

**DEPARTMENT OF VETERANS
AFFAIRS**

38 CFR Part 36

RIN 2900-AG20

**Loan Guaranty: Net Value and Pre-
Foreclosure Debt Waivers**

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: We are amending the Loan Guaranty Regulations to change the formula for calculating the net value of property securing VA guaranteed loans being terminated and to add criteria for granting preforeclosure debt waivers. The changes regarding net value appear necessary to more accurately reflect current costs. The changes regarding waivers appear necessary to more accurately reflect statutory intent.

DATES: *Effective Date:* November 7, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Fyne, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington DC 20420, telephone (202) 273-7380.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on August 1, 2000 (65 FR 46882), we proposed to amend the Loan Guaranty Regulations (38 CFR part 36) to change the formula for calculating the net value of property securing VA guaranteed loans being terminated and to add criteria for granting preforeclosure debt waivers.

Under current law, when a VA guaranteed loan is reported as being in default, the Secretary is required to establish the "net value" of the property securing the guaranteed loan in default. "Net value" means the fair market value of the property minus certain costs that VA would incur to acquire, manage, and dispose of the property. The relationship between the net value of the property, the total indebtedness of the veteran at the time of loan termination, and the amount of VA's guaranty determines whether or not VA may acquire the property following foreclosure from the foreclosing loan holder. These factors also affect the Government's claim payment to the foreclosing holder under the guaranty. In addition, they will affect the amount of the veteran's debt to the Government under those circumstances where, by law, VA is entitled to establish a debt against a veteran. Moreover, they affect the VA's loss on the guaranty transaction which, in turn, will affect

the veteran's ability to have previously-used entitlement restored.

Previously, under § 36.4301, VA computed "net value" using cost data for the proceeding three fiscal years. We proposed to change how VA computes "net value." Instead of using three years' data, we proposed to use data only from the most recent fiscal year.

We also proposed to make nonsubstantive changes to the definition of "net value" for purposes of clarification and conformance to statutory provisions.

The comment period ended October 2, 2000. We received comments from one commenter, an association that represents mortgage lenders. These comments are discussed below. Based on the rationale set forth in the proposed rule and this document, we have adopted the provisions of the proposed rule as a final rule with a change in the definition of "net value," explained below.

Using data from 1995 through 2000, the commenter provided its fiscal analysis of the impact of the proposed rule on the mortgage industry if the proposed rule had been in effect. The analysis performed by the commenter revealed little change in using three years compared to one year. Even so, the commenter requested that VA not change the formula until after conducting a thorough analysis, including the impact on the number of *no-bids* (*buy-downs*) and consideration of "anticipated changes in policies and procedures".

It is necessary to describe *no-bids* and *buy-downs* to address this concern. VA computes the net value of the property securing the loan in each case prior to termination. This is done to determine whether VA can lower its claim liability. If the difference between the loan indebtedness and the net value is less than VA's maximum claim liability on the case, then VA can reduce its liability by requiring the loan holder to credit the account with the net value of the property. The holder then can convey the property to VA in return for its net value.

If the difference between the loan indebtedness and the net value is greater than VA's maximum claim liability, VA cannot reduce its liability. In that case VA does not specify in advance a minimum amount to be credited to the loan account, and the holder cannot convey the property to VA. The industry typically calls such cases *no-bids*.

When a holder receives advice that a case is a *no-bid*, it may decide to voluntarily waive part of the loan indebtedness. This is done to reduce the

difference between loan indebtedness and the net value to a point where the difference is less than VA's claim liability. Then VA can reduce its liability by requiring the loan holder to credit the remaining indebtedness with the net value, and the case is no longer a *no-bid*. The amount waived by the holder is called the *buy-down*.

After giving careful consideration to the comment we have determined that further analyses is not warranted. The argument that we should give consideration to anticipated changes in policies and procedures is not a basis for giving further analysis before establishing a rule change. Furthermore, even if such an analysis were possible, VA's primary goal for this rule was to more accurately reflect in any future year the cost of acquiring, managing, and disposing of properties. Using the most recent data available would provide a better predictor of costs in the coming year.

An example provided by the commenter of a policy change impacting net value was the potential cost of lead-based paint hazard reductions. The commenter expressed concern that moving from considering three years' data to one year's data would likely increase the number of *no-bids* immediately after VA implemented the lead-based paint procedures. However, as we stated above, VA's primary goal is to accurately reflect the cost to VA of acquiring, managing, and disposing of properties. In the case of lead-based paint procedures, VA has decided not to significantly change procedures and therefore there should be no real changes in costs attributable to them. Just as implementing a new procedure like lead paint abatement could show an immediate impact on *no-bids*, future cost savings by VA resulting from legislation, regulations, or management efficiencies would be recognized more quickly, to the advantage of loan holders by VA adopting the proposed rule. Therefore VA continues to believe, as the commenter noted, that moving to annualized cost data would have a neutral impact over time.

The definition of net value, in the proposed rule, requires VA to determine the costs of acquiring and disposing of property. One of the cost factors the proposed rule required VA to determine was losses on resale. The commenter requested that VA also include average resale gains in calculating a property's net value. The commenter asserted that this is consistent with the Department's stated goal of creating a net value that more accurately reflects current costs. Failure to recognize such gains would understate a property's net value and

unfairly increase no-bids. We agree with the rationale set forth by the commenter, and have made an appropriate change to the final rule so that VA will consider losses and gains when calculating net value using the previous year's operating expenses.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal government, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of the 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 rule only affects VA guaranteed loan foreclosures. Such foreclosures represent only a small part of affected lenders' businesses. Moreover, the effect of the rule will be cost-neutral in almost all cases. Therefore, pursuant to 5 U.S.C. 605(b), the rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.118.

List of Subjects in 38 CFR Part 36

Condominiums, Flood insurance, 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: July 12, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as follows:

PART 36—LOAN GUARANTY

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

Authority: 38 U.S.C. 501, 3701-3704, 3707, 3710-3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. In § 36.4301, the introductory text for the term "Net Value", and paragraph (3) are revised, to read as follows:

§ 36.4301 Definitions.

* * * * *

Net value. The fair market value of real property, minus an amount representing the costs that the Secretary estimates would be incurred by VA in acquiring and disposing of the property. The number to be subtracted from the fair market value will be calculated by multiplying the fair market value by the current cost factor. The cost factor used will be the most recent percentage of the fair market value that VA calculated and published in the Notices section of the **Federal Register** (it is intended that this percentage will be calculated annually). In computing this cost factor, VA will determine the average operating expenses and losses (or gains) on resale incurred for properties acquired under § 36.4320 which were sold during the preceding fiscal year and the average administrative cost to VA associated with the property management activity. The final net value derived from this calculation will be stated as a whole dollar amount (any fractional amount will be rounded up to the next whole dollar). The cost items included in the calculation will be:

* * * * *

(3) *Administrative costs.* (i) An estimate of the total cost for VA of personnel (salary and benefits) and overhead (which may include things such as travel, transportation, communication, utilities, printing, supplies, equipment, insurance claims and other services) associated with the acquisition, management and disposition of property acquired under § 36.4320 of this part. The average administrative costs will be determined by:

(A) Dividing the total cost for VA personnel and overhead salary and benefits costs by the average number of properties on hand and adjusting this figure based on the average holding time for properties sold during the preceding fiscal year; then

(B) Dividing the figure calculated in paragraph (3)(i)(A) of this definition by the VBA ratio of personal services costs to total obligations.

(ii) The three cost averages will be added to the average loss (or gain) on

property sold during the preceding fiscal year (based on the average property purchase price) and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the preceding fiscal year to derive the percentage to be used in estimating net value.

3. Section 36.4323 is amended by:

A. In paragraph (e)(1)(v), removing "liability." from the end of the paragraph and adding, in its place, "liability; or".

B. Adding paragraph (e)(1)(vi).

C. In paragraph (e)(4), revising the first sentence and the authority citation at the end of the paragraph.

The addition and revisions read as follows:

§ 36.4323 Subrogation and indemnity.

* * * * *

(e) * * *

(1) * * *

(vi) The obligor being released is not the current titleholder to the property and there are no indications of fraud, misrepresentation, or bad faith on the obligor's part in obtaining the loan or disposing of the property or in connection with the loan default.

* * * * *

(4) Determinations made under paragraphs (e)(1) and (e)(2) of this section are intended for the benefit of the Government in reducing the amount of claim payable by VA and/or avoiding the establishment of uncollectible debts owing to the United States. * * *

(Authority: 38 U.S.C. 501, 3703(c)(1), 5302)

* * * * *

[FR Doc. 02-25494 Filed 10-7-02; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL-7392-1]

RIN 2050-AE91

Municipal Solid Waste Landfill Location Restrictions for Airport Safety

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comment, we are withdrawing the direct final rule for Municipal Solid Waste Landfill Location Restrictions for Airport Safety. We published the direct final rule on July 11, 2002 (67 FR 45915)