruction costs could include architectural services, land surveys, attorneys' fees, and other costs or fees necessary to plan for grant use and would be limited to no more than 20 percent of the eligible individual's grant amount. Conditional approval must be granted before an applicant would be authorized to incur any preconstruction costs. Should an applicant incur preconstruction costs prior to conditional approval, he or she would not be reimbursed for those costs. This is because, pursuant to the authorizing statute, an applicant must be deemed eligible for grant assistance before the Secretary may approve the disbursement of any grant funds.

An applicant who has obtained conditional approval would need to satisfy all requirements of § 36.4405(b) before the Secretary would authorize final approval. One such requirement would be to provide the Secretary scaled plans and specifications for the planned adaptations. The Secretary must determine that the plans and specifications meet the minimum property and design requirements of the SAH program. VA's review of plans at this stage would differ from the feasibility and suitability determination under § 36.4404. Under proposed § 36.4404, plans may be preliminary and need not be scaled, which would allow VA to determine eligibility without requiring a veteran or servicemember to expend personal funds in advance of the grant. The plans and specifications required at this stage, however, would need to be more detailed than those required to determine eligibility, as they would be relied upon during the inspection process and for the release of funds. In other words, at the beginning of this second and final stage, the Secretary already would have determined that the planned adaptations were suitable and feasible for the purposes of eligibility; nevertheless, the Secretary still would need to determine that the adaptations also met minimum property and design requirements before granting final

approval and disbursing the remaining grant proceeds.

Another important requirement in this stage is that an applicant who has obtained conditional approval must provide the Secretary evidence of sufficient ownership interest in the proposed housing unit. Though this requirement is not new, it would change substantially from current practice. As stated above, existing title requirements for PH grants, which are found at 38 CFR 36.4402, do not necessarily reflect the vast choices available to an applicant when planning an estate. For instance, a life-estate is a commonly used tool in estate-planning, yet VA's current regulations do not include the life-estate as an acceptable form of title.

Under the proposed rule, an applicant would have more freedom in the type of estate that he or she chooses to obtain. Moreover, since the applicant would already be conditionally approved for a grant at this stage, meaning that the applicant's eligibility status would have been determined, he or she would be authorized to use a portion of the grant proceeds for attorneys' and other legal fees. VA believes that this change will open the door to SAH assistance for a number of veterans and servicemembers who might not otherwise be able to afford the upfront costs associated with the SAH program.

In addition to the proposed new portions of the regulation described above, the final grant approval section would contain the joint ownership provisions, non-discrimination certifications, flood insurance requirements, and geographical limitations in current §§ 36.4402(a)(5), 36.4402(a)(6), 36.4403, and 36.4411, respectively. The current rule on joint ownership would be revised in accordance with the statute in 38 U.S.C. 2102(c), making it clear that an eligible individual's available grant assistance would not be reduced simply because of a shared interest in a property. The non-discrimination and flood insurance provisions would not contain new provisions, but they would be more intuitively located. The provisions relating to geographical limitations would be revised to eliminate specific references to Guam and American Samoa, because they are included within the meaning of the term "Territories." This provision would also incorporate the provisions of Public Law 110-289 expressly permitting the Secretary, in his or her discretion, to provide SAH grants to otherwise eligible individuals residing outside the United States.

The proposed amendments to the SAH grant approval process are

necessary to reduce the possible confusion surrounding the process created by current regulations. Since numerous determinations must be made at various points on the SAH timeline, and since certain financial considerations (for example, reimbursements for preconstruction costs) are dependent upon the stage of an applicant's grant approval, it is important that the regulations are clear about exactly how such stages are structured. VA has authority to take this action pursuant to 38 U.S.C. 2101 and 2102A. The intended effect of this action is more detailed regulations that make clear to the public the aspects of and practical differences between conditional approval and final approval of SAH grants.

Section 36.4406 Reimbursement of Costs and Disbursement of Grant Funds

With the exception of current §§ 36.4406 and 36.4410, current regulations provide little information about what costs an eligible individual may incur with SAH grant funds and when these costs may be incurred. Furthermore, since VA is proposing to include in the regulations the two-stage approval process, VA believes that the regulations also should explain more fully what costs may be incurred, when costs will be reimbursed, and when and how grant funds will be disbursed, depending on the status of conditional approval and final approval.

Section 36.4406, "Reimbursement of costs and disbursement of grant funds," would revise and expand upon current § 36.4406 to explain how grant funds will be disbursed, and would set forth specific requirements for incurring and reimbursing certain preconstruction costs. The section would re-emphasize that conditional approval must be obtained in order for an applicant to incur allowable preconstruction costs and that there would be a 20 percent cap on such costs to preserve the remaining grant funds for construction, in the event that final approval is granted.

The section also would substitute the broader framework of "construction-related costs" for current § 36.4404's limitations on costs allowable for grant computation. Construction-related costs, as defined under proposed § 36.4401 would mean "[a]n expense incurred for the purpose of or directly related to building, modifying, or adapting a housing unit by using specially adapted housing grant proceeds." Since each eligible individual would require different adaptations, VA believes that the broader framework would allow an eligible individual to achieve maximum

use of his or her grant proceeds and adapted property.

In terms of grant disbursement after final approval, proposed § 36.4406 would be similar to current regulations in stating that the Secretary determines the method on a case-by-case basis. Currently, the Secretary generally requires that funds either be deposited into an escrow account so that an escrow agent can disburse funds directly to a contractor or that the funds be disbursed to a mortgage holder to reduce the outstanding principal indebtedness. This practice would remain in effect under the proposed rule.

Finally, proposed § 36.4406 would note that, in the event that an eligible individual dies at some point during the SAH grant timeline, the estate may be reimbursed for authorized preconstruction and construction related costs, but must submit requests for reimbursement that are timely under the proposed rule. Unfortunately, some eligible individuals will die before the adaptations to their housing units are finished. VA's new two-staged process will make it easier for eligible individuals' estates to recover costs where the individual had been determined eligible and had already expended personal funds. At the same time, a limitation on the timeframe in which an eligible individual's estate may seek such reimbursement is necessary. VA believes that one year from the date on which the Loan Guaranty Service becomes aware of the eligible individual's death would provide the estate sufficient time in which to submit the necessary documentation. Under the proposed rule, VA would require that requests for reimbursement be submitted within one year, except when the Secretary determines that equity and good conscience require otherwise.

These actions are necessary in order to clarify what specific preliminary costs may be incurred, to detail the administrative requirements that must be followed in order to be properly reimbursed, and to explain the options regarding grant disbursement. This section takes into account the fact that, to obtain a grant, an eligible individual may have to incur certain reasonable expenses; and that, although SAH grants are made for the benefit of the eligible individual not his or her family, VA has a longstanding administrative practice of making an eligible individual's estate whole. In developing this section, we were also guided by a 1995 legal decision of the VA Office of the General Counsel (VAOPGCPREC 13-95), which held:

The Veterans Benefits Administration (VBA) should issue regulations establishing what constitutes the final approval for granting SAH assistance. These regulations should also provide that VA may authorize a veteran who meets all initial qualifying criteria to incur certain preliminary costs prior to final grant approval. They may also permit VA to reimburse these costs to the estate of a veteran who dies prior to final approval if VA determines it is likely approval would have been given had the veteran lived.

VA has authority to take this action pursuant to 38 U.S.C. 2101(d). The intended effect of this action is more detailed regulations that make clear to the public the costs that may be incurred and the temporal requirements for their reimbursement.

Section 36.4407 Guaranteed and Direct Loans

Section 36.4407, "Guaranteed and direct loans," would revise current § 36.4409 to clarify its requirements. No substantive change to § 36.4409 is intended.

Section 36.4408 Submission of Proof to the Secretary

Proposed § 36.4408, "Submission of proof to the Secretary," would renumber current § 36.4405. The change would be structural only.

Section 36.4409 Delegations of Authority

Proposed § 36.4409, "Delegations of authority," would renumber current § 36.4408. In addition, VA proposes updates to the list of positions with delegated authority to reflect changes in position titles and to add the Deputy Director, Loan Guaranty Service. VA has authority to take this action pursuant to 38 U.S.C. 501, 512, and 2101.

Section 36.4410 Supplementary Administrative Action

Proposed § 36.4410, "Supplementary administrative action," would renumber previous § 36.4407. It would also rephrase current § 36.4407 in a reader-focused style. No substantive change is intended to current § 36.4407.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act of 1995

Although this document contains provisions constituting collections of information, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), no new or proposed revised collections of information are associated with this proposed rule. The information collection provisions for § 36.4400 *et seq.* are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900-0031, 2900-0047, 2900-0132, and 2900-0300.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This proposed rule would directly affect only individuals. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final

regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.106, Specially Adapted Housing for Disabled Veterans; and 64.118, Veterans Housing—Direct Loans for Certain Disabled Veterans.

Lists of Subjects in 38 CFR Part 36

Condominiums, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: June 26, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 36 (subpart C) as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and as otherwise noted.

2. Revise Subpart C to read as follows:

Subpart C—Assistance to Certain Individuals in Acquiring Specially Adapted Housing

Sec.

- 36.4400 Authority.
- 36.4401 Definitions.
- 36.4402 Grant types.
- 36.4403 Subsequent use.
- 36.4404 Eligibility for assistance.
- 36.4405 Grant approval.
- 36.4406 Reimbursement of costs and disbursement of grant funds.
- 36.4407 Guaranteed and direct loans.
- 36.4408 Submission of proof to the Secretary.
- 36.4409 Delegations of authority.
- 36.4410 Supplementary administrative action.

Subpart C—Assistance to Certain Individuals in Acquiring Specially Adapted Housing

§ 36.4400 Authority.

The Secretary's authority to provide assistance in acquiring specially adapted housing is set forth in 38 U.S.C. chapter 21.

(Authority: 38 U.S.C. 501, 2101(d))

§ 36.4401 Definitions.

The following definitions of terms apply to this subpart:

Adapt: To make a housing unit suitable to, or fit for, the residential living needs of an eligible individual.

(Authority: 38 U.S.C. 501, 2101)

Adapted housing grant or AH grant: A grant authorized under 38 U.S.C. 2101(b), 2102(b).

(Authority: 38 U.S.C. 501, 2101, 2102)

Aggregate amount of assistance available: The amounts specified at 38 U.S.C. 2102(d) as adjusted in accordance with 38 U.S.C. 2102(e).

(Authority: 38 U.S.C. 501, 2101, 2102)

Beneficial property interest: An interest deemed by the Secretary as one that provides (or will provide) an eligible individual a meaningful right to occupy a housing unit as a residence.

(Authority: 38 U.S.C. 501, 2101)

Braces: Orthopedic appliances, including prosthetic devices, used for support.

(Authority: 38 U.S.C. 501, 2101)

Construction-related cost: An expense incurred for the purpose of or directly related to building, modifying, or adapting a housing unit by using specially adapted housing grant proceeds.

(Authority: 38 U.S.C. 501, 2101)

Disability: A compensable physical impairment, as determined by a Department of Veterans Affairs rating decision, that meets the criteria of 38 U.S.C. 2101(a)(2) or (b)(2).

(Authority: 38 U.S.C. 501, 2101)

Eligible individual: For specially adapted housing purposes, a person who has served or is currently serving in the active military, naval, or air service, and who has been determined by the Secretary to be eligible for benefits pursuant to 38 U.S.C. chapter 21.

(Authority: 38 U.S.C. 501, 2101, 2101A)

Eligible individual's family: Persons related to an eligible individual by blood, marriage, or adoption.

(Authority: 38 U.S.C. 501, 2101, 2102A)

Housing unit: Any residential unit, including all necessary land, improvements, and appurtenances, together with such movable equipment or special features as are authorized by 38 U.S.C. 1717 and 2101. For the purposes of this definition, *movable facilities* is defined as such exercising equipment and other aids as may be allowed or required by the Chief Medical Director or designee; *necessary land* is defined as any plot of land the cost and area of which are not

disproportionate to the type of improvements thereon and which is in keeping with the locality; and *special fixtures and necessary adaptations* is defined as construction features which are specially designed to overcome the physical limitations of the individual beneficiary and which are allowed or required by the Chief Medical Director or designee as necessary by nature of the qualifying disability.

(Authority: 38 U.S.C. 501, 1717, 2101)

Ownership interest: An undivided property interest that the Secretary determines is a satisfactory:

(1) Fee simple estate;

(2) Life estate;

(3) Functional equivalent of a life estate, such as that created by a valid trust, a long-term lease, or a land installment contract that will convert to a fee simple estate upon satisfaction of the contract's terms and conditions;

(4) Ownership of stock or membership in a cooperative housing corporation entitling the eligible individual to occupy for dwelling purposes a single family residential unit in a development, project, or structure owned or leased by such corporation;

(5) Lease, under the terms of a valid and enforceable Memorandum of Understanding between a tribal organization and the Secretary; or

(6) Beneficial property interest in a housing unit located outside the United States.

(Authority: 38 U.S.C. 501, 2101, 3762)

Paraplegic housing grant or PH grant: A grant authorized under 38 U.S.C. 2101(a).

(Authority: 38 U.S.C. 501, 2101)

Preconstruction cost: An authorized expense incurred by an eligible individual in anticipation of receiving final approval for a specially adapted housing grant.

(Authority: 38 U.S.C. 501, 2101)

Reimburse: To pay specially adapted housing grant funds directly to an eligible individual (or an eligible individual's estate) for preconstruction costs or for construction-related costs.

(Authority: 38 U.S.C. 501, 2101)

Reside: To occupy (including seasonal occupancy) as one's residence.

(Authority: 38 U.S.C. 501, 2101)

Secretary: The Secretary of the United States Department of Veterans Affairs or any employee or agent authorized in § 36.4409 of this part to act on behalf of the Secretary.

(Authority: 38 U.S.C. 501, 2101)

Specially adapted housing grant: A PH grant, AH grant, or TRA grant made to an eligible individual in accordance with the requirements of 38 U.S.C. chapter 21 and this subpart.

(Authority: 38 U.S.C. 501, 2101)

Temporary residence adaptations grant or TRA grant: A grant, the specific requirements and amount of which are outlined in 38 U.S.C. 2102A and 2102(d).

(Authority: 38 U.S.C. 501, 2101, 2102A)

§ 36.4402 Grant types.

(a) *PH grant.* The PH grant provides monetary assistance for the purpose of acquiring specially adapted housing pursuant to one of the following plans:

(1) Where an eligible individual elects to construct a dwelling on land to be acquired by the eligible individual, the Secretary will pay, up to the aggregate amount of assistance available for PH grants, not more than 50 percent of the eligible individual's total costs for acquiring the land and constructing the dwelling.

(2) Where an eligible individual elects to construct a dwelling on land already owned by the eligible individual, the Secretary will pay, up to the aggregate amount of assistance available for PH grants, not more than the lesser of:

(i) 50 percent of the eligible individual's costs for the land and the construction of the dwelling, or

(ii) 50 percent of the eligible individual's costs for the dwelling, plus the full amount of the unpaid balance, if any, of the cost to the individual of the necessary land.

(3) Where an eligible individual elects to adapt a housing unit already owned by the eligible individual, to conform to the requirements of the eligible individual's disability, the Secretary will pay, up to the aggregate amount of assistance available for PH grants, the greater of:

(i) The eligible individual's costs for making such adaptation(s), or

(ii) 50 percent of the eligible individual's costs for making such adaptation(s), plus the lesser of:

(A) 50 percent of the eligible individual's costs for acquiring the housing unit, or

(B) The full amount of the unpaid balance, if any, of the cost to the individual of the housing unit.

(4) Where an eligible individual has already acquired a suitably adapted housing unit, the Secretary will pay, up to the aggregate amount of assistance available for PH grants, the lesser of:

(i) 50 percent of the eligible individual's cost of acquiring such housing unit, or

(ii) The full amount of the unpaid balance, if any, of the cost to the individual of the housing unit.

(b) *AH grant.* (1) The AH grant provides monetary assistance for the purpose of acquiring specially adapted housing pursuant to one of the following plans:

(i) Where an eligible individual elects to construct a dwelling on land to be acquired by the eligible individual or a member of the eligible individual's family;

(ii) Where an eligible individual elects to construct a dwelling on land already owned by the eligible individual or a member of the eligible individual's family;

(iii) Where an eligible individual elects to adapt a housing unit already owned by the eligible individual or a member of the eligible individual's family; or

(iv) Where an eligible individual elects to purchase a housing unit that is already adapted to the requirements of the eligible individual's disability.

(2) Regardless of the plan chosen pursuant to paragraph (b)(1) of this section, the Secretary will pay the lesser of:

(i) The actual cost, or, in the case of an eligible individual acquiring a housing unit already adapted with special features, the fair market value, of the adaptations determined by the Secretary to be reasonably necessary, or

(ii) The aggregate amount of assistance available for AH grants.

(c) *TRA grant.* The TRA grant provides monetary assistance for the purpose of adapting a housing unit owned by a member of the eligible individual's family, in which the eligible individual intends to reside temporarily. The Secretary will pay, up to the amounts specified at 38 U.S.C. 2102A(b) for TRA grants, the actual cost of the adaptations.

(d) *Duplication of benefits.* (1) If an individual is determined eligible for a PH grant, he or she may not subsequently receive an AH grant.

(2) If an individual is determined eligible for an AH grant, and becomes eligible for a PH grant, he or she may receive PH grants and TRA grants up to the aggregate amount of assistance available for PH grants. However, any AH or TRA grants received by the individual before he or she was determined eligible for the PH grant will count towards the three grant limit in § 36.4403.

(3) If the Secretary has provided assistance to an eligible individual under 38 U.S.C. 1717, the Secretary will not provide assistance under this subpart that would result in duplicate

payments for the same adaptations. However, nothing in this subpart prohibits an eligible individual from utilizing the assistance authorized under 38 U.S.C. 1717 and 38 U.S.C. chapter 21 simultaneously, provided that no duplicate payments result.

(Authority: 38 U.S.C. 2102, 2102A, 2104)

§ 36.4403 Subsequent use.

An eligible individual may receive up to three grants of assistance under 38 U.S.C. chapter 21, subject to the following limitations:

(a) The aggregate amount of assistance available to an eligible individual for PH grant and TRA grant usage will be limited to the aggregate amount of assistance available for PH grants;

(b) The aggregate amount of assistance available to an eligible individual for AH grant and TRA grant usage will be limited to the aggregate amount of assistance available for AH grants;

(c) The TRA grant may only be obtained once and will be counted as one of the three grant usages; and

(d) Funds from subsequent PH grant or AH grant usages may only pay for reimbursing specially adapted housing-related costs incurred on or after June 15, 2006 or the date on which the eligible individual is conditionally approved for subsequent assistance, whichever is later.

(Authority: 38 U.S.C. 2102, 2102A)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0132.)

§ 36.4404 Eligibility for assistance.

(a) *Disability requirements.* (1) The PH grant is available to individuals with permanent and total service-connected disability who are entitled to compensation under 38 U.S.C. chapter 11 for any of the following conditions:

(i) Loss, or loss of use, of both lower extremities so as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair;

(ii) Blindness in both eyes having only light perception, plus loss or loss of use of one lower extremity;

(iii) Loss, or loss of use, of one lower extremity, together with—

(A) Residuals of organic disease or injury; or

(B) The loss or loss of use of one upper extremity, which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair;

(iv) Loss, or loss of use, of both upper extremities so as to preclude use of the arms at or above the elbows; or

(v) Any other injury identified as eligible for assistance under 38 U.S.C. 2101(a).

(2) The AH grant is available to individuals with permanent and total service-connected disability who are entitled to compensation under 38 U.S.C. chapter 11 for any of the following conditions:

(i) Blindness in both eyes with 5/200 visual acuity or less;

(ii) Anatomical loss, or loss of use, of both hands; or

(iii) Any other injury identified as eligible for assistance under 38 U.S.C. 2101(b).

(3) The TRA grant is available to individuals with permanent and total service-connected disability who are entitled to compensation under 38 U.S.C. chapter 11 for any of the conditions described under paragraph (a)(1) of this section for the PH grant or paragraph (a)(2) of this section for the AH grant.

(b) *Feasibility and suitability requirements.* (1) In order for an individual to be eligible for PH grant assistance, the Secretary must determine that:

(i) It is medically feasible for the individual to reside outside of an institutional setting;

(ii) It is medically feasible for the individual to reside in the proposed housing unit and in the proposed locality;

(iii) The nature and condition of the proposed housing unit are suitable for the individual's residential living needs; and

(iv) The cost of the proposed housing unit bears a proper relation to the individual's present and anticipated income and expenses.

(2) In order for an individual to be eligible for AH grant assistance, the Secretary must determine that:

(i) The individual is residing in and reasonably intends to continue residing in a housing unit owned by the individual or a member of the individual's family; or

(ii) If the individual's housing unit is to be constructed or purchased, the individual will be residing in and reasonably intends to continue residing in a housing unit owned by the individual or a member of the individual's family.

(Authority: 38 U.S.C. 501, 2101, 2102, 2102A)

§ 36.4405 Grant approval.

(a) *Conditional approval.* (1) The Secretary may provide written notification to an eligible individual of conditional approval of a specially

adapted housing grant if the Secretary has determined that:

(i) Disability requirements have been satisfied pursuant to § 36.4404(a);

(ii) Feasibility and suitability requirements have been satisfied pursuant to § 36.4404(b); and

(iii) The eligible individual has not exceeded the usage and dollar limitations prescribed by §§ 36.4402(d) and 36.4403.

(2) Once conditional approval has been granted, the Secretary may authorize, in writing, an eligible individual to incur certain preconstruction costs pursuant to § 36.4406.

(b) *Final approval.* In order to obtain final approval for a specially adapted housing grant, the Secretary must determine that the following property requirements are met:

(1) *Proposed adaptations.* The plans and specifications of the proposed adaptations demonstrate compliance with minimum property and design requirements of the specially adapted housing program.

(2) *Ownership.*

(i) In the case of PH grants, the eligible individual must have, or provide satisfactory evidence that he or she will acquire, an ownership interest in the housing unit.

(ii) In the case of AH grants, the eligible individual or a member of the eligible individual's family must have, or provide satisfactory evidence that he or she will acquire, an ownership interest in the housing unit.

(iii) In the case of TRA grants:

(A) A member of the eligible individual's family must have, or provide satisfactory evidence that he or she will acquire, an ownership interest in the housing unit, and

(B) The eligible individual and the member of the eligible individual's family who has or acquires an ownership interest in the housing unit must sign a certification as to the likelihood of the eligible individual's temporary occupancy of such residence.

(iv) If the ownership interest in the housing unit is or will be vested in the eligible individual and another person, the Secretary will not for that reason reduce by percentage of ownership the amount of a specially adapted housing grant. However, to meet the ownership requirement for final approval of a specially adapted housing grant, the eligible individual's ownership interest must be of sufficient quantum and quality, as determined by the Secretary, to ensure the eligible individual's quiet enjoyment of the property.

(3) *Certifications.* The eligible individual must certify, in such form as the Secretary will prescribe, that:

(i) Neither the eligible individual, nor anyone authorized to act for the eligible individual, will refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the housing unit acquired by this benefit, to any person because of race, color, religion, sex, familial status, disability, or national origin;

(ii) The eligible individual, and anyone authorized to act for the eligible individual, recognizes that any restrictive covenant on the housing unit relating to race, color, religion, sex, familial status, disability, or national origin is illegal and void, and any such covenant is specifically disclaimed; and

(iii) The eligible individual, and anyone authorized to act for the eligible individual, understands that civil action for preventative relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law.

(4) *Flood insurance.* The eligible individual's housing unit, if it is or becomes located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended, must be covered by flood insurance. The amount of flood insurance must be at least equal to the lesser of the full insurable value of the housing unit or the maximum limit of coverage available for the particular type of housing unit under the National Flood Insurance Act, as amended. The Secretary will not approve any financial assistance for the acquisition or construction of a housing unit located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program.

(Authority: 38 U.S.C. 501, chapter 21, 42 U.S.C. 4012a, 4106(a)).

(5) *Geographical limits.* Any real property purchased, constructed, or adapted with the proceeds of a specially adapted housing grant must be located:

(i) Within the United States, which, for purposes of 38 U.S.C. chapter 21, includes the several States, Territories, and possessions, including the District of Columbia, and the Commonwealths of Puerto Rico and the Northern Mariana Islands; or,

(ii) If outside the United States, in a country or political subdivision which allows individuals to have or acquire a beneficial property interest, and in which the Secretary, in his or her discretion, has determined that it is reasonably practicable for the Secretary to provide assistance in acquiring specially adapted housing.

(Authority: 38 U.S.C. 2101, 2101A, 2102A)

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0031, 2900-0132, and 2900-0300.)

§ 36.4406 Reimbursement of costs and disbursement of grant funds.

(a) After providing conditional approval of a specially adapted housing grant for an eligible individual pursuant to § 36.4405, the Secretary may authorize the incurrence, prior to obtaining final specially adapted housing grant approval, of preconstruction costs of the types and subject to the limits specified in this paragraph.

(1) Preconstruction costs to be incurred may not exceed 20 percent of the eligible individual's aggregate amount of assistance available, unless the individual is authorized by the Secretary in writing to incur specific preconstruction costs in excess of this 20 percent limitation. Preconstruction costs may include the following items:

(i) Architectural services employed for preparation of building plans and specifications.

(ii) Land surveys.

(iii) Attorneys' and other legal fees.

(iv) Other costs or fees necessary to plan for specially adapted housing grant use, as determined by the Secretary.

(2) If the Secretary authorizes final approval, the Secretary will pay out of the specially adapted housing grant the preconstruction costs that the Secretary authorized in advance. If the specially adapted housing grant process is terminated prior to final approval, preconstruction costs incurred that the Secretary authorized in advance will be reimbursed to the eligible individual, or the eligible individual's estate pursuant to paragraph (c) of this section, but will be deducted from the aggregate amount of assistance available and the reimbursement will constitute one of the three permitted grant usages (see § 36.4403).

(b) After final approval, the Secretary will determine a method of disbursement that is appropriate and advisable in the interest of the eligible individual and the Government, and will pay the specially adapted housing grant accordingly. Disbursement of

specially adapted housing grant proceeds generally will be made to third parties who have contracted with the veteran, to an escrow agent, or to the eligible individual's lender, as the Secretary deems appropriate. If the Secretary determines that it is appropriate and advisable, the Secretary may disburse specially adapted housing grant funds directly to an eligible individual where the eligible individual has incurred authorized preconstruction or construction-related costs and paid for such authorized costs using personal funds.

(c) Should an eligible individual die before the Secretary disburses the full specially adapted housing grant, the eligible individual's estate must submit to the Secretary all requests for reimbursement within one year of the date the Loan Guaranty Service learns of the eligible individual's death. Except where the Secretary determines that equity and good conscience require otherwise, the Secretary will not reimburse an eligible individual's estate for a request that has not been received by the Department of Veterans Affairs within this timeframe.

(Authority: 38 U.S.C. 2101(d))

§ 36.4407 Guaranteed and direct loans.

(a) In any case where, in addition to using the benefits of 38 U.S.C. chapter 21, the eligible individual will use his or her entitlement to the loan guaranty benefits of 38 U.S.C. chapter 37, the complete transaction must be in accord with applicable regulations found in this part.

(b) In any case where, in addition to using the benefits of 38 U.S.C. chapter 21, the eligible individual will use a direct loan under 38 U.S.C. 3711(i), the complete transaction must be in accord with the requirements of § 36.4503 and the loan must be secured by the same housing unit to be purchased, constructed, or adapted with the proceeds of the specially adapted housing grant.

(c) In any case where, in addition to using the benefits of 38 U.S.C. chapter 21, the eligible individual will use the Native American Direct Loan benefit under 38 U.S.C. chapter 37, subchapter V, the eligible individual's ownership interest in the housing unit must comport with the requirements found in §§ 36.4501, 36.4512, and 36.4527 and in the tribal documents approved by the Secretary, which include, but may not be limited to, the Memorandum of Understanding, the residential lease of tribal-owned land, the tribal lending ordinances, and any relevant tribal resolutions.

(Authority: 38 U.S.C. 2101(d), 3711(i), 3762)

§ 36.4408 Submission of proof to the Secretary.

The Secretary may, at any time, require submission of such proof of costs and other matters as the Secretary deems necessary.

(Authority: 38 U.S.C. 501, 2101(d))

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0031 and 2900-0300.)

§ 36.4409 Delegations of authority.

(a) Each employee of the Department of Veterans Affairs appointed to or lawfully filling any of the following positions is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect to assisting eligible individuals in acquiring specially adapted housing:

- (1) Under Secretary for Benefits.
- (2) Director, Loan Guaranty Service.
- (3) Deputy Director, Loan Guaranty Service.

(4) Assistant Director, Loan Policy and Valuation.

(5) Chief, Specially Adapted Housing, Loan Guaranty Service.

(6) Director, VA Medical Center.

(7) Director, VA Regional Office.

(8) Loan Guaranty Officer.

(9) Assistant Loan Guaranty Officer.

(b) Nothing in this section will be construed to authorize the determination of basic eligibility or medical feasibility under § 36.4404(a), (b)(1)(i), or (b)(1)(ii) by any employee designated in this section, except as otherwise authorized.

(Authority: 38 U.S.C. 501, 512, ch. 21)

§ 36.4410 Supplementary administrative action.

Subject to statutory limitations and conditions prescribed in title 38, U.S.C., the Secretary may take such action as may be necessary or appropriate to relieve undue prejudice to an eligible individual or a third party contracting or dealing with such eligible individual which might otherwise result.

(Authority: 38 U.S.C. 501, 2101(d))

[FR Doc. E9-23842 Filed 10-2-09; 8:45 am]

BILLING CODE 8320-01-P