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DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 36

RIN 2900-AO70

Loan Guaranty – Specially Adapted Housing Assistive Technology Grant Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to implement through regulation statutory authority to provide grants for the development of new assistive technologies for use in specially adapted housing for eligible veterans or servicemembers, as authorized by the Veterans' Benefits Act of 2010 (the Act), enacted on October 13, 2010. The Act authorizes VA to provide grants of up to \$200,000 per fiscal year to persons or entities to encourage the development of specially adapted housing assistive technologies. VA is amending its regulations to outline the process, the criteria, and the priorities relating to the award of these research and development grants.

DATES: Comments must be received by VA on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to: Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, 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-AO70-Loan Guaranty – Specially Adapted Housing Assistive Technology Grant Program.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4923 for an appointment (this is not a toll-free number). 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: John Bell III, Assistant Director for Loan Policy and Valuation (262), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 632-8786. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Public Law 111-275, the Veterans’ Benefits Act of 2010 (the Act), was enacted on October 13, 2010. Section 203 of the Act amended chapter 21, title 38, United States Code, to establish the Specially Adapted Housing Assistive Technology Grant Program. Veterans’ Benefits Act of 2010, Public Law 111-275, § 203, 124 Stat. 2874 (2010). The Act authorizes VA to provide grants of up to \$200,000 per fiscal year, through September 30, 2016, to a “person or entity” for the development of specially adapted housing assistive technologies and limits to \$1 million the aggregate amount of such grants VA may award in any fiscal year. *Id.* VA is

publishing these proposed regulations to outline the process, the criteria, and the priorities relating to the award of these research and development grants.

The Specially Adapted Housing (SAH) Grant Program is administered by the Loan Guaranty Service (LGY) of the Veterans Benefits Administration (VBA). Through the SAH program, LGY provides grants to servicemembers and veterans with certain service-connected disabilities to help purchase or construct an adapted home, or modify an existing home to allow them to live more independently. Currently, most SAH adaptations involve structural modifications such as ramps, wider halls and doorways, and lower countertops.

Pursuant to the authority established by the Act, VA is proposing to amend its regulations to implement a new grant program to encourage the development of specially adapted housing assistive technologies. As proposed, § 36.4412(a)(1) and (2) would state that the Secretary will make grants for the development of new assistive technologies for specially adapted housing and that a person or entity may apply for such grants. Proposed § 36.4412(a)(3) would also require that the new grant program be administered in a manner as consistent as possible with part 200 of title 2 of the Code of Federal Regulations (CFR). Part 200 is where the Office of Management and Budget (OMB) has issued regulatory guidance to Federal agencies that provide grant awards to non-Federal entities, that is, to States, local governments, Indian tribes, institutions of higher education, or non-profit organizations that carry out a Federal award as recipient or subrecipient. See 2 CFR 200.69. The part broadly outlines pre-award requirements on agencies and applicants, as well as post-award requirements related to financial and program management, property standards, procurement

standards, reports and records, and standards on termination and enforcement. The part also sets forth after-the-award requirements related to closeout, subsequent adjustments, continuing responsibilities, and collections of amounts due.

Since the new program would also be open to individuals and private entities, some of the applicants will not meet the definition of non-Federal entity or recipient, as defined under part 200, and certain provisions of part 200 may not be applicable to all applicants in this technology grant program. Where the Secretary determines a provision is not applicable or where the Secretary determines that additional requirements are necessary due to the uniqueness of a situation, the Secretary would apply the same standard applicable to exceptions under 2 CFR 200.102.

Although part 200 does not define the term exception, § 200.102 is clear that an exception can relax an existing requirement or make additional, more restrictive requirements on a participant. Section 200.102 requires that if an exception is more restrictive on a certain class of participants than that which is otherwise provided in part 200, VA must receive approval from OMB. If an exception is less restrictive than what is provided in part 200, § 200.102 authorizes VA to grant the exception on a case-by-case basis. It is impossible to anticipate every way in which the Secretary can or should exercise oversight authority. The purpose of this provision is to ensure that a loophole in a regulation does not unduly hinder the Secretary's ability to protect the public interest or prevent private individuals or organizations from participating because of technicalities related to oversight.

The regulation would also include proposed paragraph (b) covering the definitions applicable to the SAH technology grant. The definitions found at 38 CFR

36.4401 would be incorporated by reference. New definitions for “technology grant applicant” and “new assistive technology” would be added, but they would not be relevant to the types of SAH grants that are provided directly to veterans. They would solely be limited to the SAH technology grant.

The new definitions would provide who may apply for an SAH technology grant and the type of product that would have to be developed using SAH technology grant funds. House Report 111-109 stated that the “research and development community is diverse, ranging from single-person inventors to large corporations and academic institutions.” H.R. Rep. No. 111-109, at 3 (2009). Accordingly, for the purpose of determining who may apply to this grant program, VA would define “technology grant applicant” to include a person or entity that applies for a grant pursuant to 38 U.S.C. 2108 and 38 CFR 36.4412 to develop new assistive technology or technologies for specially adapted housing. House Report 111-109 also explained that there are many emerging technologies that could improve home adaptations or otherwise enhance a veteran or servicemember’s ability to live independently, such as voice-recognition and voice-command operations, living environment controls, and adaptive feeding equipment. *Id.* Therefore, VA is proposing to define “new assistive technology” as an advancement that the Secretary determines could aid or enhance the ability of an eligible individual, as defined in 38 CFR 36.4401, to live in an adapted home.

Proposed paragraph (c) would provide that, as funds are made available for the program, VA would publish in the Federal Register a Notice of Funds Availability (NoFA), soliciting applications for the grant program and information on applications. Upon publication of a NoFA, a technology grant applicant seeking a grant under this

section would submit an application to the Secretary via www.Grants.gov, as required under proposed paragraph (d). Applications would include: (1) Standard Form 424 (Application for Federal Assistance) with the box labeled “application” marked; (2) a certification that the applicant has not been debarred or suspended and is eligible to participate in the VA grant process and receive Federal funds; (3) statements addressing the scoring criteria; and (4) any additional information as deemed appropriate by VA.

Under proposed paragraph (e), the NoFA would set forth the full and specific procedural requirements for assistive technology grant applicants, such as whether the grant cycle would be limited to applications submitted during a particular timeframe or if applications would be accepted on a rolling basis.

Under proposed paragraph (f), the Secretary would establish the specific scoring criteria used to evaluate all technology grant applications received by VA. The scoring criteria and the maximum amount of points available are as follows:

(i) A description of how the new assistive technology is innovative (up to 50 points);

(ii) An explanation of how the new assistive technology will meet a specific, unmet need among eligible individuals (up to 50 points);

(iii) An explanation of how the new assistive technology is specifically designed to promote the ability of eligible individuals to live more independently (up to 30 points);

(iv) A description of the new assistive technology’s concept, size, and scope (up to 30 points);

(v) An implementation plan with major milestones for bringing the new assistive technology into production and to the market. Such milestones must be meaningful and achievable within a specific timeframe (up to 30 points); and

(vi) An explanation of what uniquely positions the technology grant applicant in the marketplace. This can include a focus on characteristics such as the economic reliability of the technology grant applicant, the technology grant applicant's status as a minority or veteran-owned business, or other characteristics that the technology grant applicant wants to include to show how it will help protect the interests of, or further the mission of, VA and the program (up to 20 points).

As provided, each scoring criterion would be capped at a maximum number of points. Although VA would not set a maximum aggregate score possible, an application would have to receive 70 points or more to be considered for an award. If an application does not score a minimum of 70 points, VA would not consider it for an award, even if it means an award cannot be made during a particular grant cycle. VA believes the scoring framework would allow the Secretary to make awards based on priorities of veterans and VA, while also ensuring that taxpayer funds are used responsibly.

The actual number of points received would not be based solely on the technology grant applicant's responses, but also on a number of variables such as specific needs of veterans and servicemembers, number of technology grant applicants, type of technology grant applicants, the availability of funds, and other factors related to VA's mission of serving veterans. VA would explain scoring priorities in the published NoFA so that technology grant applicants have the opportunity to tailor their responses

accordingly. The change in priorities would not introduce new scoring criteria. It would merely help technology grant applicants understand how the scores will be weighted.

To illustrate: VA might emphasize in one grant cycle the need for innovation, and as a result, explain in the NoFA that innovation will be a top priority. A technology grant applicant would then know to concentrate on how innovative its product would be. In reviewing the application, the Secretary might award all 50 allowable points to the technology grant applicant who best satisfies that criterion. In the next grant cycle, the Secretary might determine that a particular need has gone unmet among eligible individuals who are adapting their homes. The Secretary might choose to place more emphasis on meeting that need than on general innovation. As a result, the published NoFA for that grant cycle would explain the Secretary's new priorities. A technology grant applicant would then know that its application would have more success if it were to focus on how the product would meet the need. When reviewing applications, the Secretary could choose to award all 50 points for that criterion, while only scoring the most innovative product 30 points.

As shown, proposed paragraph (f) would provide technology grant applicants all the substantive information necessary for meeting VA requirements. Meanwhile, it would allow VA to adapt to veterans' needs and to the marketplace without requiring a new regulatory change each time a new grant cycle is introduced.

Proposed paragraph (g) would state that deadlines for program applications would be established in the NoFA. Proposed paragraph (h) would also note that decisions for awarding technology grants would be made in accordance with the guidelines (covering such issues as timing and method of notification) described in the

NoFA. The Secretary would provide written approvals, denials, or requests for additional information. As part of the annual program report to Congress required by the Act, VA would conduct periodic audits of all approved grants under this program to ensure that the actual project size and scope are consistent with those outlined in the proposal and that established milestones are achieved. Such audits would be consistent with the requirements under 2 CFR part 200.

Proposed paragraph (i) would also include a new delegation of authority specific to the technology grant program. Currently, 38 CFR 36.4409 authorizes certain VA employees to act on behalf of the Secretary with respect to assisting eligible individuals in acquiring specially adapted housing. This delegation does not extend to the technology grant program. Therefore, VA proposes that the VA officials who would be authorized to exercise the powers and functions of the Secretary with respect to providing assistance under 38 U.S.C. 2108 would be as follows: (a) Under Secretary for Benefits, (b) Deputy Under Secretary for Economic Development, (c) Director, Loan Guaranty Service, and (d) Deputy Director, Loan Guaranty Service.

Finally, we would note in proposed paragraph (j) that the technology grant is not a veterans' benefit and, therefore, is not subject to the same rights of appeal as an adjudication of benefits. See 38 U.S.C. 7104(a). Moreover, although VA would provide technology grant applicants with as much information and assistance as possible, the Secretary does not have a duty to assist technology grant applicants in obtaining a grant. See 38 U.S.C. 5103A(a).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by OMB, as “any 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 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 this 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 because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Orders 12866 or 13563. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually

within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www1.va.gov/orpm/>, by following the link for "VA Regulations Published."

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. There would be no significant economic impact on any small entities because grant applicants are not required to provide matching funds to receive the maximum grant amount of \$200,000. The assistive technology grant program would not impact a substantial number of small entities because VA may only award a maximum of \$1 million in aggregate grant funds per fiscal year, and VA's authority to award these grants expires September 30, 2016. On this basis, the Secretary certifies that the adoption of 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. Therefore, under 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

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 an 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 one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule includes provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) that require approval by OMB. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Proposed 38 CFR 36.4412(d) contains a collection of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the collections of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273-9026; e-

mail to www.Regulations.gov. Comments should indicate that they are submitted in response to “RIN 2900-AO70.”

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

The Department considers comments by the public on proposed collections of information in--

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department’s estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The new collection of information contained in 38 CFR 36.4412(d) is described immediately following this paragraph, under its title.

Title: Applicant Scoring Criteria and Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

- Summary of collection of information: The new collection of information in proposed 38 CFR 36.4412(d) would require applicants for an SAH Assistive Technology grant to submit VA Form 26-0967, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion,” and to provide statements addressing the scoring criteria for grant awards. VA Form 26-0967 is currently pending OMB approval. Additionally, 38 CFR 36.4412(d) contains an existing information collection that is currently approved by OMB and has been assigned OMB control number 4040-0004.
- Description of need for information and proposed use of information:
Section 2108 of Title 38 of the United States Code states that a person or entity seeking an SAH technology grant shall submit an application for the grant in such form and manner as the Secretary shall specify. VA is specifying in regulation that the information provided under this collection of information is necessary for a complete SAH Assistive Technology grant application. The information will be used by Loan Guaranty personnel in deciding whether an applicant meets the requirements and satisfies the scoring criteria for award of an SAH Assistive Technology grant under 38 U.S.C. 2108.

- Description of likely respondents: Respondents will likely include non-Federal entities, private entities, and individuals who choose to submit applications for an SAH Assistive Technology grant.
- Estimated number of respondents: 20 in Fiscal Year (FY) 2015; 20 in FY 2016.
- Estimated frequency of responses: This is a one-time collection.
- Estimated average burden per response: 120 minutes.
- Estimated total annual reporting and recordkeeping burden: 40 hours in FY 2015; 40 hours in FY 2016.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program 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.

Signing Authority

The Acting Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on August 15, 2014, for publication.

List 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.

Dated: September 2, 2014

Robert C. McFetridge,
Director, Regulation Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 36, subpart C to read as follows:

PART 36—LOAN GUARANTY

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

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

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

2. Add § 36.4412 to read as follows:

§ 36.4412 Specially Adapted Housing Assistive Technology Grant Program.

(a) General. (1) The Secretary will make grants for the development of new assistive technologies for specially adapted housing.

(2) A person or entity may apply for, and receive, a grant pursuant to this section.

(3)(i) All technology grant recipients, including individuals and entities formed as for-profit entities, will be subject to the rules on Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and other Non-profit Organizations, as found at 2 CFR Part 200.

(ii) Where the Secretary determines that 2 CFR Part 200 is not applicable or where the Secretary determines that additional requirements are necessary due to the

uniqueness of a situation, the Secretary will apply the same standard applicable to exceptions under 2 CFR 200.102.

(b) Definitions. To supplement the definitions contained in § 36.4401, the following terms are herein defined for purposes of this section:

(1) A technology grant applicant is a person or entity that applies for a grant pursuant to 38 U.S.C. 2108 and this section to develop new assistive technology or technologies for specially adapted housing.

(2) A new assistive technology is an advancement that the Secretary determines could aid or enhance the ability of an eligible individual, as defined in 38 CFR 36.4401, to live in an adapted home.

(c) Grant application solicitation. As funds are available for the program, VA will publish in the Federal Register a Notice of Funds Availability (NoFA), soliciting applications for the grant program and providing information on applications.

(d) Application process and requirements. Upon publication of the NoFA, a technology grant applicant must submit an application to the Secretary via www.Grants.gov. Applications must consist of the following:

(1) Standard Form 424 (Application for Federal Assistance) with the box labeled “application” marked;

(2) VA Form 26-0967 (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion) to ensure that the technology grant applicant has not been debarred or suspended and is eligible to participate in the VA grant process and receive Federal funds;

(3) Statements addressing the scoring criteria in 38 CFR 36.4412(f); and

(4) Any additional information as deemed appropriate by VA.

(e) Threshold requirements. The NoFA will set out the full and specific procedural requirements for technology grant applicants.

(f) Scoring criteria. (1) The Secretary will score technology grant applications based on the scoring criteria in paragraph (f)(2) of this section. Although there is not a cap on the maximum aggregate score possible, a technology grant application must receive a minimum aggregate score of 70 points to be considered for a technology grant.

(2) The scoring criteria and maximum points are as follows:

(i) A description of how the new assistive technology is innovative (up to 50 points);

(ii) An explanation of how the new assistive technology will meet a specific, unmet need among eligible individuals (up to 50 points);

(iii) An explanation of how the new assistive technology is specifically designed to promote the ability of eligible individuals to live more independently (up to 30 points);

(iv) A description of the new assistive technology's concept, size, and scope (up to 30 points);

(v) An implementation plan with major milestones for bringing the new assistive technology into production and to the market. Such milestones must be meaningful and achievable within a specific timeframe (up to 30 points); and

(vi) An explanation of what uniquely positions the technology grant applicant in the marketplace. This can include a focus on characteristics such as the economic reliability of the technology grant applicant, the technology grant applicant's status as a

minority or veteran-owned business, or other characteristics that the technology grant applicant wants to include to show how it will help protect the interests of, or further the mission of, VA and the program (up to 20 points).

(g) Application deadlines. Deadlines for technology grant applications will be established in the NoFA.

(h) Awards process. Decisions for awarding technology grants under this section will be made in accordance with guidelines (covering such issues as timing and method of notification) described in the NoFA. The Secretary will provide written approvals, denials, or requests for additional information. The Secretary will conduct periodic audits of all approved grants under this program to ensure that the actual project size and scope are consistent with those outlined in the proposal and that established milestones are achieved.

(i) Delegation of authority. (1) Each VA employee appointed to or lawfully fulfilling 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 the grant program authorized by 38 U.S.C. 2108:

- (i) Under Secretary for Benefits.
 - (ii) Deputy Under Secretary for Economic Development.
 - (iii) Director, Loan Guaranty Service.
 - (iv) Deputy Director, Loan Guaranty Service.
- (2) [Reserved]

(j) Miscellaneous. (1) The grant offered by this chapter is not a veterans' benefit. As such, the decisions of the Secretary are final and not subject to the same appeal rights as decisions related to veterans' benefits.

(2) The Secretary does not have a duty to assist technology grant applicants in obtaining a grant.

(Authority: 38 U.S.C. 2108)

(The Office of Management and Budget has approved the information collection requirements in this section that are within the scope of control number 4040-0004. The additional information collection requirements have been submitted to OMB and are pending OMB approval.)

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