

Dated: July 21, 2010.

**James Scott Sledge,**  
*Chief, U.S. Copyright Royalty Judge.*  
**James H. Billington,**  
*Librarian of Congress.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR part 36

RIN 2900-AM87

#### Loan Guaranty: Assistance to Eligible Individuals in Acquiring Specially Adapted Housing

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs' (VA's) Loan Guaranty regulations concerning assistance to eligible individuals in acquiring specially adapted housing. These changes improve the readability of the regulations; provide further detail about longstanding program policies; and address legislation, policy changes, and a VA Office of the General Counsel legal opinion.

**DATES:** *Effective Date:* October 18, 2010.

#### FOR FURTHER INFORMATION CONTACT:

William White, Acting Assistant Director for Loan Policy and Valuation, Loan Guaranty Service (262), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9543. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** Veterans and servicemembers with severe disabilities may be eligible under 38 U.S.C. chapter 21 for specially adapted housing (SAH) grants. In administering the SAH program, VA helps these eligible individuals to purchase, construct, or adapt a home that suits the individual's living needs. In a document published in the **Federal Register** on October 5, 2009 (74 FR 51103), VA proposed to amend regulations in 38 CFR part 36, subpart C, regarding assistance to certain disabled veterans in acquiring SAH, specifically §§ 36.4400 through 36.4410, which implement the SAH grant program.

As explained in the proposed rule, VA is amending these regulations for three reasons. First, VA believes the regulations should be written in a reader-focused style. Second, detailed guidance about program policies and a regulation written with an easy-to-follow organizational structure will help

applicants and eligible individuals (and those acting on their behalf) understand program requirements. Third, substantive changes are necessary to implement recent legislation, policy decisions, and a VA General Counsel legal opinion. Pursuant to 38 U.S.C. 2101(d), the Secretary may prescribe regulations applicable to the SAH program. In revising these regulations, VA intends that applicants, eligible individuals, program participants, and other interested parties will be better informed about the legal requirements and Department policies that guide the administration of SAH grants.

The comment period for the proposed rule ended on December 4, 2009, and VA received two comments. The commenters expressed concern regarding VA's proposed use of the terminology "paraplegic housing grant or PH grant" for the grant authorized under 38 U.S.C. 2101(a). The commenters pointed out that the term is reflective of only one of the types of disabilities that make an individual eligible for this grant. Additionally, the commenters suggested that the use of the term "paraplegic" might result in an improper restriction on eligibility for SAH grants. The concern was that the term "paraplegia" or "paraplegic" might not be interpreted to include the functional loss of use of the lower limbs due to psychological disorders or other non-organic impairments. One commenter, citing General Counsel Precedent Opinion 60-90, asserted that such a restriction on eligibility for SAH grants is improper, and both commenters wanted to ensure that the definition for "paraplegic grant" would not exclude individuals who otherwise would have been eligible for assistance under 38 U.S.C. 2101(a).

The General Counsel opinion held that the determination of "loss of use" is made "irrespective of whether such loss is functional or organic in origin." VA did not propose to diverge from this holding. VA agrees with the commenters' concerns and, therefore, has decided to use the applicable statutory citations when referring to the grants authorized under 38 U.S.C. 2101(a) as well as 2101(b), rather than the terms "paraplegic housing grant" or "adaptive housing grant" as proposed.

No other substantive changes are made to the proposed rule. However, VA has made a few technical revisions. First, VA has revised the heading of subpart C to refer to "Eligible Individuals" rather than "Certain Disabled Veterans." Second, VA is amending the language in § 36.4404(a)(1), (2), and (3) to clarify that assistance is based on an

individual's rating for entitlement to compensation under 38 U.S.C. chapter 11. These changes are intended to clarify that assistance under 38 U.S.C. chapter 21 is available to veterans and active duty servicemembers. Third, on September 24, 2009, VA published a final rule establishing 38 CFR 36.4412, which implemented provisions of the Housing and Economic Recovery Act of 2008, Public Law 110-289. Those provisions authorize VA to provide automatic annual increases to certain SAH grant recipients. VA sought comments on proposed § 36.4412 in a document published in the **Federal Register** on May 12, 2009 (74 FR 22145). VA inadvertently omitted § 36.4412 in the proposed rule that preceded this final rule. See 74 FR 51103. VA is re-inserting this provision, without further change, as § 36.4411. No substantive changes were made to the regulation. Finally, VA has revised §§ 36.4405(a)(iii), 36.4405(b), and 36.4406(b) for grammatical reasons.

#### 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 given year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

#### Paperwork Reduction Act of 1995

Although this document contains provisions constituting collections of information, under the provisions of 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 subpart C of 38 CFR part 36 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900-0031, 2900-0047, 2900-0132, and 2900-0300.

#### Executive Order 12866

Executive Order 12866 directs 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, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a "significant regulatory

action,” requiring review by OMB, unless OMB waives such review, if it is a 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 the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final 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 the Executive Order.

### 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 will directly affect only individuals. Therefore, pursuant to 5 U.S.C. 605(b), this final rule 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 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. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on September 13, 2010, for publication.

### Lists 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 13, 2010.

**Robert C. McFeteridge,**

*Director, Regulation Policy and Management, Office of General Counsel, Department of Veterans Affairs.*

■ For the reasons stated in the preamble, the Department of Veterans Affairs is amending 38 CFR part 36 (subpart C) as set forth below.

### 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. Revise Subpart C to read as follows:

#### Subpart C—Assistance to Certain Individuals in Acquiring Specially Adapted Housing

Sec.

- 36.4400 Authority.
- 36.4401 Definitions.
- 36.4402 Grant types.
- 36.4403 Subsequent use.
- 36.4404 Eligibility for assistance.
- 36.4405 Grant approval.
- 36.4406 Reimbursement of costs and disbursement of grant funds.
- 36.4407 Guaranteed and direct loans.
- 36.4408 Submission of proof to the Secretary.
- 36.4409 Delegations of authority.
- 36.4410 Supplementary administrative action.
- 36.4411 Annual adjustments to the aggregate amount of assistance available.

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

##### § 36.4400 Authority.

The Secretary’s authority to provide assistance in acquiring specially adapted housing is set forth in 38 U.S.C. chapter 21.

(Authority: 38 U.S.C. 501, 2101(d))

##### § 36.4401 Definitions.

The following definitions of terms apply to this subpart:

*2101(a) grant:* A grant authorized under 38 U.S.C. 2101(a).

(Authority: 38 U.S.C. 501, 2101)

*2101(b) grant:* A grant authorized under 38 U.S.C. 2101(b).

(Authority: 38 U.S.C. 501, 2101)

*Adapt:* To make a housing unit suitable to, or fit for, the residential living needs of an eligible individual.

(Authority: 38 U.S.C. 501, 2101)

*Aggregate amount of assistance available:* The amounts specified at 38 U.S.C. 2102(d) as adjusted in accordance with 38 U.S.C. 2102(e).

(Authority: 38 U.S.C. 501, 2101, 2102)

*Beneficial property interest:* An interest deemed by the Secretary as one that provides (or will provide) an eligible individual a meaningful right to occupy a housing unit as a residence.

(Authority: 38 U.S.C. 501, 2101)

*Braces:* Orthopedic appliances, including prosthetic devices, used for support.

(Authority: 38 U.S.C. 501, 2101)

*Construction-related cost:* An expense incurred for the purpose of or directly related to building, modifying, or adapting a housing unit by using specially adapted housing grant proceeds.

(Authority: 38 U.S.C. 501, 2101)

*Disability:* A compensable physical impairment, as determined by a Department of Veterans Affairs rating decision, that meets the criteria of 38 U.S.C. 2101(a)(2) or (b)(2).

(Authority: 38 U.S.C. 501, 2101)

*Eligible individual:* For specially adapted housing purposes, a person who has served or is currently serving in the active military, naval, or air service, and who has been determined by the Secretary to be eligible for benefits pursuant to 38 U.S.C. chapter 21.

(Authority: 38 U.S.C. 501, 2101, 2101A)

*Eligible individual’s family:* Persons related to an eligible individual by blood, marriage, or adoption.

(Authority: 38 U.S.C. 501, 2101, 2102A)

*Housing unit:* Any residential unit, including all necessary land, improvements, and appurtenances, together with such movable or special fixtures and necessary adaptations as are authorized by 38 U.S.C. 1717 and 2101. For the purposes of this definition, *movable facilities* is defined as such exercising equipment and other aids as may be allowed or required by the Chief Medical Director or designee; *necessary land* is defined as any plot of land the cost and area of which are not disproportionate to the type of improvements thereon and which is in keeping with the locality; and *special fixtures and necessary adaptations* is defined as construction features which

are specially designed to overcome the physical limitations of the individual beneficiary and which are allowed or required by the Chief Medical Director or designee as necessary by nature of the qualifying disability.

(Authority: 38 U.S.C. 501, 1717, 2101)

**Ownership interest:** An undivided property interest that the Secretary determines is a satisfactory:

- (1) Fee simple estate;
- (2) Life estate;
- (3) Functional equivalent of a life estate, such as that created by a valid trust, a long-term lease, or a land installment contract that will convert to a fee simple estate upon satisfaction of the contract's terms and conditions;
- (4) Ownership of stock or membership in a cooperative housing corporation entitling the eligible individual to occupy for dwelling purposes a single family residential unit in a development, project, or structure owned or leased by such corporation;
- (5) Lease, under the terms of a valid and enforceable Memorandum of Understanding between a tribal organization and the Secretary; or
- (6) Beneficial property interest in a housing unit located outside the United States.

(Authority: 38 U.S.C. 501, 2101, 3762)

**Preconstruction cost:** An authorized expense incurred by an eligible individual in anticipation of receiving final approval for a specially adapted housing grant.

(Authority: 38 U.S.C. 501, 2101)

**Reimburse:** To pay specially adapted housing grant funds directly to an eligible individual (or an eligible individual's estate) for preconstruction costs or for construction-related costs.

(Authority: 38 U.S.C. 501, 2101)

**Reside:** To occupy (including seasonal occupancy) as one's residence.

(Authority: 38 U.S.C. 501, 2101)

**Secretary:** The Secretary of the United States Department of Veterans Affairs or any employee or agent authorized in § 36.4409 of this part to act on behalf of the Secretary.

(Authority: 38 U.S.C. 501, 2101)

**Specially adapted housing grant:** A 2101(a) grant, 2101(b) grant, or TRA grant made to an eligible individual in accordance with the requirements of 38 U.S.C. chapter 21 and this subpart.

(Authority: 38 U.S.C. 501, 2101)

**Temporary residence adaptations grant or TRA grant:** A grant, the specific requirements and amount of which are

outlined in 38 U.S.C. 2102A and 2102(d).

(Authority: 38 U.S.C. 501, 2101, 2102A)

#### § 36.4402 Grant types.

(a) **2101(a) grant.** The 2101(a) grant provides monetary assistance for the purpose of acquiring specially adapted housing pursuant to one of the following plans:

(1) Where an eligible individual elects to construct a dwelling on land to be acquired by the eligible individual, the Secretary will pay, up to the aggregate amount of assistance available for 2101(a) grants, not more than 50 percent of the eligible individual's total costs for acquiring the land and constructing the dwelling.

(2) Where an eligible individual elects to construct a dwelling on land already owned by the eligible individual, the Secretary will pay, up to the aggregate amount of assistance available for 2101(a) grants, not more than the lesser of:

- (i) 50 percent of the eligible individual's costs for the land and the construction of the dwelling, or
- (ii) 50 percent of the eligible individual's costs for the dwelling, plus the full amount of the unpaid balance, if any, of the cost to the individual of the necessary land.

(3) Where an eligible individual elects to adapt a housing unit already owned by the eligible individual, to conform to the requirements of the eligible individual's disability, the Secretary will pay, up to the aggregate amount of assistance available for 2101(a) grants, the greater of:

- (i) The eligible individual's costs for making such adaptation(s), or
- (ii) 50 percent of the eligible individual's costs for making such adaptation(s), plus the lesser of:

(A) 50 percent of the eligible individual's costs for acquiring the housing unit, or

(B) The full amount of the unpaid balance, if any, of the cost to the individual of the housing unit.

(4) Where an eligible individual has already acquired a suitably adapted housing unit, the Secretary will pay, up to the aggregate amount of assistance available for 2101(a) grants, the lesser of:

- (i) 50 percent of the eligible individual's cost of acquiring such housing unit, or
- (ii) The full amount of the unpaid balance, if any, of the cost to the individual of the housing unit.

(b) **2101(b) grant.** (1) The 2101(b) grant provides monetary assistance for the purpose of acquiring specially

adapted housing pursuant to one of the following plans:

(i) Where an eligible individual elects to construct a dwelling on land to be acquired by the eligible individual or a member of the eligible individual's family;

(ii) Where an eligible individual elects to construct a dwelling on land already owned by the eligible individual or a member of the eligible individual's family;

(iii) Where an eligible individual elects to adapt a housing unit already owned by the eligible individual or a member of the eligible individual's family; or

(iv) Where an eligible individual elects to purchase a housing unit that is already adapted to the requirements of the eligible individual's disability.

(2) Regardless of the plan chosen pursuant to paragraph (b)(1) of this section, the Secretary will pay the lesser of:

(i) The actual cost, or, in the case of an eligible individual acquiring a housing unit already adapted with special features, the fair market value, of the adaptations determined by the Secretary to be reasonably necessary, or

(ii) The aggregate amount of assistance available for 2101(b) grants.

(c) **TRA grant.** The TRA grant provides monetary assistance for the purpose of adapting a housing unit owned by a member of the eligible individual's family, in which the eligible individual intends to reside temporarily. The Secretary will pay, up to the amounts specified at 38 U.S.C. 2102A(b) for TRA grants, the actual cost of the adaptations.

(d) **Duplication of benefits.** (1) If an individual is determined eligible for a 2101(a) grant, he or she may not subsequently receive a 2101(b) grant.

(2) If an individual is determined eligible for a 2101(b) grant, and becomes eligible for a 2101(a) grant, he or she may receive 2101(a) grants and TRA grants up to the aggregate amount of assistance available for 2101(a) grants. However, any 2101(b) or TRA grants received by the individual before he or she was determined eligible for the 2101(a) grant will count towards the three grant limit in § 36.4403.

(3) If the Secretary has provided assistance to an eligible individual under 38 U.S.C. 1717, the Secretary will not provide assistance under this subpart that would result in duplicate payments for the same adaptations. However, nothing in this subpart prohibits an eligible individual from utilizing the assistance authorized under 38 U.S.C. 1717 and 38 U.S.C.

chapter 21 simultaneously, provided that no duplicate payments result.

(Authority: 38 U.S.C. 2102, 2102A, 2104)

#### **§ 36.4403 Subsequent use.**

An eligible individual may receive up to three grants of assistance under 38 U.S.C. chapter 21, subject to the following limitations:

(a) The aggregate amount of assistance available to an eligible individual for 2101(a) grant and TRA grant usage will be limited to the aggregate amount of assistance available for 2101(a) grants;

(b) The aggregate amount of assistance available to an eligible individual for 2101(b) grant and TRA grant usage will be limited to the aggregate amount of assistance available for 2101(b) grants;

(c) The TRA grant may only be obtained once and will be counted as one of the three grant usages; and

(d) Funds from subsequent 2101(a) grant or 2101(b) grant usages may only pay for reimbursing specially adapted housing-related costs incurred on or after June 15, 2006 or the date on which the eligible individual is conditionally approved for subsequent assistance, whichever is later.

(Authority: 38 U.S.C. 2102, 2102A)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0132.)

#### **§ 36.4404 Eligibility for assistance.**

(a) *Disability requirements.* (1) The 2101(a) grant is available to individuals with permanent and total service-connected disability who have been rated as being entitled to compensation under 38 U.S.C. chapter 11 for any of the following conditions:

(i) Loss, or loss of use, of both lower extremities so as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair;

(ii) Blindness in both eyes having only light perception, plus loss or loss of use of one lower extremity;

(iii) Loss, or loss of use, of one lower extremity, together with—

(A) Residuals of organic disease or injury; or

(B) The loss or loss of use of one upper extremity, which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair;

(iv) Loss, or loss of use, of both upper extremities so as to preclude use of the arms at or above the elbows; or

(v) Any other injury identified as eligible for assistance under 38 U.S.C. § 2101(a).

(2) The 2101(b) grant is available to individuals with permanent and total

service-connected disability who have been rated as being entitled to compensation under 38 U.S.C. chapter 11 for any of the following conditions:

(i) Blindness in both eyes with 5/200 visual acuity or less;

(ii) Anatomical loss, or loss of use, of both hands; or

(iii) Any other injury identified as eligible for assistance under 38 U.S.C. § 2101(b).

(3) The TRA grant is available to individuals with permanent and total service-connected disability who have been rated as being entitled to compensation under 38 U.S.C. chapter 11 for any of the conditions described under paragraph (a)(1) of this section for the 2101(a) grant or paragraph (a)(2) of this section for the 2101(b) grant.

(b) *Feasibility and suitability requirements.* (1) In order for an individual to be eligible for 2101(a) grant assistance, the Secretary must determine that:

(i) It is medically feasible for the individual to reside outside of an institutional setting;

(ii) It is medically feasible for the individual to reside in the proposed housing unit and in the proposed locality;

(iii) The nature and condition of the proposed housing unit are suitable for the individual's residential living needs; and

(iv) The cost of the proposed housing unit bears a proper relation to the individual's present and anticipated income and expenses.

(2) In order for an individual to be eligible for 2101(b) grant assistance, the Secretary must determine that:

(i) The individual is residing in and reasonably intends to continue residing in a housing unit owned by the individual or a member of the individual's family; or

(ii) If the individual's housing unit is to be constructed or purchased, the individual will be residing in and reasonably intends to continue residing in a housing unit owned by the individual or a member of the individual's family.

(Authority: 38 U.S.C. 501, 2101, 2102, 2102A)

#### **§ 36.4405 Grant approval.**

(a) *Conditional approval.* (1) The Secretary may provide written notification to an eligible individual of conditional approval of a specially adapted housing grant if the Secretary has determined that:

(i) Disability requirements have been satisfied pursuant to § 36.4404(a);

(ii) Feasibility and suitability requirements have been satisfied pursuant to § 36.4404(b); and

(iii) The eligible individual has not exceeded the usage or dollar limitations prescribed by §§ 36.4402(d) and 36.4403.

(2) Once conditional approval has been granted, the Secretary may authorize, in writing, an eligible individual to incur certain preconstruction costs pursuant to § 36.4406.

(b) *Final approval.* In order for an individual to obtain final approval for a specially adapted housing grant, the Secretary must determine that the following property requirements are met:

(1) *Proposed adaptations.* The plans and specifications of the proposed adaptations demonstrate compliance with minimum property and design requirements of the specially adapted housing program.

(2) *Ownership.*

(i) In the case of 2101(a) grants, the eligible individual must have, or provide satisfactory evidence that he or she will acquire, an ownership interest in the housing unit.

(ii) In the case of 2101(b) grants, the eligible individual or a member of the eligible individual's family must have, or provide satisfactory evidence that he or she will acquire, an ownership interest in the housing unit.

(iii) In the case of TRA grants:

(A) A member of the eligible individual's family must have, or provide satisfactory evidence that he or she will acquire, an ownership interest in the housing unit, and

(B) The eligible individual and the member of the eligible individual's family who has or acquires an ownership interest in the housing unit must sign a certification as to the likelihood of the eligible individual's temporary occupancy of such residence.

(iv) If the ownership interest in the housing unit is or will be vested in the eligible individual and another person, the Secretary will not for that reason reduce by percentage of ownership the amount of a specially adapted housing grant. However, to meet the ownership requirement for final approval of a specially adapted housing grant, the eligible individual's ownership interest must be of sufficient quantum and quality, as determined by the Secretary, to ensure the eligible individual's quiet enjoyment of the property.

(3) *Certifications.* The eligible individual must certify, in such form as the Secretary will prescribe, that:

(i) Neither the eligible individual, nor anyone authorized to act for the eligible

individual, will refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the housing unit acquired by this benefit, to any person because of race, color, religion, sex, familial status, disability, or national origin;

(ii) The eligible individual, and anyone authorized to act for the eligible individual, recognizes that any restrictive covenant on the housing unit relating to race, color, religion, sex, familial status, disability, or national origin is illegal and void, and any such covenant is specifically disclaimed; and

(iii) The eligible individual, and anyone authorized to act for the eligible individual, understands that civil action for preventative relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law.

(4) *Flood insurance.* The eligible individual's housing unit, if it is or becomes located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended, must be covered by flood insurance. The amount of flood insurance must be at least equal to the lesser of the full insurable value of the housing unit or the maximum limit of coverage available for the particular type of housing unit under the National Flood Insurance Act, as amended. The Secretary will not approve any financial assistance for the acquisition or construction of a housing unit located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program

(Authority: 38 U.S.C. 501, chapter 21, 42 U.S.C. 4012a, 4106(a))

(5) *Geographical limits.* Any real property purchased, constructed, or adapted with the proceeds of a specially adapted housing grant must be located:

(i) Within the United States, which, for purposes of 38 U.S.C. chapter 21, includes the several States, Territories, and possessions, including the District of Columbia, and the Commonwealths of Puerto Rico and the Northern Mariana Islands; or,

(ii) If outside the United States, in a country or political subdivision which allows individuals to have or acquire a beneficial property interest, and in which the Secretary, in his or her discretion, has determined that it is

reasonably practicable for the Secretary to provide assistance in acquiring specially adapted housing.

(Authority: 38 U.S.C. 2101, 2101A, 2102A)

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0031, 2900–0132, and 2900–0300.)

#### **§ 36.4406 Reimbursement of costs and disbursement of grant funds.**

(a) After providing conditional approval of a specially adapted housing grant for an eligible individual pursuant to § 36.4405, the Secretary may authorize the incurrence, prior to obtaining final specially adapted housing grant approval, of preconstruction costs of the types and subject to the limits specified in this paragraph.

(1) Preconstruction costs to be incurred may not exceed 20 percent of the eligible individual's aggregate amount of assistance available, unless the individual is authorized by the Secretary in writing to incur specific preconstruction costs in excess of this 20 percent limitation. Preconstruction costs may include the following items:

(i) Architectural services employed for preparation of building plans and specifications.

(ii) Land surveys.

(iii) Attorneys' and other legal fees.

(iv) Other costs or fees necessary to plan for specially adapted housing grant use, as determined by the Secretary.

(2) If the Secretary authorizes final approval, the Secretary will pay out of the specially adapted housing grant the preconstruction costs that the Secretary authorized in advance. If the specially adapted housing grant process is terminated prior to final approval, preconstruction costs incurred that the Secretary authorized in advance will be reimbursed to the eligible individual, or the eligible individual's estate pursuant to paragraph(c) of this section, but will be deducted from the aggregate amount of assistance available and the reimbursement will constitute one of the three permitted grant usages (see § 36.4403).

(b) The Secretary will determine a method of disbursement that is appropriate and advisable in the interest of the eligible individual and the Government, and will pay the specially adapted housing grant accordingly. Disbursement of specially adapted housing grant proceeds generally will be made to third parties who have contracted with the veteran, to an escrow agent, or to the eligible individual's lender, as the Secretary

deems appropriate. If the Secretary determines that it is appropriate and advisable, the Secretary may disburse specially adapted housing grant funds directly to an eligible individual where the eligible individual has incurred authorized preconstruction or construction-related costs and paid for such authorized costs using personal funds.

(c) Should an eligible individual die before the Secretary disburses the full specially adapted housing grant, the eligible individual's estate must submit to the Secretary all requests for reimbursement within one year of the date the Loan Guaranty Service learns of the eligible individual's death. Except where the Secretary determines that equity and good conscience require otherwise, the Secretary will not reimburse an eligible individual's estate for a request that has not been received by the Department of Veterans Affairs within this timeframe.

(Authority: 38 U.S.C. 2101(d))

#### **§ 36.4407 Guaranteed and direct loans.**

(a) In any case where, in addition to using the benefits of 38 U.S.C. chapter 21, the eligible individual will use his or her entitlement to the loan guaranty benefits of 38 U.S.C. chapter 37, the complete transaction must be in accord with applicable regulations found in this part.

(b) In any case where, in addition to using the benefits of 38 U.S.C. chapter 21, the eligible individual will use a direct loan under 38 U.S.C. 3711(i), the complete transaction must be in accord with the requirements of § 36.4503 and the loan must be secured by the same housing unit to be purchased, constructed, or adapted with the proceeds of the specially adapted housing grant.

(c) In any case where, in addition to using the benefits of 38 U.S.C. chapter 21, the eligible individual will use the Native American Direct Loan benefit under 38 U.S.C. chapter 37, subchapter V, the eligible individual's ownership interest in the housing unit must comport with the requirements found in §§ 36.4501, 36.4512, and 36.4527 and in the tribal documents approved by the Secretary, which include, but may not be limited to, the Memorandum of Understanding, the residential lease of tribal-owned land, the tribal lending ordinances, and any relevant tribal resolutions.

(Authority: 38 U.S.C. 2101(d), 3711(i), 3762)

**§ 36.4408 Submission of proof to the Secretary.**

The Secretary may, at any time, require submission of such proof of costs and other matters as the Secretary deems necessary.

(Authority: 38 U.S.C. 501, 2101(d))

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0031 and 2900–0300.)

**§ 36.4409 Delegations of authority.**

(a) Each employee of the Department of Veterans Affairs appointed to or lawfully filling 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 assisting eligible individuals in acquiring specially adapted housing:

- (1) Under Secretary for Benefits.
- (2) Director, Loan Guaranty Service.
- (3) Deputy Director, Loan Guaranty Service.
- (4) Assistant Director, Loan Policy and Valuation.
- (5) Chief, Specially Adapted Housing, Loan Guaranty Service.
- (6) Director, VA Medical Center.
- (7) Director, VA Regional Office.
- (8) Loan Guaranty Officer.
- (9) Assistant Loan Guaranty Officer.

(b) Nothing in this section will be construed to authorize the determination of basic eligibility or medical feasibility under § 36.4404(a), (b)(1)(i), or (b)(1)(ii) by any employee designated in this section, except as otherwise authorized.

(Authority: 38 U.S.C. 501, 512, ch. 21)

**§ 36.4410 Supplementary administrative action.**

Subject to statutory limitations and conditions prescribed in title 38, U.S.C., the Secretary may take such action as may be necessary or appropriate to relieve undue prejudice to an eligible individual or a third party contracting or dealing with such eligible individual which might otherwise result.

(Authority: 38 U.S.C. 501, 2101(d))

**§ 36.4411 Annual adjustments to the aggregate amount of assistance available.**

(a) On October 1 of each year, the Secretary will increase the aggregate amounts of assistance available for grants authorized under 38 U.S.C. 2101(a) and 2101(b). Such increase will be equal to the percentage by which the Turner Building Cost Index for the most recent calendar year exceeds that of the next preceding calendar year.

(b) Notwithstanding paragraph (a) of this section, if the Turner Building Cost Index for the most recent full calendar year is equal to or less than the next preceding calendar year, the percentage increase will be zero.

(c) No later than September 30 of each year, the Secretary will publish in the **Federal Register** the aggregate amounts of assistance available for the upcoming fiscal year.

(Authority: 38 U.S.C. 2102(e))

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 9 and 721**

[EPA–HQ–OPPT–2008–0252; FRL–8835–5]

RIN 2070–AB27

**Multi-Walled Carbon Nanotubes and Single-Walled Carbon Nanotubes; Significant New Use Rules**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is issuing significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for two chemical substances which were the subject of Premanufacture Notices (PMNs). The two chemical substances are identified generically as multi-walled carbon nanotubes (MWCNT) (PMN P–08–177) and single-walled carbon nanotubes (SWCNT) (PMN P–08–328). This action requires persons who intend to manufacture, import, or process either of these two chemical substances for a use that is designated as a significant new use by this final rule to notify EPA at least 90 days before commencing that activity. EPA believes that this action is necessary because these chemical substances may be hazardous to human health and the environment. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

**DATES:** This final rule is effective October 18, 2010.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2008–0252. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available,

e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Jim Alwood, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8974; e-mail address: [alwood.jim@epa.gov](mailto:alwood.jim@epa.gov).

*For general information contact:* The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Does this Action Apply to Me?**

You may be potentially affected by this action if you manufacture, import, process, or use either of the chemical substances contained in this final rule: Multi-walled carbon nanotubes (MWCNT) (PMN P–08–177) and single-walled carbon nanotubes (SWCNT) (PMN P–08–328). Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of