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DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Parts 36 and 42

RIN 2900-AP78

Federal Civil Penalties Adjustment Act Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Federal Civil Monetary Penalties Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, sets forth a formula increasing the maximum statutory amounts for civil monetary penalties and requires federal agencies to give notice of the new maximum amounts by regulation. This final rule of the Department of Veterans Affairs (VA) adopts without change VA's interim final rule, which increased maximum civil monetary penalties from \$10,000 to \$21,563 for false loan guaranty certifications and from \$5,500 to \$10,781 for fraudulent claims or fraudulent statements in any VA program.

DATES: Effective Date: Effective [Insert date of publication in the Federal Register], the interim final rule published June 22, 2016 (81 FR 40523) is adopted as final.

FOR FURTHER INFORMATION CONTACT: Jeffrey Martin, Program Manager, Office of Regulation and Policy Management, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 461-4918.

SUPPLEMENTARY INFORMATION:

On June 22, 2016, VA published in the Federal Register an interim final rule adjusting the amounts of civil monetary penalties that VA may assess against participants who make certain false certifications or who engage in fraudulent activity. See 81 FR 40523. The interim final rule increased maximum civil monetary penalties from \$10,000 to \$21,563 for false loan guaranty certifications and from \$5,500 to \$10,781 for fraudulent claims or fraudulent statements in any VA program.

VA published the interim final rule to implement the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (Sec. 701 of Public Law 114-74), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) (Public Law 101-410), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. In calculating the adjusted amounts, VA relied on guidance from The Executive Office of the President Office of Management and Budget (OMB), published on February 24, 2016, advising the heads of federal agencies how to implement the 2015 Act. See <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

VA received one comment in response to the interim final rule. The comment was a photograph that was not relevant to the rulemaking. The photograph was not posted to www.regulations.gov. VA is adopting the interim final 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,” which requires 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 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 that it is not a significant regulatory action under Executive Order 12866.

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 interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

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. Accordingly, no proposed rulemaking was required in connection with the adoption of this final rule. Pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses 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. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on September 16, 2016, for publication.

List of Subjects in 38 CFR Parts 36 and 42

Condominiums, Housing, Individuals with disabilities, Loan programs-housing and community development, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

PART 36—LOAN GUARANTY

**PART 42—STANDARDS IMPLEMENTING THE PROGRAM FRAUD CIVIL
REMEDIES ACT**

Accordingly, the interim rule amending 38 CFR parts 36 and 42 which was published at 81 FR 40523 on June 22, 2016, is adopted as a final rule without change.

Dated: September 16, 2016

Michael Shores
Acting Director,
Regulation Policy & Management
Office of the Secretary
Department of Veterans Affairs

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