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## DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AP25

Loan Guaranty: Adjustable Rate Mortgage Notification Requirements and Look-Back Period

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as final, without change, a proposed rule of the Department of Veterans Affairs (VA) to amend its regulations that govern adjustable rate mortgages made in conjunction with the Home Loan Guaranty program. These revisions align VA's disclosure and interest rate adjustment requirements with the implementing regulations of the Truth in Lending Act (TILA), as recently revised by the Consumer Financial Protection Bureau (CFPB). This rulemaking will ensure VA remains consistent with other applicable consumer finance and housing regulations governing adjustable rate mortgages.

DATES: Effective Date: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: John Bell III, Assistant Director for Loan Policy (262), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 632-8786. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

The January 29, 2015 Proposed Rule

On January 29, 2015, VA published a proposed rule in the Federal Register at 80 FR 4812, to revise VA's regulations governing adjustable rate mortgages set forth at 38 CFR 36.4312(d). VA proposed two amendments in this rulemaking to ensure VA regulations remain aligned with TILA and the implementing regulations set forth by the CFPB. First, VA proposed amending 38 CFR 36.4312(d)(6) so that the requirements for the disclosures and notifications that must be provided to borrowers prior to an interest-rate adjustment are cross-referenced to those set forth in the TILA implementing regulations at 12 CFR 1026.20(c) and (d). Second, VA proposed amending 38 CFR 36.4312(d)(2) to require that lenders adjust interest rates based on the most recent interest rate index figure available 45 days prior to the interest rate adjustment, instead of the interest rate index available 30 days prior to the interest rate adjustment, as is currently required in VA's regulations.

The public comment period for the proposed rule closed on March 30, 2015. VA received two comments. The comments received on the proposed rule are discussed below. VA adopts without change the proposed rule that revises VA's adjustable rate mortgage regulations at 38 CFR 36.4312(d) to ensure consistency with other Federal agency regulations.

VA received one public comment on the proposed rule from a lender who participates in the VA Home Loan program. The commenter expressed support for the rule as written and stated that VA's alignment with CFPB's rules will reduce the regulatory burden [on lenders] and ensure protection for Veterans and Servicemembers.

VA received one public comment on the proposed rule from an individual. The commenter stated that a three-year look-back period would be detrimental to veterans and their spouses. The commenter explained that veterans and their spouses currently have a good chance of moving to an assisted living facility of their choice or staying at home with a caregiver, but that with a three-year look-back period, the majority of these individuals will no longer have that choice. The commenter explained that this would result in these veterans relying on Medicaid and going to a facility not of their choosing, which would be more expensive.

VA believes the commenter mistook the purpose of VA's proposal, as the term look-back often relates to the period preceding the date that a person applies for Medicaid. VA does not believe this regulatory change has any impact on veterans moving to an assisted living facility, staying with a caregiver, or relying on Medicaid, as the commenter stated. Instead, this change helps ensure VA alignment with other Federal laws and current lender practices with regard to adjustable rate mortgages. See 80 FR 4814. It provides veteran borrowers who have adjustable rate mortgages more advanced notice and detailed disclosures regarding a change in their interest rates, thereby affording them a better opportunity to respond to such changes and stay in their homes. Therefore, VA is adopting the proposed rule without change.

## Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the 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 the Office of Management and Budget (OMB), unless OMB waives such review, 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 otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a

significant regulatory action under Executive Order 12866. 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://www.va.gov/orpm/>, by following the link for VA Regulations Published from FY 2004 to FYTD.

#### Unfunded Mandates

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

#### Paperwork Reduction Act

Although this document contains a provision constituting a collection of information at 38 CFR 36.4312(d)(6), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), no new or proposed revised collections of information are associated with this final rule. The information collection provisions for this final rule are currently approved by OMB and have been assigned OMB control number 3170-0015.

### Regulatory Flexibility Act

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).

This rule aligns the disclosure and look-back requirements for adjustable rate mortgages to the revised requirements in the 2013 TILA servicing rule published by the CFPB. VA does not have discretion not to align these requirements with the new TILA requirements established by CFPB and implemented by CFPB in the 2013 TILA servicing rule. The revised disclosure and look-back requirements began applying to VA adjustable rate mortgages in January 2015, regardless of VA action. VA is publishing this rulemaking because it is important for VA regulations to be consistent with TILA and its implementing regulations. In this rule, VA will adopt the minimum 45-day look-back period to clarify that lenders making VA-guaranteed adjustable rate mortgages must meet the TILA minimum notification requirements. As discussed in the preamble to VA's proposed rule, CFPB noted in its rulemaking that the majority of adjustable rate mortgages in the conventional market already have look-back periods of 45 days or longer. 80 FR 4813. Additionally, the revisions to the disclosure requirements simply align VA requirements with the CFPB's 2013 TILA servicing rule and the procedures currently followed in the conventional mortgage lending market.

See id.

Accordingly, the Secretary certifies that the adoption of 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. 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.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.114, Veterans Housing—Guaranteed and Insured Loans.

**Signing Authority**

The 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. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on August 6, 2015, for publication.

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.

Dated: August 7, 2015

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Michael Shores,  
Chief Impact Analyst,  
Office of Regulation Policy & Management,  
Office of the General Counsel,  
Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR part 36 as follows:

PART 36—LOAN GUARANTY

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

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

2. Amend § 36.4312 by revising paragraphs (d)(2) and (6) and adding an information collection parenthetical to the end of the section to read as follows:

§ 36.4312 Interest rates.

\* \* \* \* \*

(d) \* \* \*

(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 36 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 the note. For loans where the date of the note is before January 10, 2015, the current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment. For loans where the date of the note is on or after January 10, 2015, the current index figure shall be the

most recent index figure available 45 days before the date of each interest rate adjustment.

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(6) Disclosures. The lender must provide the borrower with disclosures in accordance with the timing, content, and format required by the regulations implementing the Truth in Lending Act (15 U.S.C. 1601 et seq.) at 12 CFR 1026.20(c) and (d). A copy of these disclosures will be made a part of the lender's permanent record on the loan.

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(The Office of Management and Budget has approved the information collection requirements in this section under control number 3170-0015.)

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