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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: Final rule.

SUMMARY: This rule adopts as final, without change, a proposed rule of the Department of Veterans Affairs (VA) to amend its regulations to provide grants for the development of new assistive technologies for use in specially adapted housing for eligible veterans or servicemembers. The Veterans' Benefits Act of 2010 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. This final rule implements changes to VA regulations to clarify the process, the criteria, and the priorities relating to the award of these research and development grants.

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 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:

The September 8, 2014 Proposed Rule

On September 8, 2014, VA published a proposed rule in the Federal Register at 79 FR 53146, implementing VA's statutory authority to provide grants for the development of new assistive technologies for use in specially adapted housing for eligible veterans or servicemembers. Section 203 of the Veterans' Benefits Act of 2010 (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, section 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.

The public comment period for the proposed rule closed on November 7, 2014. VA received one comment. The comment received on the proposed rule is discussed below. VA adopts without substantive change the proposed rule that implements the grant program to encourage the development of specially adapted housing assistive technologies. As explained below, however, VA is making one administrative correction to the proposed delegation of authority.

VA received one public comment on the proposed rule from an individual. The commenter expressed support for the proposed rule, but believed the application scoring criteria should be revised. The commenter explained that the prioritization of the criteria outlined in the proposed rule should be changed to reflect “those characteristics that make the project most likely to produce a successful and impactful result.” The commenter recommended changing the maximum point values that may be awarded for certain scoring criteria, with a feasible implementation plan being eligible for the highest number of maximum possible points and innovation and minority or economic status being eligible for the lowest number of maximum possible points. Additionally, the commenter proposed that “empirical research” should be added as a distinct scoring criterion utilized in the review process.

VA is publishing the scoring criteria set forth in proposed 38 CFR 36.4412(f) without change because VA believes that the criteria as proposed effectively carry out Congress’s intent for the Grant program and satisfy the commenter’s interest in successful and impactful results. Specifically, in regard to the legislative history of the Act, the preamble to the proposed rule explained that “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.” 79 FR 53147. In its scoring criteria, VA provided that a new advancement’s innovation and ability to meet an unmet need may be awarded the maximum possible points because it understood a central goal of the law to be the development of original, potentially groundbreaking

technologies. VA also prioritized a new advancement's promotion of independent living in the scoring criteria based on Congress's statement that emerging technologies (as supported through this Grant program) could enhance the ability for veterans or servicemembers to live independently. See 79 FR 53148. Additionally, to ensure that these advancements may be feasibly developed and effectively utilized by eligible individuals, VA's proposed scoring criteria also include a description of the new assistive technology's concept, size, and scope and an implementation plan for bringing the technology to the marketplace. See *id.* Accordingly, VA is maintaining its scoring criteria as set forth in the proposed rule because this prioritization effectively carries out congressional intent while addressing the commenter's stated interest in successful and impactful results.

Additionally, VA is publishing the scoring criteria set forth in proposed 38 CFR 36.4412(f) without change because the criteria provide VA flexibility to ensure that grant awards are made based on the identified priorities and/or needs of veterans and VA at the time the Notice of Funds Availability (NoFA) is published. See 79 FR 53147, 53148. Specifically, in setting out the scoring criteria and maximum points that may be awarded for each criterion, VA explained that "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." 79 FR 53148. As explained in the preamble to the proposed rule, while the regulation text sets forth the maximum number of points that may be awarded based on any one criterion, each NoFA would explain the specific scoring priorities for that grant application cycle. *Id.* This change in priorities would not introduce new scoring criteria, but would instead help technology grant applicants

understand how the scores will be weighted and provide them an opportunity to tailor their responses accordingly. Id.

The preamble to the proposed rule also provides an example to illustrate VA's flexibility to emphasize certain criterion in each NoFA. It explains that 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. Id. Accordingly, VA believes this flexibility to weigh criteria based on the identified needs and priorities of veterans and VA at the time a NoFA is published will ensure grant awards successfully carry out program goals and positively impact eligible individuals.

Finally, the commenter suggested adding "empirical research" as a criterion to be evaluated when scoring grant applications. VA understands empirical research to be defined as "originating in or based on observation or experience" (<http://www.merriam->

webster.com/dictionary/empirical). VA's scoring criteria anticipate VA's consideration of empirical research in evaluating applications and determining points awarded for each criterion. For example, an application for a new assistive technology may utilize empirical research surrounding currently-available technologies on the market to demonstrate the advancement's level of innovation. Or, a successful description of how the new advancement is specifically designed to promote the ability of eligible individuals to live independently may utilize empirical research to explain, for example, the most common disabilities among eligible individuals, the critical factors that affect an eligible individual's ability to live independently, and how the new assistive technology may enable individuals to overcome barriers to independent living. VA will consider the presence of empirical research in its review of applications and determination of points to be awarded. As empirical research may be utilized to support applications and impact application scoring under the existing criteria, it does not need to be added as a stand-alone factor for evaluation.

Administrative Correction

The proposed rule included a delegation of authority to various officials in the Department. The title of the Deputy Under Secretary for Economic Opportunity was incorrectly listed as the Deputy Under Secretary for Economic Development. This rule corrects the error. The change is only for administrative accuracy and has no substantive effect on the rule.

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 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://www.va.gov/orpm/>, by following the link for "VA Regulations Published from FY 2004 Through Fiscal Year to Date."

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. There will 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 will 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 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.

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 the 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

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. 5 CFR 1320.8(b)(1) and (3)(vi).

This final rule will impose the following new information collection requirements. Section 36.4412(d) of title 38 CFR will 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. The information provided under this collection of information is necessary for a complete SAH Assistive Technology grant application. The information will be used by VA 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. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA has submitted these information collections to OMB for its review. OMB approved these new information collection requirements associated with the final rule and assigned OMB control number 2900-0821.

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 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 September 11, 2015, 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 11, 2015.

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

For the reasons set out in the preamble, VA amends 38 CFR part 36, subpart C to read 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. 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 paragraph (f) of this section;
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 Opportunity.
- (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 under control numbers 4040-0004 and 2900-0821.)

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