

agreements for the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.)*, as amended—Contracts and subawards of amounts in excess of \$100,000 must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations must be reported to the DOS and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (Exec. Order No. 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Exec. Order No. 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Exec. Order No. 12549. Contractors with awards that exceed the small purchase threshold must provide the required certification regarding its exclusion status and that of its principal employees.

Dated: July 18, 1995.

**Janet Reno,**

*Attorney General.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 36

RIN 2900-AG14

#### Loan Guaranty: Implementation of Public Laws 102-547, 103-66, 103-78, 103-325, 103-353, and 103-446

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) loan guaranty regulations to implement certain provisions of various public laws. VA is amending its regulations to provide for loans to Reservists and members of the National Guard, loans with negotiated interest rates, adjustable rate mortgages, restoration of entitlement in certain cases, energy efficient mortgages, and flood zone determination fees. VA is also amending its regulations in the areas of manufactured housing certifications, certain interest rate reduction refinancing loans, and conveyance of properties notwithstanding overbids. In addition, the regulations are amended to reflect a reduced funding fee for interest rate reduction refinancing loans and an increase in the maximum guaranty amount. These changes increase the types of loans available to veterans and the categories of veterans eligible for VA home loans.

**EFFECTIVE DATE:** This final rule is effective on August 25, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273-7368.

**SUPPLEMENTARY INFORMATION:** On February 24, 1994, VA published in the **Federal Register** (59 FR 8881) proposed regulatory amendments implementing Public Laws 102-547, 103-66, and 103-78. The proposed amendments were published to change: [1] 38 CFR 36.4312, to add a funding fee structure for loans to members of the Selected Reserves; [2] §§ 36.4212 and 36.4311, to allow VA guaranteed loans to bear interest at rates agreed upon by the veteran and the lender; [3] §§ 36.4212(b) and 36.4311(b), to provide that discount points cannot be financed, except for interest rate reduction refinancing loans; [4] §§ 36.4212 and 36.4311, to provide for VA guaranteed loans with adjustable interest rates; [5] §§ 36.4302 and

36.4336, to provide for energy efficient mortgages; [6] §§ 36.4232, 36.4254, and 36.4312, to reduce the funding fee for interest rate reduction refinancing loans to 0.50 percent of the total loan amount; [7] § 36.4312, to increase the funding fee on most guaranteed loans and for the second and subsequent use of the loan guaranty benefit, except for interest rate reduction refinancing loans; and [8] §§ 36.4223 and 36.4302, to revise the guaranty percentage for certain interest rate reduction refinancing loans. Please refer to the February 24, 1994, **Federal Register** for a complete discussion of the proposed amendments. This document adopts the regulatory amendments as originally proposed, except for a technical change discussed below, revisions of authority citations, amendments reflecting statutory changes made by Public Laws 103-325, 103-353, and 103-446, and non-substantive changes.

VA received three comments on the proposed amendments. Two commenters noted that the veteran is permitted to finance discount points on interest rate reduction refinancing loans, and suggested that the veteran be allowed to finance discount points on purchase loans as well. This suggestion cannot be adopted because the financing of discount points on purchase loans is prohibited by statute; see 38 U.S.C. 3703(c).

A third commenter supported the amendments which allow VA to guarantee a loan above the reasonable value of the property for the purpose of adding energy efficient improvements to the home. This commenter recommended that language be added to the regulations requiring "that financed energy improvements meet efficiency standards that exceed, by some pre-determined level, those otherwise applicable in the jurisdiction."

We do not believe it would be appropriate to require specific standards for energy efficient improvements. Local variations in climate, energy sources and energy efficiency requirements would make it difficult to implement and monitor the use of such standards. Furthermore, standards for energy efficient improvements could be perceived by program participants as unnecessarily complicating the lending process and have an adverse impact on this area of VA's home loan program.

This commenter also suggested that prior to the closing of a VA guaranteed loan the purchaser be required to obtain an energy audit which would provide an estimate of home energy consumption and information about potential cost-effective improvements to reduce that consumption. VA is

opposed to a mandatory energy audit. At this time, it is uncertain whether reliable energy audits can be obtained by home purchasers in all parts of the country for an affordable cost. Furthermore, the requirement could be perceived by program participants as unnecessarily complicating the lending process and increasing the cost of homeownership. However, the Certificate of Reasonable Value (VA Form 26-1843) or the lender's Notice of Value is issued for each property to be purchased with a VA guaranteed loan. These notices do recommend that the veteran purchaser obtain such an audit.

A technical change is being made to 38 CFR 36.4212(f)(2) and 36.4311(d)(2) by adding a new sentence to each. The proposed regulations failed to specify what would be the effective date of the new interest rate on an adjustable rate mortgage. The additional sentence provides that when the rate is adjusted, the new rate will become effective the first day of the month following the adjustment date; the corresponding change in the monthly payment of principal and interest will occur one month later, because interest is collected in arrears. These changes reflect standard practice in the industry.

This final rule also contains new provisions to incorporate changes made by Public Laws 103-325, 103-353 and 103-446.

First, 38 CFR 36.4203(a) and 36.4302 are amended to reflect the change by Public Law 103-446 to 38 U.S.C. 3702 to permit a veteran's home or manufactured home loan entitlement to be restored, on a one-time basis, if the veteran has repaid the prior VA loan in full, but has not disposed of the property securing that loan. After one such restoration, any future restoration of that entitlement will require the veteran to have disposed of all property previously financed with a VA loan using that entitlement.

The manufactured home warranty requirements of § 36.4231(b) are amended to reflect the provisions of Public Law 103-446 abolishing the requirement for VA inspections of the manufacturing process and onsite inspections of manufactured homes sold to veterans. Also, as required by Public Law 103-446, the provisions of § 36.4231(b) are amended to provide that any manufactured home properly displaying a certificate of conformity with all applicable Federal manufactured home construction and safety standards is eligible for VA financing.

Public Law 103-353 increased the maximum guaranty amount on loans greater than \$144,000 from \$46,000 to

\$50,750. This final rule accordingly amends 38 CFR 36.4302(a) and (d) to incorporate the increased guaranty amount for VA loans over \$144,000.

38 CFR 36.4306a(a) is amended to incorporate the changes made by Public Law 103-446 with regard to energy efficient improvement costs to be included in interest rate reduction refinancing loans (IRRRLs). Under the provisions of the new law, IRRRLs may now include additional funds for energy efficient improvements.

This final rule also adds new provisions at the end of §§ 36.4212(a) and 36.4311(a). Public Law 103-446 amended 38 U.S.C. 3710(e) to provide that, for an adjustable rate mortgage being refinanced under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11) by a fixed rate mortgage, the interest rate on the new loan may be higher than the current rate on the adjustable rate loan. The new language merely reflects the statutory change.

This document amends 38 CFR 36.4320(a)(1)(ii)(B) to conform with new statutory language regarding the conveyance of property. Public Law 103-446 amended 38 U.S.C. 3732(c)(7) to provide that VA may now accept conveyance of property securing a guaranteed loan from the loan holder notwithstanding the holder's overbid at the liquidation sale. This was previously allowed only where State law requirements resulted in an overbid. This change extends to all overbids, including those caused by lender or attorney error.

Finally, the National Flood Insurance Reform Act of 1994, title V of Public Law 103-325, permits lenders to charge borrowers a reasonable fee for certain costs of determining whether the home or manufactured home is located in an area having special flood hazards. 38 CFR 36.4232, 36.4254, and 36.4312 are amended accordingly.

The Secretary hereby certifies that this final rule will 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. The final rule essentially restates statutory provisions and reflects statutory requirements. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

#### List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan programs—housing and

community development, Manufactured homes, Veterans.

Approved: July 17, 1995.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR Part 36 is amended as set forth below.

#### PART 36—LOAN GUARANTY

1. The authority citation for part 36, §§ 36.4201 through 36.4287 is revised to read as follows:

**Authority:** Sections 36.4201 through 36.4287 issued under 38 U.S.C. 501, 3701-3704, 3707, 3710-3714, 3719, 3720, 3729, unless otherwise noted.

2. Section 36.4203 is amended by revising the remainder of paragraphs (a)(2) and (a)(3) and adding new paragraph (a)(4) to read as follows:

#### § 36.4203 Eligibility of the veteran for the manufactured home loan benefit under 38 U.S.C. 3712.

(a) \* \* \*

(2)(i) The loan has been repaid in full or the Secretary has been released from liability as to the loan, or if the Secretary has suffered a loss on said loan, such loss has been paid in full; or  
(ii) A veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of his or her entitlement to the extent the entitlement of the veteran-transferor had been used originally, and the veteran-transferee otherwise meets the requirements of 38 U.S.C. chapter 37.

(3) In a case in which the veteran still owns a property purchased with a VA-guaranteed loan, the Secretary may, one time only, restore entitlement if:

(i) The loan has been repaid in full, or, if the Secretary has suffered a loss on the loan, the loss has been paid in full; or

(ii) The Secretary has been released from liability as to the loan and, if the Secretary has suffered a loss on the loan, the loss has been paid in full.

(4) The Secretary may, in any case involving circumstances deemed appropriate, waive either or both of the requirements set forth in paragraphs (a)(1) and (a)(2)(i) of this section.

(Authority: 38 U.S.C. 3702, 3712)

3. Section 36.4212 is revised to read as follows:

#### § 36.4212 Interest rates and late charges.

(a) In guaranteeing or insuring loans under 38 U.S.C. chapter 37, the Secretary may elect to require that such loans either bear interest at a rate that is agreed upon by the veteran and the lender, or bear interest at a rate not in

excess of a rate established by the Secretary. The Secretary may, from time to time, change that election by publishing a notice in the **Federal Register**. Provided, however, that the interest rate of a loan for the purpose of an interest rate reduction under 38 U.S.C. 3712(a)(1)(F) must be less than the interest rate of the VA loan being refinanced. This paragraph (a) does not apply in the case of an adjustable rate mortgage being refinanced with a fixed rate loan.

(Authority: 38 U.S.C. 3703, 3712)

(b) For loans bearing an interest rate agreed upon by the veteran and the lender, the veteran may pay reasonable discount points in connection with the loan. The discount points may not be included in the loan amount, except for interest rate reduction refinancing loans under 38 U.S.C. 3712(a)(1)(F).

(Authority: 38 U.S.C. 3703, 3712)

(c) The rate of interest in instruments securing the indebtedness for all loans may be expressed in terms of add-on or discount.

(Authority: 38 U.S.C. 3710, 3712)

(d) Interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency or default; *Provided*, that a late charge not in excess of an amount equal to 4 percent of any installment paid more than 15 days after due date shall not be considered a violation of this limitation.

(Authority: 38 U.S.C. 3712)

(e) Adjustable rate mortgage loans which comply with the requirements of this paragraph are eligible for guaranty.

(1) *Interest rate index.* Changes in the interest rate charged on an adjustable rate mortgage must correspond to changes in the weekly average yield on one year (52 week) Treasury bills adjusted to a constant maturity. Yields on one year Treasury bills at "constant maturity" are interpolated by the United States Treasury from the daily yield curve. This curve, which relates the yield on the security to its time to maturity, is based on the closing market bid yields on actively traded one year Treasury bills in the over-the-counter market. The weekly average one year constant maturity Treasury bill yields are published by the Federal Reserve Board of the Federal Reserve System. The Federal Reserve Statistical Release Report H.15 (519) is released each Monday. These one year constant maturity Treasury bill yields are also published monthly in the Federal Reserve Bulletin, published by the

Federal Reserve Board of the Federal Reserve System, as well as quarterly in the Treasury Bulletin, published by the Department of the Treasury.

(2) *Frequency of interest rate changes.* Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur not sooner than 12 months nor later than 18 months from the date of the borrower's first mortgage payment. The adjusted rate will become effective the first day of the month following the adjustment date; the first monthly payment at the new rate will be due on the first day of the following month. To set the new interest rate, the lender will determine the change between the initial (i.e., base) index figure and the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(3) *Method of rate changes.* Interest rate changes may only be implemented through adjustments to the borrower's monthly payments.

(4) *Initial rate and magnitude of changes.* The initial contract interest rate of an adjustable rate mortgage shall be agreed upon by the lender and the veteran. The rate must be reflective of adjustable rate lending. Annual adjustments in the interest rate shall be set at a certain spread or margin over the interest rate index prescribed in paragraph (e)(1) of this section. Except for the initial rate, this margin shall remain constant over the life of the loan. Annual adjustments to the contract interest rate shall correspond to annual changes in the interest rate index, subject to the following conditions and limitations:

(i) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(ii) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, rounded to the nearest one-eighth of one percent, up or down. For example, if the margin is 2 percent and the new index figure is 6.06 percent, the

adjusted mortgage interest rate will be 8 percent. If the margin is 2 percent and the new index figure is 6.07 percent, the adjusted mortgage interest rate will be 8 1/8 percent.

(5) *Pre-loan disclosure.* The lender shall explain fully and in writing to the borrower, no later than on the date upon which the lender provides the prospective borrower with a loan application, the nature of the obligation taken. The borrower shall certify in writing that he or she fully understands the obligation and a copy of the signed certification shall be placed in the loan folder and included in the loan submission to VA. Such lender disclosure must include the following items:

(i) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;

(ii) Identification of the interest rate index, its source of publication and availability;

(iii) The frequency (i.e., annually) with which interest rate levels and monthly payments will be adjusted, and the length of the interval that will precede the initial adjustment; and

(iv) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the borrower over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(6) *Annual disclosure.* At least 25 days before any adjustment to a borrower's monthly payment may occur, the lender must provide a notice to the borrower which sets forth the date of the notice, the effective date of the change, the old interest rate, the new interest rate, the new monthly payment amount, the current index and the date it was published, and a description of how the payment adjustment was calculated. A copy of the annual disclosure shall be made a part of the lender's permanent record on the loan.

(Authority: 38 U.S.C. 3707, 3712)

4. Section 36.4223 is amended by revising paragraph (a)(4) to read as follows:

**§ 36.4223 Interest rate reduction refinancing loan.**

(a) \* \* \*

(4) The dollar amount of the guaranty of the 38 U.S.C. 3712(a)(1)(F) loan may not exceed the greater of the original guaranty amount of the loan being refinanced, or 25 percent of the loan; and

(Authority: 38 U.S.C. 3703, 3712)

\* \* \* \* \*

5. Section 36.4231 is amended by revising paragraph (b) to read as follows:

**§ 36.4231 Warranty requirements.**

\* \* \* \* \*

(b) Any manufactured housing unit properly displaying a certification of conformity to all applicable Federal manufactured home construction and safety standards pursuant to 42 U.S.C. 5415 shall be acceptable as security for a VA guaranteed loan.

(Authority: 38 U.S.C. 3712)

\* \* \* \* \*

6. In § 36.4232, paragraph (a)(2) is amended by removing the period at the end thereof and by adding in its place a semi-colon; paragraphs (a)(5) and (a)(6) are amended by removing “, and” and by adding to each paragraph at the end thereof a semi-colon; and paragraph (a)(7) is amended by removing the period at the end thereof and adding in its place “; and”. Section 36.4232 is also amended by adding a new paragraph (a)(8) and by revising paragraph (e)(1), to read as follows:

**§ 36.4232 Allowable fees and charges; manufactured home unit.**

(a) \* \* \*

(8) The actual amount charged for flood zone determinations, including a charge for a life-of-the-loan flood zone determination service purchased at the time of loan origination, if made by a third party who guarantees the accuracy of the determination. A fee may not be charged for a flood zone determination made by a Department of Veterans Affairs appraiser or for the lender's own determination.

(Authority: 38 U.S.C. 3712; 42 U.S.C. 4001 note, 4012a)

\* \* \* \* \*

(e)(1) Subject to the limitations set out in paragraph (e)(4) of this section, a fee must be paid to the Secretary. A fee of 1 percent of the total amount must be paid in a manner prescribed by the Secretary before a manufactured home unit loan will be eligible for guaranty. Provided, however, that the fee shall be 0.50 percent of the total loan amount for interest rate reduction refinancing loans guaranteed under 38 U.S.C.

3712(a)(1)(F). All or part of the fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender shall disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 3729(a))

\* \* \* \* \*

7. Section 36.4254 is amended by redesignating paragraph (a)(7) as paragraph (a)(8); and is further amended by adding a new paragraph (a)(7), by adding an authority citation following paragraph (a)(8), and by revising paragraph (d)(1), to read as follows:

**§ 36.4254 Fees and charges.**

(a) \* \* \*

(7) The actual amount charged for flood zone determinations, including a charge for a life-of-the-loan flood zone determination service purchased at the time of loan origination, if made by a third party who guarantees the accuracy of the determination. A fee may not be charged for a flood zone determination made by a Department of Veterans Affairs appraiser or for the lender's own determination, and

(8) \* \* \*

(Authority: 38 U.S.C. 3712; 42 U.S.C. 4001 note, 4012a)

\* \* \* \* \*

(d)(1) Notwithstanding the provisions of paragraph (c) of this section and subject to the limitations set out in paragraphs (d)(4) and (d)(5) of this section, a fee must be paid to the Secretary. A fee of 1 percent of the total loan amount must be paid to the Secretary before a combination manufactured home and lot loan (or a loan to purchase a lot upon which a manufactured home owned by the veteran will be placed) will be eligible for guaranty. Provided, however, that the fee shall be 0.50 percent of the total loan amount for interest rate reduction refinancing loans guaranteed under 38 U.S.C. 3712(a)(1)(F). All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 3729(a))

\* \* \* \* \*

8. The authority citation for part 36, §§ 36.4300 through 36.4375 is revised to read as follows:

**Authority:** Sections 36.4300 through 36.4375 issued under 38 U.S.C. 101, 501, 3701-3704, 3710, 3712-3714, 3720, 3279, 3732, unless otherwise noted.

9. In § 36.4302, paragraphs (c), (d), (e), (f), (g), (h), (i) and (j) are redesignated as paragraphs (d), (e), (f), (g), (h), (i), (j) and (l), respectively; and § 36.4302 is further amended by revising paragraph (a)(4), by revising paragraph (b), by adding a new paragraph (c), by revising the newly redesignated paragraph (e), by

revising newly redesignated paragraphs (j)(2), (j)(3), and (j)(4), and by adding a new paragraph (k), to read as follows:

**§ 36.4302 Computation of guaranties or insurance credits.**

(a) \* \* \*

(4) The lesser of \$50,750 or 25 percent of the original principal loan amount where the loan amount exceeds \$144,000 and the loan is for the purchase or construction of a home or the purchase of a condominium unit.

(b) With respect to an interest rate reduction refinancing loan guaranteed under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11), the dollar amount of guaranty may not exceed the greater of the original guaranty amount of the loan being refinanced, or 25 percent of the refinancing loan amount.

(Authority: 38 U.S.C. 3703, 3710)

(c) With respect to a loan for an energy efficient mortgage guaranteed under 38 U.S.C. 3710(d), the amount of the guaranty shall be in the same proportion as would have been provided if the energy efficient improvements were not added to the loan amount, and there shall be no additional charge to the veteran's entitlement as a result of the increased guaranty amount.

(Authority: 38 U.S.C. 3703, 3710)

\* \* \* \* \*

(e) Subject to the provisions of § 36.4303(g), the following formulas shall govern the computation of the amount of the guaranty or insurance entitlement which remains available to an eligible veteran after prior use of entitlement:

(1) If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from \$36,000. The sum remaining is the amount of available entitlement for use, except that:

(i) Entitlement may be increased by up to \$14,750 if the loan amount exceeds \$144,000 and the loan is for purchase or construction of a home or purchase of a condominium; and

(ii) Entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 3712 may not exceed \$20,000.

(2) If a veteran previously secured a realty (home) loan, the amount of realty (home) loan entitlement used is subtracted from \$36,000. The sum remaining is the amount of available entitlement for use, except that:

(i) Entitlement may be increased by up to \$14,750 if the loan amount exceeds \$144,000 and the loan is for purchase or construction of a home or purchase of a condominium; and

(ii) Entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 3712 may not exceed \$20,000.

(3) If a veteran previously secured a manufactured home loan under 38 U.S.C. 3712, the amount of entitlement used for that loan is subtracted from \$36,000. The sum remaining is the amount of available entitlement for home loans and the sum remaining may be increased by up to \$14,750 if the loan amount exceeds \$144,000 and the loan is for purchase or construction of a home or purchase of a condominium. To determine the amount of entitlement available for manufactured home loans processed under 38 U.S.C. 3712, the amount of entitlement previously used for that purpose is subtracted from \$20,000. The sum remaining is the amount of available entitlement for use for manufactured home loan purposes under 38 U.S.C. 3712.

(Authority: 38 U.S.C. 3703, 3712)

\* \* \* \* \*

(j) \* \* \*

(2)(i) The loan has been repaid in full or the Secretary has been released from liability as to the loan, or if the Secretary has suffered a loss on said loan, such loss has been paid in full; or

(ii) A veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of his or her entitlement to the extent the entitlement of the veteran-transferor had been used originally; or

(3) The loan has been repaid in full, and the loan for which the veteran seeks to use entitlement is secured by the same property which secured the fully repaid loan; or

(4) In a case in which the veteran still owns the property purchased with a VA-guaranteed loan, the Secretary may, one time only, restore entitlement used on that loan if:

(i) the loan has been repaid in full or, if the Secretary has suffered a loss on the loan, the loss has been paid in full; or

(ii) the Secretary has been released from liability as to the loan, and, if the Secretary has suffered a loss on the loan, the loss has been paid in full.

(k) The Secretary may, in any case involving circumstances deemed appropriate, waive either or both of the requirements set forth in paragraphs (j)(1) and (j)(2)(i) of this section.

(Authority: 38 U.S.C. 3702(b), 3710)

\* \* \* \* \*

10. In § 36.4306a, the introductory text of paragraph (a) and paragraph (a)(3) are revised, to read as follows:

**§ 36.4306a Interest rate reduction refinancing loan.**

(a) Pursuant to 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11), a veteran may refinance an existing VA guaranteed, insured, or direct loan to reduce the interest rate payable on the existing loan provided the following requirements are met:

\* \* \* \* \*

(3) The amount of the refinancing loan may not exceed:

(i) An amount equal to the sum of the balance of the loan being refinanced and such closing costs as authorized by § 36.4312(d) and a discount not to exceed a dollar amount determined in accordance with § 36.4312(d)(7)(i); or

(ii) In the case of a loan to refinance an existing VA guaranteed or direct loan and to improve the dwelling securing such loan through energy efficient improvements, an amount equal to the sum of the amount referred to with respect to the loan under paragraph (a)(3)(i) of this section and the amount authorized by § 36.4336(a)(4);

(Authority: 38 U.S.C. 3710(a))

\* \* \* \* \*

11. Section 36.4311 is revised to read as follows:

**§ 36.4311 Interest rates.**

(a) In guaranteeing or insuring loans under 38 U.S.C. chapter 37, the Secretary may elect to require that such loans either bear interest at a rate that is agreed upon by the veteran and the lender, or bear interest at a rate not in excess of a rate established by the Secretary. The Secretary may, from time to time, change that election by publishing a notice in the **Federal Register**. However, the interest rate of a loan for the purpose of an interest rate reduction under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11) must be less than the interest rate of the VA loan being refinanced. This paragraph does not apply in the case of an adjustable rate mortgage being refinanced under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11) with a fixed rate loan.

(Authority: 38 U.S.C. 3703, 3710)

(b) For loans bearing an interest rate agreed upon by the veteran and the lender, the veteran may pay reasonable discount points in connection with the loan. The discount points may not be included in the loan amount, except for interest rate reduction refinancing loans under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11). For loans bearing an interest rate agreed upon by the veteran and the lender, the provisions of § 36.4312(d)(6) and (d)(7) do not apply.

(Authority: 38 U.S.C. 3703, 3710)

(c) Interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency or default: *Provided*, that a late charge not in excess of an amount equal to 4 percent on any installment paid more than 15 days after due date shall not be considered a violation of this limitation.

(Authority: 38 U.S.C. 3710)

(d) Adjustable rate mortgage loans which comply with the requirements of this paragraph (d) are eligible for guaranty.

(1) *Interest rate index.* Changes in the interest rate charged on an adjustable rate mortgage must correspond to changes in the weekly average yield on one year (52 weeks) Treasury bills adjusted to a constant maturity. Yields on one year Treasury bills at "constant maturity" are interpolated by the United States Treasury from the daily yield curve. This curve, which relates the yield on the security to its time to maturity, is based on the closing market bid yields on actively traded one year Treasury bills in the over-the-counter market. The weekly average one year constant maturity Treasury bill yields are published by the Federal Reserve Board of the Federal Reserve System. The Federal Reserve Statistical Release Report H. 15 (519) is released each Monday. These one year constant maturity Treasury bill yields are also published monthly in the Federal Reserve Bulletin, published by the Federal Reserve Board of the Federal Reserve System, as well as quarterly in the Treasury Bulletin, published by the Department of the Treasury.

(2) *Frequency of interest rate changes.* Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months nor later than 18 months from the date of the borrower's first mortgage payment. The adjusted rate will become effective the first day of the month following the adjustment date; the first monthly payment at the new rate will be due on the first day of the following month. To set the new interest rate, the lender will determine the change between the initial (i.e., base) index figure and the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(3) *Method of rate changes.* Interest rate changes may only be implemented through adjustments to the borrower's monthly payments.

(4) *Initial rate and magnitude of changes.* The initial contract interest rate of an adjustable rate mortgage shall be agreed upon by the lender and the veteran. The rate must be reflective of adjustable rate lending. Annual adjustments in the interest rate shall be set at a certain spread or margin over the interest rate index prescribed in paragraph (d)(1) of this section. Except for the initial rate, this margin shall remain constant over the life of the loan. Annual adjustments to the contract interest rate shall correspond to annual changes in the interest rate index, subject to the following conditions and limitations:

(i) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(ii) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, rounded to the nearest one-eighth of one percent, up or down. For example, if the margin is 2 percent and the new index figure is 6.06 percent, the adjusted mortgage interest rate will be 8 percent. If the margin is 2 percent and the new index figure is 6.07 percent, the adjusted mortgage interest rate will be 8 1/8 percent.

(5) *Pre-loan disclosure.* The lender shall explain fully and in writing to the borrower, no later than on the date upon which the lender provides the prospective borrower with a loan application, the nature of the obligation taken. The borrower shall certify in writing that he or she fully understands the obligation and a copy of the signed certification shall be placed in the loan folder and included in the loan submission to VA. Such lender disclosure must include the following items:

(i) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;

(ii) Identification of the interest rate index, its source of publication and availability;

(iii) The frequency (i.e., annually) with which interest rate levels and monthly payments will be adjusted, and

the length of the interval that will precede the initial adjustment; and

(iv) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the borrower over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(6) *Annual disclosure.* At least 25 days before any adjustment to a borrower's monthly payment may occur, the lender must provide a notice to the borrower which sets forth the date of the notice, the effective date of the change, the old interest rate, the new interest rate, the new monthly payment amount, the current index and the date it was published, and a description of how the payment adjustment was calculated. A copy of the annual disclosure shall be made a part of the lender's permanent record on the loan.

(Authority: 38 U.S.C. 3707, 3710)

12. Section 36.4312 is amended by redesignating paragraph (d)(1)(viii) as paragraph (d)(1)(ix), and by removing from paragraph (e)(3) "in paragraphs (e)(4) and (e)(5)" and replacing it with "in paragraph (e)(4)". Section 36.4312 is further amended by adding a new paragraph (d)(1)(viii), by revising the authority citation following paragraph (d)(7)(iv), by adding introductory text to paragraph (e), and by revising paragraph (e)(1), to read as follows:

**§ 36.4312 Charges and fees.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(viii) The actual amount charged for flood zone determinations, including a charge for a life-of-the-loan flood zone determination service purchased at the time of loan origination, if made by a third party who guarantees the accuracy of the determination. A fee may not be charged for a flood zone determination made by a Department of Veterans Affairs appraiser or for the lender's own determination.

\* \* \* \* \*

(7) \* \* \*

(iv) \* \* \*

(Authority: 38 U.S.C. 3703, 3710; 42 U.S.C. 4001 note, 4012a)

\* \* \* \* \*

(e) Subject to the limitations set out in paragraph (e)(4) of this section, a fee must be paid to the Secretary.

(1) The fee on loans to veterans shall be as follows:

(i) On all interest rate reduction refinancing loans guaranteed under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11), the fee shall be 0.50 percent of the total loan amount.

(ii) On all refinancing loans other than those described in paragraph (e)(1)(i) of this section, the funding fee shall be 2.75 percent of the loan amount for loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of 38 U.S.C. 3701(b)(5), and 2 percent of the loan amount for loans to all other veterans; provided, however, that if the veteran is using entitlement for a second or subsequent time, the fee shall be 3 percent of the loan amount.

(iii) Except for loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of 38 U.S.C. 3701(b)(5), the funding fee shall be 2 percent of the total loan amount for all loans for the purchase or construction of a home on which the veteran does not make a down payment, unless the veteran is using entitlement for a second or subsequent time, in which case the fee shall be 3 percent. On purchase or construction loans on which the veteran makes a down payment of 5 percent or more, but less than 10 percent, the amount of the funding fee shall be 1.50 percent of the total loan amount. On purchase or construction loans on which the veteran makes a down payment of 10 percent or more, the amount of the funding fee shall be 1.25 percent of the total loan amount.

(iv) On loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of 38 U.S.C. 3701(b)(5), the funding fee shall be 2.75 percent of the total loan amount on loans for the purchase or construction of a home on which the veteran does not make a down payment, unless the veteran is using entitlement for a second or subsequent time, in which case the fee shall be 3 percent. On purchase or construction loans on which veterans whose entitlement is based on service in the Selected Reserve make a down payment of 5 percent or more, but less than 10 percent, the amount of the funding fee shall be 2.25 percent of the total loan amount. On purchase or construction loans on which such veterans make a down payment of 10 percent or more, the amount of the funding fee shall be 2 percent of the total loan amount.

(v) All or part of the fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 3729)

\* \* \* \* \*

13. Section 36.4320 is amended by revising paragraph (a)(1)(ii)(B) to read as follows:

§ 36.4320 Sale of security.

- (a) \* \* \*
- (1) \* \* \*
- (ii) \* \* \*

(B) The holder acquires the property, or the rights to the property, at the liquidation sale for an amount in excess of the specified amount, the indebtedness shall be credited with the proceeds of the sale. The holder may elect to convey the property to the Secretary under the terms of paragraph (a)(1)(ii)(A) of this section, unless a bid in excess of the specified amount was made pursuant to paragraph (a)(3) of this section.

(Authority: 38 U.S.C. 3732(c))

\* \* \* \* \*

14. Section 36.4336 is amended by revising paragraph (a)(2)(i) and by adding a new paragraph (a)(4), to read as follows:

§ 36.4336 Eligibility of loans; reasonable value requirements.

- (a) \* \* \*

\* \* \* \* \*

(2)(i) Except as to refinancing loans pursuant to 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), (a)(11), or (b)(7) and energy efficient mortgages pursuant to 38 U.S.C. 3710(d), the loan (including any scheduled deferred interest added to principal) does not exceed the reasonable value of the property or projected reasonable value of a new home which is security for a graduated payment mortgage loan, as appropriate, as determined by the Secretary, and

\* \* \* \* \*

(4) A loan guaranteed under 38 U.S.C. 3710(d) which includes the cost of energy efficient improvements may exceed the reasonable value of the property. The cost of the energy efficient improvements that may be financed may not exceed \$3,000; provided, however, that up to \$6,000 in energy efficient improvements may be financed if the increase in the monthly payment for principal and interest does not exceed the likely reduction in monthly utility costs resulting from the energy efficient improvements.

(Authority: 38 U.S.C. 3710)

\* \* \* \* \*

[FR Doc. 95-18182 Filed 7-25-95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300386A; FRL-4966-4]

RIN 2070-AB78

Polymethylene Polyphenylisocyanate, Polymer with Ethylene Diamine, Diethylene Triamine and Sebacyl Chloride, Cross-Linked; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacyl chloride, cross-linked, when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d) to replace and delete the existing exemption from the requirement of a tolerance for residues of cross-linked nylon-type encapsulating polymer under 40 CFR 180.1028. Elf Atochem North America, Inc., requested this regulation pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective July 26, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300386A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of

objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300386A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8811; e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 24, 1995 (60 FR 27469), EPA issued a proposed rule that gave notice that Elf Atochem North America, Inc., 2000 Market St., Philadelphia, PA 10103-3222, had submitted pesticide petition (PP) 5E4447 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR part 180 by replacing the existing exemption from the requirement of a tolerance for residues of cross-linked nylon-type encapsulating polymer listed under 40 CFR 180.1028 with an exemption from the requirement of a tolerance for residues of polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacyl chloride, cross-linked, when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d).

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol