asserting the claim against the third-party payer recive from the TRICARE contractor a report of all amounts expended by the United States for care resulting from the incident upon which potential liability in the third party is based (including amounts paid by TRICARE for both inpatient and outpatient care). Prior to assertion and final settlement of a claim, it will be necessary for the responsible claims authority to secure from the TRICARE contractor updated information to insure that all amounts expended under TRICARE are included in the government's claim. It is equally important that information on future medical payments be obtained through the investigative process and included as a part of the government's claim. No TRICARE-related claim will be settled, compromised or waived without full consideration being given to the possible future medical payment aspects of the individual case.

(j) *Reporting requirements.* Pursuant to 10 U.S.C. 1079a, all refunds and other amounts collected in the administration of TRICARE shall be credited to the appropriation available for that program for the fiscal year in which the refund or amount is collected. Therefore, the Department of Defense requires an annual report stating the number and dollar amount of claims asserted against, and the number and dollar amount of recoveries from third-party payers (including FMCRA recoveries) arising from the operation of the TRICARE. To facilitate the preparation of this report and to maintain program integrity, the following reporting requirements are established:

(1) *TRICARE contractors.* Each TRICARE contractor shall submit on or before January 31 of each year an annual report to the Director, TRICARE Management Activity, or a designee, covering the 12 months of the previous calendar year. This report shall contain, as a minimum, the number and total dollar of cases of potential third-party payer/FMCRA liability referred to uniformed services claims authorities for further investigation and collection. These figures are to be itemized by the states and uniformed services to which the cases are referred.

(2) *Uniformed Services.* Each uniformed service will submit to the Director, TRICARE Management Activity, or designee, an annual report covering the 12 calendar months of the previous year, setting forth, as a minimum, the number and total dollar amount of cases involving TRICARE payments received from TRICARE contractors, the number and dollar amount of cases involving TRICARE payments received from other sources, and the number and dollar amount of claims actually asserted against, and the dollar amount of recoveries from, third-payment payers or under the FMCRA. The report, itemized by state and foreign claims jurisdictions, shall be provided no later than February 28 of each year.

(3) *Implementation of the reporting requirements.* The Director, TRICARE Management Activity, or a designee shall issue guidance for implementation of the reporting requirements prescribed by this section.

Dated: February 4, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–3159 Filed 2–7–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–03–018]

Drawbridge Operation Regulations; Ashley River, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Ashley River (US 17) drawbridges across the Ashley River, miles 2.4 and 2.5, Charleston, South Carolina. This temporary deviation allows the bridge owner or operator to keep all spans of the Ashley River drawbridges in the down or closed position for 16 days.

DATES: This temporary rule is effective from 7 a.m. on January 31, 2003 to 7 a.m. on February 15, 2003.

ADDRESSES: Material received from the public as well as documents indicated in this preamble as being available in the docket are part of docket [CGD07–03–018] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, Room 432, 909 S.E. 1st Avenue, Miami, Florida 33131–3050, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Manager, Seventh Coast Guard District, Bridge Branch at (305) 415–6744.

SUPPLEMENTARY INFORMATION: The Ashley River (US 17) drawbridges across the Ashley River, miles 2.4 and 2.5 are double bascule leaf bridges, with vertical clearances of 14.0 feet at mean high water and horizontal clearances of 100 feet between fenders. The existing operating regulation in 33 CFR 117.915 requires the bridges to open on signal; except that, from 7 a.m. to 9 a.m. Monday through Friday and 4 p.m. to 7 p.m. daily, the draws need be opened only if at least 12 hours notice is given. The draws of either bridge shall open as soon as possible for the passage of vessels in an emergency involving danger to life or property.

On December 30, 2002, The Industrial Company (TLC), representing the South Carolina Department of Transportation, requested a temporary change to the operation of the Ashley River (US 17) drawbridges to allow them to complete the rehabilitation to the structure.

This deviation will have a limited impact on navigation as there is only one marina west of the structure and they have been notified by the contractor of the possible closure of the structure. Mariners have the opportunity to relocate the vessels that would require a bridge opening to one of the marinas located east of the structure.

The Commander, Seventh Coast Guard District has granted a temporary deviation from the operating requirements listed in 33 CFR 117.915 to allow The Industrial Company, representing the owner, to facilitate repairs to the bridge spans. Under this temporary deviation, the Ashley River drawbridges may remain closed to navigation from 7 a.m. on January 31, 2003, to 7 a.m. on February 15, 2003.

Dated: January 29, 2003.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 03–3264 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 19

RIN 2900–AK62

Appeals Regulations: Title for Members of the Board of Veterans' Appeals

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs' (VA) Appeals Regulations to provide that a Member of the Board of Veterans'

Appeals may also be known as a Veterans Law Judge.

DATES: *Effective Date:* February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits, after an opportunity for a hearing. There are currently 55 Board ''members,'' who decide 35,000 to 40,000 such appeals per year.

On March 6, 2001, we published a notice of proposed rulemaking (NPRM) that would provide that a Member of the Board may also be known as a Veterans Law Judge. 66 FR 13463. The comment period ended May 7, 2001. We received 38 comments, 33 from individuals and 5 from organizations. Of the commenters, 27 supported the proposal, while 11 opposed it.

We have carefully considered all the comments. We also considered a letter from six veterans service organizations sent prior to the beginning of the comment period, but which we referenced in our NPRM. 66 FR at 13463. We have grouped the objections into seven general categories and discuss them below.

For the reasons described, we have decided to adopt the proposed regulation as a final regulation.

1. *The title is detrimental or of no benefit to veterans.*

Several individuals and one organization expressed concern that the change would ''intimidate'' veterans. Some organizations opined that the change would provide no benefit to veterans. At the same time, several individuals said they did not find the title intimidating. In addition, several individuals said that they found the current title of ''member'' confusing and thought that ''judge'' would be a clarification.

We do not agree that the change will intimidate veterans or provide them no benefit.

The chief reason we proposed this rule was to recognize Board members for what they are: Judges. It is a title that is widely used in the executive branch for thousands of people who hold hearings and decide appeals. For example—

If a person disagrees with a Social Security decision, his appeal is heard by a Social Security Administration (SSA) employee called a judge.

If he disagrees with that decision, the appeal is heard by another SSA employee called a judge.

If a federal employee appeals a personnel decision, her appeal is heard by a Merit Systems Protection Board employee called a judge.

If a person has a complaint about discrimination, her case is heard by an Equal Employment Opportunity Commission employee called a judge.

We also know that most veterans who come before the Board do so once in their life. As we said in our NPRM, ''member'' doesn't really tell the veteran much about what the member does. 66 FR at 13463. The term ''judge'' is simply more accurate.

The purpose of the Board is to give veterans an independent review of denied claims. Our experience is that veterans are most concerned that the person deciding their appeals is not part of the regional office, which initially decided their claims. We think that the term ''judge'' does a better job of letting veterans know what the Board member is and—almost as importantly—what the Board member is not.

VA actually used the term ''Veterans Law Judge'' for three or four months late in the year 2000 and early in 2001. *See* 65 FR 55461 (Sep. 14, 2000) (final rule establishing title), *rescinded*, 66 FR 13437 (Mar. 6, 2001). We received no complaints that our Board members had become more aloof or the hearings more formal, nor did we receive any complaints that any veterans were intimidated by the title.

Accordingly, we make no changes based on these comments.

2. *Board Members are not Administrative Law Judges.*

Some commenters objected to the rule because Board Members are not Administrative Law Judges (ALJs).

While this is certainly true, its apparent relevance to this rulemaking is that only ALJs are permitted to carry the title ''judge.'' We noted in our NPRM that there are many types of non-ALJ adjudicators in the executive branch who carry the title ''judge.'' We also note that individuals appointed to the judiciary under Articles I and III of the Constitution—*i.e.,* adjudicators in the various Federal courts—carry the title ''judge,'' and none of them are ALJs.

The point is that the term ''judge'' describes what the individual does, not whether he or she is subject to particular procedures established by the Office of Personnel Management (OPM). In addition, we have not proposed to refer to Board members as ''administrative law judges,'' but rather as ''Veterans Law Judges.''

Accordingly, we make no changes based on these comments.

3. *The selection process for Board Members is different from the selection process for ALJs.*

Some commenters objected to the rule because the Board member selection process is different from the ALJ selection process.

The processes are different. Like the ALJ process, however, the Board member process selects experienced attorneys and is based on merit principles. The following table illustrates the similarities and differences in the selection processes:

	Administrative Law Judge	Member, Board of Veterans' Appeals
General qualifications	Attorney with 7 years experience in Administrative Law or Litigation in a government setting. (OPM, non-regulatory requirement).	In practice, 7–10 years experience in the field of veterans' law. (VA, non-regulatory requirement)
Attorney status	Active member of the bar. (OPM, non-regulatory requirement).	Member in good standing of the bar of a State. 38 U.S.C. 7101A(a)(2).
Experience requirement	2 years experience equivalent to a GS–13 or 1 year experience as a GS–14 or GS–15. (OPM, non-regulatory requirement).	Generally, two or more years at the GS–14 or GS–15 level. (VA, non-regulatory requirement)
Skills	Knowledge of administrative procedures, rules of evidence, and trial practices; analytical ability; oral communications ability and judicial temperament; writing ability; organizational skills. (OPM, non-regulatory requirement).	Knowledge of veterans' law and of specialized areas of medicine and law; ability to conduct hearings; ability to manage attorneys; ability to participate in training activities. Additional qualification factors. (VA, non-regulatory requirement)

	Administrative Law Judge	Member, Board of Veterans' Appeals
Application process	Pass an OPM-administered 4-part exam NOTE: The ''4-part exam'' consists of (1) the application form; (2) a written test; (3) an interview; and (4) a reference check. See 5 CFR 930.203(c) and (d).	Application; interview; reference check; review of substantive work as attorney (generally as counsel at Board). (VA, non-regulatory requirement)

The similarity of the processes' results is illustrated by the fact that Board members have moved rather easily from the Board to the ALJ ranks. Indeed, a primary impetus for equalization of Board member pay with ALJ pay in 1994 (Pub. L. 103–446) was the loss of Board members to the ALJ ranks. *See, e.g.*, 140 Cong. Rec. H11349, H11350 (daily ed., Oct. 7, 1994) (statement of Rep. Montgomery in connection with passage of H.R. 4386) (pay equity provision for Board members ''is intended to insure that Members of the Board not feel compelled to pursue ALJ positions, but rather to remain at the Board, where their expertise is badly needed''); 140 Cong. Rec. H7088, H7092 (daily ed. Aug. 8, 1994) (statement of Rep. Montgomery in connection with passage of H.R. 4088) (''current pay disparity between Board members and Administrative Law Judges is producing a migration of Board members to the Social Security Administration and other federal agencies''); 140 Cong. Rec. S9457, S9458 (daily ed., Jul. 21, 1994) (statement of Sen. Akaka on introduction of S. 2305) (''Since July 1993, nine Board members have been selected to be ALJ's. This figure represents 16 percent of the 55 attorneys who have held Board member positions since last July.'').

Accordingly, we make no changes based on these comments.

4. *Board Members do not have the same ''decisional independence'' as ALJs.*

Some commenters objected to the rule because Board members do not have the same ''decisional independence'' as ALJs. Indeed, one commenter went so far as to state that ''the BVA simply cannot provide appellants the assurance of impartiality that accompanies judicial status.''

Not only are such comments, frankly, insulting to Board members, they are wrong as a matter of law.

In the first place, we believe there is no evidence that Board members are anything but impartial. We are unaware of a single instance in the 70-year history of the Board in which the differences between ALJs and Board members, as articulated by the commenters, resulted in a charge—much less a proven allegation—that any Board member at any time was other than impartial. The commenters, while referring generally to the administrative control of the Board Chairman over the Board, 38 U.S.C. 7101(a), have not directed us to any such instance. We categorically deny both that VA management has attempted to influence the result of Board members' decisions and that Board members do not provide appellants the assurance of impartiality.

We can, however, point to at least one situation in which a group of ALJs claimed that their agency—which has administrative control over them—was putting pressure on the ALJs to make fewer claimant-friendly decisions. In the early 1980s, the Department of Health and Human Services (HHS) instituted what came to be known as the ''Bellmon Review Program,'' which allegedly put pressure on ALJs within SSA to make fewer reversals of denials of Social Security benefits. Although HHS eventually modified its stance, the ALJs claimed that their independence was threatened, notwithstanding their immunity from performance reviews and the fact that they were selected for ALJ positions by OPM, not HHS. *See generally Ass'n of Admin. Law Judges, Inc.* v. *Heckler,* 594 F. Supp. 1132 (D.D.C. 1984).

Second, the term ''decisional independence'' is not a clearly defined concept, and the commenters did not attempt to define the phrase. In *Ass'n of Admin. L. Judges v. Heckler, supra,* an action challenging the ''Bellmon Review,'' the court found that ALJs had a ''qualified'' right to decisional independence. In that case—in which ALJs alleged that their decisional independence was threatened—the court noted that, while ALJs at SSA are exempt from the performance appraisals to which other civil service employees are subject (Board members, who are subject to the statutory performance review provisions of 38 U.S.C. 7101A, are also exempt from performance appraisals) and that they are entitled to rates of pay not set by the agency in which they serve (as are Board members), they are nevertheless subject to performance-related adverse personnel actions (as are Board members) and are entirely subject to their agency's right, under the administrative appeals process, to impose the agency's views on law and policy (as Board members are not). The court concluded that ''the ALJ's right to decisional independence is qualified.'' 594 F. Supp. at 1141. *See also Goodman* v. *Svahn,* 614 F. Supp. 726, 728–29 (D.D.C. 1985) (imposition of case production quotas on SSA ALJ did not violate ALJ's rights under the Administrative Procedure Act, the Civil Rights Act of 1861, or the Fifth Amendment); *cf. Sannier* v. *MSPB,* 931 F.2d 856, 858–59 (Fed. Cir. 1991) (where SSA ALJ did not allege that increased pressure to process more cases affected his decisionmaking, ALJ's claim of constructive removal was properly dismissed by MSPB for lack of subject matter jurisdiction); *Nash* v. *Bowen,* 869 F.2d 675, 680 (2d Cir.) (setting of reasonable production goals for SSA ALJs is not an infringement of decisional independence), *cert. denied,* 493 U.S. 813 (1989).

As noted, the court in *Ass'n of Admin. Law Judges, Inc.* v. *Heckler, supra,* found that the power of the agency to alter ALJ decisions contributed to the ''qualified'' nature of ALJ decisional independence. Of all adjudicators within the Executive Branch, there may be none whose decisions are more independent than those of members of the Board of Veterans' Appeals. Unlike ALJs, Board members make decisions that generally can be altered only by a Federal court. (The exceptions are (1) reconsideration under 38 U.S.C. 7104, which can be ordered by the Board chairman, but results only in the vacation of the decision and reassignment to a panel of members, and (2) reversal on the grounds of clear and unmistakable error under 38 U.S.C. 7111, which can be ordered only by a Board member.) An ALJ decision, on the other hand, generally is not directly appealable to any court. Instead, it is, in effect, a preliminary decision subject to summary reversal by the agency head. *Compare Nash* v. *Bowen,* 869 F.2d at 680 (ALJs' authority to decide Social Security appeals is delegated by the Secretary and Secretary is ultimately authorized to make the final decision), *with* 38 U.S.C. 7104(a) (decisions on appeals to Secretary are made by the Board of Veterans' Appeals).

Neither ALJs nor Board members are subject to the normal performance reviews applicable to most civil service employees. However, Board members are subject to periodic recertification

following peer review, 38 U.S.C. 7101A, while no comparable review process applies to ALJs. Nevertheless, ALJs are subject to dismissal for inadequate performance. *See SSA* v. *Goodman,* 19 M.S.P.R. 321 (1984). The concept of rating judicial performance, particularly an approach involving peer review, is hardly a novel concept. *See, e.g.*, J. Lubbers, The Federal Administrative Judiciary: Establishing an Appropriate System of Performance Evaluation for ALJs, 7 Admin. L.J. Am. U. 589, 606–11 (1994) (citing state and local judicial systems employing such a process). We do not find this distinction between Board members and ALJs to be meaningful with respect to whether Board members should be called ''Veterans Law Judges.''

Finally, we can perceive no reason—and none was advanced by the commenters—to conclude that the selection and tenure characteristics associated with ALJs determine whether an individual may be called a judge. As we pointed out in our NPRM, there are within the Federal service ''administrative judges'' who are subject to the same selection and review criteria as most civil servants. In addition, individuals appointed to the judiciary under Article I of the Constitution—Tax Court judges, judges of the United States Court of Appeals for Veterans Claims—are selected by a political process, have fixed terms, and yet are called ''judges.'' Finally, Federal District Court Judges and judges of the United States Courts of Appeals are called judges even though they are selected through a political process and have much more job security than ALJs. In sum, we are not persuaded by this argument.

For all these reasons, we find no substance to the commenters' claims that there is a substantive difference between the decisional independence of ALJs and that of Board members, nor do we believe that it is the characteristics of ALJ selection and tenure that determine whether an individual may be called ''judge.'' Accordingly, we make no change in the regulation based on those comments.

5. *The statute calls them ''members,'' not ''judges.''*

Some commenters suggest that, because the statute refers to ''members'' of the Board, VA is barred from using the title ''judge.'' The commenters provided no authority for this proposition, and we could find none.

We do, however, note that it is not uncommon for members of a statutorily-created board to be defined in regulations as ''judges.'' *See* 41 U.S.C. 607 (Boards of Contract Appeals) *and, e.g.*, 38 CFR 1.781 (BCA members at VA ''are designated Administrative Judges'') *and* 7 CFR 24.2 (BCA members at Department of Agriculture are ''designated Administrative Judges''); 31 U.S.C. 751 (Personnel Appeals Board at the General Accounting Office) *and* 4 CFR 28.3 (when designated to preside over a hearing, Board members are titled ''administrative judges''); 33 U.S.C. 921 (Benefits Review Board at the Department of Labor) *and* 20 CFR 801.2(3) & (12) (Board members are ''officially entitled'' administrative appeals judges); 42 U.S.C. 2241 (Atomic Safety and Licensing Boards) *and* 10 CFR 1.15 (members of these boards are called ''administrative judges''); *cf.* 43 CFR 4.2(a) (members of various appellate boards created by Department of the Interior are ''designated Administrative Judges'').

We make no change based on these comments.

6. *Congress failed to enact a measure providing for a similar title.*

One commenter suggested that Congress had ''rejected'' changing the title of Board member, apparently concluding that such inaction prevented VA from doing so.

In the first place, the Congress did not ''reject'' the change. Indeed, the only Congressional action of record was adoption by the House of Representatives of a similar provision in the 105th Congress.

In 1998, the House of Representatives passed a bill which, among many other things, would have provided that Board members (other than the Chairman) could also be known as ''veterans administrative law judges.'' H.R. 4110, 105th Cong. § 407(a); *see* 144 Cong. Rec. H6885 (daily ed. Aug. 3, 1998) (debate on passage of H.R. 4110 as reported by the Committee on Veterans' Affairs). That provision was never subject to a vote in the Senate. However, along with other provisions in H.R. 4110, § 407(a) was not adopted by the Senate in the compromise leading to the final version of the bill. *See* 144 Cong. Rec. H10374 (daily ed. Oct. 10, 1998) (debate on final passage of H.R. 4110).

Second, it is well-settled that the intent of the legislature is indicated by its action, not by its failure to act. *See, e.g., FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 155 (2000) (in case challenging authority of FDA to regulate tobacco, Court would ''not rely on Congress' failure to act—its consideration and rejection of bills that would have given the FDA this authority—'' in reaching conclusion that FDA lacked authority); *United States* v. *Southwestern Cable Co.,* 392 U.S. 157, 170 (1968) (failed requests for legislative action do not prove agency did not already possess authority); *see generally* 73 Am. Jur.2d, Statutes § 84 (2001). In this case, not only was there, at best, a ''failure to act'' by the Congress with respect to the title of Board members, but, to the extent it did act, part of the Congress—the House—passed the measure.

We make no changes to the regulation based on this comment.

7. *The title ''judge'' would destroy the non-adversarial nature of the VA appellate process.*

Two commenters objected to the title ''judge'' because it would adversely affect the informal, non-adversarial nature of VA's appellate process. In addition to the fact that the commenters offer only their opinions in support of this proposition, it is relevant to note that the 973 administrative law ''judges'' at SSA—approximately 75% of all federal ALJs—administer justice in ''an informal, nonadversary manner.'' 20 CFR 404.900(b) (rules relating to SSA administrative review process).

We make no changes based on these comments.

Administrative Procedure Act

This final rule concerns agency organization, procedure or practice and is not a substantive rule. Accordingly, it is exempt from the delayed effective date provision of 5 U.S.C. 553.

Paperwork Reduction Act

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

Executive Order 12866

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

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 final rule only affects members of the Board of Veterans' Appeals and not small entities. Therefore, 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.

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 governments, 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.

List of Subjects in 38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: November 18, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 19 is amended as set forth below:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. The section heading and section 19.2 are revised to read as follows:

§ 19.2 Composition of the Board; Titles.

(a) The Board consists of a Chairman, Vice Chairman, Deputy Vice Chairmen, Members and professional, administrative, clerical and stenographic personnel. Deputy Vice Chairmen are Members of the Board who are appointed to that office by the Secretary upon the recommendation of the Chairman.

(b) A member of the Board (other than the Chairman) may also be known as a Veterans Law Judge. An individual designated as an acting member pursuant to 38 U.S.C. 7101(c)(1) may also be known as an acting Veterans Law Judge.

(**Authority:** 38 U.S.C. 501(a), 512, 7101(a))

[FR Doc. 03–3040 Filed 2–7–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AL23

Loan Guaranty: Implementation of Public Law 107–103.

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its loan guaranty regulations to implement sections 401 through 404 of Pub. L. 107–103, the Veterans Education and Benefits Expansion Act of 2001. VA is incorporating into the regulations the following statutory changes: an increase in the maximum amount of loan guaranty entitlement from $50,750 to $60,000, a liberalization of the requirements regarding Memoranda of Understanding between VA and Native American Tribes in order for their members to qualify for direct housing loans to Native American veterans, a revision of the requirement that loan instruments used in connection with VA guaranteed loans contain a statement that such loans are not assumable without prior VA approval, and an increase in the specially adapted housing grant from $43,000 to $48,000 and in the special housing adaptations grant from $8,250 to $9,250.

DATES: *Effective Date:* This interim final rule is effective February 10, 2003. Comments must be received on or before April 11, 2003.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AL23.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Finneran, Assistant Director for Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. chapter 37, VA guarantees loans made by private lenders to veterans for the purchase, construction, and refinancing of homes owned and occupied by veterans. VA also makes direct housing loans to Native American veterans living on tribal trust land.

In addition, under 38 U.S.C. chapter 21, VA provides grants to certain severely-disabled veterans with qualifying permanent and total service-connected disabilities to make adaptations to their homes that are necessary because of the nature of the veterans' disabilities.

VA is amending its loan guaranty regulations (38 CFR part 36) to implement changes to those housing programs made by sections 401 through 404 of Pub. L. 107–103.

Section 401 of Pub. L. 107–103 increased the maximum guaranty on a housing loan made to eligible veterans from $50,750 to $60,000. VA is making conforming changes to § 36.4302 to reflect the new statutory maximum.

Prior to enactment of Pub. L. 107–103, 38 U.S.C. 3762 required that, before VA could make a housing loan under 38 U.S.C. chapter 37, subchapter V to a Native American veteran, the tribal organization having jurisdiction over the veteran must have entered into a Memorandum of Understanding (MOU) with the Secretary of Veterans Affairs spelling out the conditions under which the program would operate on its trust lands. Section 402(b) of Pub. L. 107–103 allows VA to make loans under this program to a Native American veteran if the tribe has entered into an MOU with another Federal agency with regard to loans to Native Americans residing on tribal lands, so long as the Secretary of VA determines that the MOU substantially complies with VA's home loan requirements. VA is amending 38 CFR 36.4527 to reflect this change. The amendment requires that the MOU between the Tribe and the other Federal agency complies with the requirements now set forth in paragraph (b) of § 36.4527.

The goal of this statutory change and the new rule is to expand the number of Native American tribes participating in the VA Native American veteran direct loan program, ultimately increasing the number of Native American veterans obtaining housing loans from VA. VA is aware that many tribes do not wish to go through the process of negotiating an MOU with VA.

VA has participated in inter-agency task forces seeking to increase the availability of housing loans on Native American tribal trust land. These include the Executive Branch's One-Stop Mortgage Initiative during the Clinton Administration, and a task force created by the Federal National Mortgage Association (FNMA, commonly known as ''Fannie Mae''). VA believes that the standards for an MOU contained in paragraph (b) of § 36.4527 mirror requirements by other Federal agencies. Therefore, an MOU between a tribe and another Federal agency would likely meet the requirements in paragraph (b).

VA specifically solicits comments from the public as to whether those requirements for an MOU between another Federal agency and a Native American tribe to be acceptable to VA are reasonable, or if they should be further modified.

Section 403 of Pub. L. 107–103 liberalized the requirement that loan instruments used in connection with VA guaranteed loans contain a