(a)(4) of this section, as applicable); a statement that all of the members of the organization elect that it be excluded from all of subchapter K; a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained); and all information required by the form and instructions to the Form 1065 for an election under paragraph (a) of this section.

(ii) * * * If an unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (but not a specified applicable unincorporated organization) does not make the election provided in section 761(a) in the manner prescribed by paragraph (b)(2)(i) of this section, it will nevertheless be deemed to have made the election if it can be shown from all the surrounding facts and circumstances that it was the intention of the members of such organization at the time of its formation to secure exclusion from all of subchapter K beginning with the first taxable year of the organization. * * *

(3) * * *

(i) * * * Application for permission to revoke the election must be made by submitting a letter ruling request that complies with the requirements of Rev. Proc. 2024–1 or successor guidance.

* * * * *

(f) *Applicability date*—(1) *In general.* Except as provided in paragraphs (d) and (f)(2) of this section, this section applies to taxable years ending on or after March 11, 2024.

(2) *Exceptions.* Paragraphs (a)(4)(iv) and (a)(5)(iv) of this section, the fifth sentence of paragraph (b)(2)(i) of this section, the first sentence of paragraph (b)(2)(ii) of this section, and the last sentence of paragraph (b)(3)(i) of this section, apply to taxable years ending on or after November 20, 2024.

Heather C. Maloy,

Acting Deputy Commissioner.

[FR Doc. 2024–26962 Filed 11–19–24; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AS16

Loan Guaranty: Loan Reporting and Partial or Total Loss of Guaranty or Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations governing loan reporting requirements for lenders that participate in the VA-guaranteed home loan program and circumstances when VA would assert a defense for partial or total loss of guaranty or insurance for lenders and holders. These proposed amendments would support VA's ongoing efforts to modernize and transform technology and processes within the guaranteed home loan program, capitalizing on industry standard datasets. In addition, the proposed regulatory changes would update and enhance the loan guaranty reporting requirements for lenders, providing veterans stronger protections against noncompliant loans through improved transparency and oversight of the program.

DATES: Comments must be received on or before January 21, 2025.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on *www.regulations.gov* as soon as possible after they have been received. VA will not post on *www.regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a 100 word Plain-Language Summary of this proposed rule is available at *Regulations.gov*, under RIN 2900–AS16(P).

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Assistant Director for Regulations, Legislation, Engagement, and Training; Terry Rouch, Assistant Director for Loan Policy and Valuation; and Colin Deaso, Assistant Director for Data and Technology Solutions, Loan Guaranty (26), Veterans Benefits Administration, Department of Veterans Affairs, 1800 G Street NW, Washington DC 20006, (202) 632–8862. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Purpose of This Rulemaking

VA proposes to amend its reporting regulation at 38 CFR 36.4303 and its partial or total loss of guaranty or insurance regulation at 38 CFR 36.4328 to support its ongoing efforts to modernize and transform technology and processes within its VA-guaranteed home loan program and to make the regulations more reader-friendly. VA is accomplishing the technological transformation by updating reporting requirements and connecting with lenders and holders through application programming interfaces (APIs). Utilizing APIs will more efficiently and effectively support veterans, lenders, servicers, and other stakeholders who participate in the VA-guaranteed home loan program. Specifically, VA would launch an API ecosystem in which VA and veterans would, through increased VA oversight capabilities, have stronger protections against noncompliant lenders and holders. Additionally, lenders and holders would have more assurance and confidence in using their authority to close VA-guaranteed loans on an automatic basis and in carrying out lending and servicing functions in VA's home loan program.

To help ensure success, updates to 38 CFR 36.4303 and 36.4328 are necessary. Amendments to § 36.4303 would expand loan reporting requirements by allowing VA, lenders, and holders to take advantage of technological improvements that APIs provide, resulting in more efficient and more effective program administration. Section 36.4328 amendments would clarify provisions addressing partial or total loss of the guaranty or insurance when VA identifies fraud, material misrepresentations, or other noncompliance with VA requirements.

II. Section-by-Section Analysis of the Proposed Regulatory Amendments

A. 38 CFR 36.4303—Reporting Requirements

1. Reporting Loans Closed on an Automatic Basis

VA proposes to revise § 36.4303(a) to add the heading, ''Automatically guaranteed loans'', and provide that, for loans automatically guaranteed under 38 U.S.C. 3703(a)(1), a lender of a class described under 38 U.S.C. 3702(d), would be required to report the loan, after loan closing, in an electronic

format using an API, as designated by the Secretary. The proposed rule would further require that such a lender must, not later than 15 days after the loan closing date, use the designated API to report a loan to VA. When reporting the loan, the lender must also use the designated API to submit the appropriate funding fee as prescribed by 38 U.S.C. 3729 and required information regarding the loan, including the loan application (*e.g.,* the Uniform Loan Application Dataset—ULAD), closing disclosures (*e.g.,* the Uniform Closing Dataset—UCD), and any other information required by the Secretary.

VA further proposes to explain that VA would announce in the **Federal Register** any designation of a new API at least 60 days before a lender would be required to use the API for reporting the loan and submitting the funding fee and loan information. The notice would provide the name of the newly designated API(s) and a link to VA's website where VA would maintain and update technical details about the operative API(s). At the expiration of the notice period, using the designated API(s) when reporting the loan, including submission of the funding fee and loan information to VA, would be a pre-condition to VA issuing a loan guaranty certificate (LGC).

The proposed amendments would be more consistent with standard industry practice for electronic reporting. Additionally, they would allow for more efficient loan oversight. For example, currently, if a funding fee is required, the lender collects the fee at closing and electronically remits the funds to VA within 15 days of closing via VA's electronic Funding Fee Payment System (FFPS). The lender also reports the loan using WebLGY, a different system. Thus, lenders have to submit documents and remittances to two VA systems, using manual processes. Due to the manual processes and separate systems necessary, VA currently allows the lender 60 days within which to submit the loan information. See 38 CFR 36.4313(e)(3) and (4). But under the new electronic reporting system, VA would retire FFPS and combine reporting the loan and remittance of the VA funding fee into one automated process. Furthermore, because of the simplification and automation, the 60-day submission process could be handled efficiently within 15 days.

VA is committed to a user-friendly API environment that improves the overall experience with VA—not launching technological improvements for their own sake. VA also understands that many lenders have already been working with other API environments. Accordingly, VA welcomes feedback, including technical, on how VA can maximize the efficiencies that come through reporting loans using APIs and how VA's proposed process might be further refined. To that end, VA has already published on VA's website the specifications for five APIs that are in various stages of development, including the API the Secretary plans to designate as the first API for reporting guaranteed loans.

The designated API would allow lenders to report loan information electronically utilizing their Loan Origination Software (LOS). This is another advantage to the API ecosystem, because the LOS is already widely accepted throughout the industry. Most lenders use the Mortgage Industry Standards Maintenance Organization (MISMO's) standards in the delivery of closing disclosure data to other federal, or federally sponsored, housing agencies such as Fannie Mae, Freddie Mac, and the Department of Housing and Urban Development (HUD). With VA's designated API for reporting the loan, lenders would be able to electronically report information in the UCD and ULAD via API directly from the lenders' LOS in accordance with MISMO standards. In the end, the designated API for loan reporting would allow for the full automation of the funding fee payment, loan reporting, and issuance of the LGC via lenders' LOS. Overall, based on industry data and widely held principles, VA assesses that the standardization of data reporting would lead to better accuracy, consistency, and clarity surrounding the loans VA guarantees and would promote a more consistent approach between VA and lenders.

Lenders would also make the required certifications related to the loan, using the API, including, for example, that the loan conforms with the applicable provisions of 38 U.S.C. chapter 37 and of the regulations concerning guaranty or insurance of loans to veterans.

The lender certifications are consistent with current regulations and approved information collections. See Office of Management and Budget (OMB) Control Number 2900–0909. The primary difference under the proposal is that the certifications would be submitted using the designated API(s), again saving resources and time for lenders and VA.

VA would also continue to require that a veteran make certain certifications at the time the loan is closed. Veterans would not notice any change. The primary change for lenders would be that, as with their own certifications, they would report a veteran's certifications using the designated API(s). One veteran certification would relate to past or present occupancy of the property. In the case of a loan for the purchase or construction of a residential property, or for a cash-out refinance, the veteran would be required to certify that the veteran intends to occupy such property as the veteran's home. See 38 U.S.C. 3704(c). In the case of a loan for the repair, alteration, or improvement of residential property, the veteran would be required to certify that the veteran occupies the property as the veteran's home. An exception to this is if the home improvement or refinancing loan is for extensive changes to the property that would prevent the veteran from occupying the property while the work is being completed. In such a case, the veteran would be required to certify that the veteran intends to occupy or reoccupy the property as the veteran's home upon completion of the substantial improvements or repairs. Another exception would be for an interest rate reduction refinance loan (commonly referred to as an IRRRL), where the veteran would be required to certify that the veteran either occupies the property as the veteran's home or had previously occupied it as the veteran's home. The certifications are required by statute, as are the differing occupancy requirements based on loan type. See 38 U.S.C. 3703(c), 3704(c), 3710(e).

In the event a veteran is in active-duty status as a member of the Armed Forces and is unable to occupy the property because of such status, VA would accept a certification from the spouse of the veteran that the veteran's spouse occupies or intends to occupy the property as his or her home or a certification from the veteran's attorney-in-fact or from the legal guardian of a dependent child of the veteran that the dependent child occupies or intends to occupy the property as the dependent child's home. See 38 U.S.C. 3704(c)(2).

In the case of an interest rate reduction refinancing loan, the veteran must certify as to meeting one of the occupancy requirements at 38 CFR 36.4307(a)(2). See U.S.C. 3710(e)(1)(F). The certifications required are consistent with current statutory and regulatory requirements. Id.

Lastly, VA would provide that upon VA's acceptance of the information, VA would issue the LGC, subject to provisions of proposed § 36.4328.

2. Reporting Loans That Require VA's Prior Approval

VA proposes to remove current paragraphs (b), (c), and (d) of 38 CFR 36.4303 and add a new paragraph (b).

Proposed paragraph (b) would include the heading, ''Prior-approval loans'', and provide that, in the case of any loan made by a lender without the authority to close loans on an automatic basis or any loan where the Secretary provides advance notice of the need for prior approval, the lender would be required to report the loan to the Secretary before the loan closing for the Secretary's review. Lenders would be required to report the loan in an electronic format and using an API, if an API is designated by the Secretary for this purpose. While VA anticipates releasing an API for lenders to submit loans that require prior approval by the Secretary, this API is not currently ready. As such, the Secretary would direct lenders under the proposed rule to continue using VA's current loan reporting system, WebLGY, to submit certain pre-closing and underwriting loan information for the Secretary's review. As with automatically guaranteed loans, VA would propose to include language in paragraph (b) that would require VA to announce in the **Federal Register** any designation of a new API at least 60 days before a lender would be required to use the API.

The loan information that must be submitted before loan closing would include the loan application (that is, the Uniform Residential Loan Application (URLA), credit reports obtained in connection with the loan application, certain VA forms as required by the Secretary, the occupancy certification as noted in proposed § 36.4303(a)(2)(iv) obtained at the time of loan application, and any other information the Secretary determines necessary for a determination.

Upon VA's review and approval of the above information, VA would issue a certificate of commitment, which would commit an LGC to the holder of the loan upon the payment of the full proceeds of the loan for the purposes described in the original report and provided the requirements in proposed § 36.4303(b)(4) are met. If VA does not approve the loan, VA would notify the lender that the loan cannot be closed as a VA-guaranteed loan; however, the lender may resubmit the loan to VA for prior approval after the lender corrects any issues identified by VA.

The lender would be required to report the loan to VA not later than 15 days after the loan closing date using the same API as when reporting loans closed on an automatic basis. The submission would also include the following items: the appropriate funding fee as prescribed by 38 U.S.C. 3729; the information prescribed in proposed § 36.4303(a)(2)(ii); evidence that any conditions identified by the Secretary in the certificate of commitment are satisfied in order for the Secretary to issue an LGC; evidence showing the property securing the loan is that for which the certificate of commitment was issued; evidence that all property purchased or acquired with the proceeds of the loan has been encumbered as required by VA; and lender and veteran certifications prescribed in proposed § 36.4303(a)(2)(iii) and (iv), respectively.

Lastly, VA would provide that upon VA's acceptance of the information, VA would issue the LGC, subject to provisions of proposed § 36.4328.

These reporting requirements for loans that require pre-approval from VA are generally not new. The change would be the method of transmission to VA, meaning that the lender would transmit the information using the designated API. VA notes, too, that prior-approval loans constitute less than one percent of VA's guaranty portfolio.

3. Failure To Close Prior-Approval Loans and Late Reporting of Loans

VA proposes to redesignate current paragraphs (e) and (f) of 38 CFR 36.4303 as new paragraphs (b)(6) and (c), respectively. VA would also revise newly redesignated paragraphs (b)(6) and (c).

Proposed paragraph (b)(6) would provide that if the lender does not close the loan on which prior approval was obtained, the certificate of commitment would have no further effect.

Proposed paragraph (c) would include a heading to be styled, ''Late reporting of closed loans'', and would provide that, for loans not reported in accordance with the timing requirements of this section, evidence of guaranty would be issued only if the loan report is accompanied by a statement from the lending institution that explains why the loan was reported late and whether, since origination, the loan was in default. VA would require the statement to identify the case or cases in issue and to set forth the specific reason or reasons why the loan was not submitted on time. Upon receipt of such a statement, VA would issue evidence of guaranty. A pattern of late reporting and the reasons therefore would be considered by VA in taking action under §§ 36.4336 and 36.4353. VA believes that this change, to include referencing existing authority to take action under § 36.4336, would serve as a deterrence for late reporting of loans to VA.

4. Evidence of Guaranty and Clarifying or Conforming Amendments

VA proposes to redesignate current paragraph (g) as new paragraph (d). The heading would be styled, ''Form of guaranty evidence.'' Substantively, proposed paragraph (d) would provide that, for guaranteed loans, evidence of a guaranty would be issued by the Secretary as an LGC and that, for insured loans, notice of credit to an insurance account would be given to the lender. This revision would be to improve clarity and readability.

VA would remove current paragraphs (h) and (j) and redesignate current paragraph (i) as new paragraph (e). VA would also revise new paragraph (e) by adding the heading, ''Exclusions from the guaranty or insurance amount'', and clarifying that the amounts referenced are those disbursed by a lender.

Lastly, VA would redesignate current paragraphs (k) and (l) as new paragraphs (f) and (g) and would revise new paragraphs (f) and (g) by adding the headings, ''Veteran's right to exit purchase contract'' and ''Processing and reporting a loan assumption'', respectively. VA also proposes to revise new paragraph (g) to conform any internal references to this new paragraph and correct the references in new paragraph (g)(1)(ii)(D), which currently references paragraphs (l)(1)(i), (I)(1)(i)(B), and (l)(1)(i)(A), rather than (g)(1)(i), (g)(1)(i)(B), and (g)(1)(i)(A), respectively.

5. Information Collections and Authority Citations

Section 36.4303 already contains collections of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that are approved by the Office of Management and Budget (OMB). The information collection associated with proposed § 36.4303(g), pertaining to assumptions, is currently approved under OMB control number 2900–0516. The information collection associated with proposed § 36.4303(a)(2)(iv), pertaining to the veteran's occupancy certification, is currently approved under OMB control number 2900–0521. VA is not proposing any substantive revisions to these provisions or the information collections but is proposing to add OMB control number 2900–0521 to the list of approved information collections at the end of the section.

Similarly, VA proposes to add OMB control number 2900–0909 to the list of approved information collections at the end of § 36.4303. This approved information collection pertains to existing lender reporting requirements

for both automatically guaranteed loans and prior-approval loans. This includes information and certifications required under current § 36.4303(a), (c), (d), and (f). With this proposed rule, VA is revising the information required by a lender to include additional loan origination information including but not limited to the loan application (*e.g.,* ULAD) and closing disclosures (*e.g.,* UCD). VA also proposes to amend the format (*i.e.,* collection instrument) lenders will use to submit this information to reflect the use of APIs. Accordingly, VA has outlined these changes in the below Paperwork Reduction Act section and any incremental burden costs or savings to the public.

VA notes that it currently has approval from OMB to collect loan application information and closing disclosures under the information collection associated with 38 CFR 36.4333. This rule, in part, pertains to lenders' requirement to maintain loan origination records and VA's authority to request an audit of such records as necessary for oversight and program management. Under the current approved information collection (OMB control number 2900–0515), VA requires lenders to upload the ULAD and UCD for any loan selected for audit (also known as Full File Loan Review). With this proposed rule, lenders will have already submitted this information when they report the loan to VA for an LGC. As such, separate from this rulemaking, VA intends to revise the information collection at 38 CFR 36.4333 to remove the duplicate information collection.

Finally, VA proposes to remove the paragraph-specific authority citations and amend the authority citation at the end of § 36.4303.

B. Partial or Total Loss of Guaranty or Insurance

VA proposes to rewrite § 36.4328, which addresses how lender or holder noncompliance with VA requirements can affect the guaranty and VA's payment of the guaranty. The rule has not been updated for some time, and VA believes modernizing the style would promote transparency, help stakeholders better understand VA's longstanding policy, and improve VA's oversight function. For example, VA would add headings at the paragraph level, as headings throughout the section would help VA employees and stakeholders better understand which provisions apply to a given situation, such as material misrepresentations in origination compared to servicing. The goal is to minimize legalese and arrange the section under a more orderly framework. In addition, VA would codify a requirement for indemnifying VA when a lender fails to comply with certain requirements.

1. Forgeries and Falsifications of Documents

Paragraph (a) of § 36.4328 would be revised under the heading ''No liability on the guaranty or insurance due to forgery or falsification of documents.'' The revision would explain that VA would have no liability on account of a guaranty or insurance of a loan, or any certificate or other evidence thereof, if—a signature to the note, the mortgage, or any other loan papers is a forgery; the application for guaranty or insurance is a forgery; or the certificate of discharge or the certificate of eligibility is counterfeited or falsified, or is not issued by the Government.

The current rule's phrase, ''Subject to the incontestable provisions,'' would be deleted. The deletion is because, for some readers, the phrase can perhaps give the wrong impression that VA has no enforcement authority over a guaranteed loan. It is VA's position that the introductory clause was inserted originally to emphasize what was, at the time, a newly enacted law providing more guaranty stability. VA has not intended the phrase to imply that VA has no way of addressing losses caused by forgeries, fraud, or material misrepresentations, nor has VA applied it that way.

Another historical reference that is not necessary anymore is the date, July 1, 1948. References in paragraph (a) to the date ''July 1, 1948'' would be deleted, because VA's guaranty portfolio no longer includes any loans made that long ago. Any substantive difference that may have applied at one point has been overtaken by time.

In short, the substance under which VA applies paragraph (a) today would not change under the proposed rule's paragraph (a). The proposal would instead eliminate outdated text for clearer intent.

2. Material Misrepresentation by a Lender

VA would replace current paragraph (b) of § 36.4328 by inserting the heading, ''Material misrepresentation by a lender'', and specifying the actions VA may take after learning of a material misrepresentation. Specifically, the rule would provide that if a lender knew or should have known of a material misrepresentation at the time of reporting the loan to VA under § 36.4303, VA may adjust the maximum guaranty amount on the LGC or demand indemnification from the lender. Paragraph (b)(1) would apply to instances where a material misrepresentation is identified before VA issues the LGC. Paragraph (b)(2) would apply to instances where a material misrepresentation is identified after VA issues the LGC. Paragraph (b)(3) would provide an opportunity for the lender to take corrective action, when the Secretary determines it appropriate, and either have the full guaranty amount restored or cancel the indemnification, as applicable.

Under paragraph (b)(1) of § 36.4328, which would include the heading, ''Material misrepresentation is identified before VA issues the loan guaranty certificate'', VA would notify the lender of VA's findings that the lender made a material misrepresentation when reporting the loan and would issue the loan guaranty certificate with a maximum guaranty amount of one dollar. For example, in a situation where a lender reported to VA a $400,000 loan but VA found an improper charge of $100, VA would, under paragraph (b)(1), notify the lender that the LGC is issued in the amount of $1 rather than the expected $100,000.

Under paragraph (b)(2), which would address, as the heading would indicate, instances where a ''Material misrepresentation is identified after VA issues the loan guaranty certificate,'' VA would notify the originating lender of VA's findings and that the maximum guaranty amount on the loan has been reduced to $1, if the originating lender is the current loan holder. Alternatively, if the originating lender is not the current loan holder, VA would require the originating lender to indemnify VA, as provided in paragraph (c).

Paragraph (b)(3) of § 36.4328 would be introduced with the heading, ''Corrective action by lender.'' Paragraph (b)(3)(i) would explain that, when notifying the lender of VA's findings under paragraph (b)(1) or (2), VA would also identify corrective action(s), if any, VA determines necessary to remediate the effects of the material misrepresentation. After VA receives evidence confirming the effects of the material misrepresentation have been remediated, VA would either restore the guaranty to the full amount or cancel the indemnification, as applicable. Paragraph (b)(3)(ii) would state that, if VA determines the effects of the material misrepresentation cannot be remediated, VA would not offer the originating lender the opportunity to take corrective action. VA would require the originating lender to indemnify VA, as provided in paragraph (c).

The proposed revisions would improve the readability of the regulation; not change the substantive way VA conducts oversight and works with lenders and holders to help ensure a fair outcome for VA, veterans, lenders, and holders. For example, consistent with current policy, VA would not limit the application of the regulation to commissions of fraud, as violations resulting from misrepresentations that were made without malintent can be just as damaging to veterans and the Government as an act of fraud. It is longstanding policy that, when VA finds a veteran has been wrongly charged a fee, for example, VA does not need a finding of fraud to instruct the lender to reimburse the veteran for the improper charge. VA instructs the lender that the charge must be reimbursed. VA notes, too, that the applicable statute does not, in authorizing VA to assert defenses, mention intent. See 38 U.S.C. 3721.

Similarly, VA has for some time offered lenders the opportunity to indemnify VA against any eventual loss when the lender violated one of VA's regulations. Although VA has not codified the procedure explicitly until now, the indemnification process has proven effective for all stakeholders. The veteran continues to receive all the advantages that accompany a VA-guaranteed loan. The holder continues to be able to rely on the guaranty. The market continues to consider the VA guaranty a premium certification. Importantly, too, VA continues to be able to protect the taxpayer against losses VA would not have incurred had VA known of a violation at the time of issuing the LGC, using a common risk-shifting mechanism in the financial industry.

VA would delete the term ''willful'' from the current rule, but again, VA does not expect that lenders or holders would notice a change in VA's approach. As with the illustration regarding the improper $100 charge, VA already considers the improper charge a material misrepresentation, even if just the lender's mistake. This is because the lender is responsible for ensuring its own compliance with VA's statutes and regulations. Yet, the lender submitted the loan for guaranty, requesting a higher guaranty amount than VA would have guaranteed had VA known of the improper charge. Plus, the veteran who obtained the guaranteed loan has been wrongly required to pay $100, and VA believes that, in such a circumstance, the veteran deserves to be made whole by the lender. VA also already works with the lender to ensure the veteran is reimbursed for the improper charge. Thus, the proposed rule would more specifically outline current procedures than the current rule does but would not change the expectations lenders and holders have come to rely on.

VA understands the importance of being able to rely on VA's guaranty, particularly given how critical it is to the secondary investment market, which supplies to many in the lending industry the liquidity necessary for making VA-guaranteed loans. VA believes the additional clarity under the proposed rule would help further that stability, rather than detract from it, as it would make clearer the policies and procedures VA has employed for some time in addressing noncompliance. Yet at the same time, the revision would serve as a clear reminder to lenders that in originating loans or servicing loans of veterans with VA-guaranteed loans, the lender must ensure the representations they make to VA align with the facts as represented.

3. Indemnification by the Lender

VA would, under the heading ''Indemnification after VA issues the loan guaranty certificate,'' replace paragraph (c) of § 36.4328 to codify the indemnification process applicable to a loan where fraud or a material misrepresentation is identified after VA has issued the LGC. One type of indemnification, applicable to noncompliance with underwriting requirements in § 36.4340, would have a 5-year term, including any subsequent interest rate reduction refinancing loans, under proposed paragraph (c)(1). The other type of indemnification would apply to noncompliance for reasons other than underwriting decisions under § 36.4340. Under proposed paragraph (c)(2), the duration of this latter type would last the life of the loan, including any subsequent interest rate reduction refinancing loans.

Proposed paragraph (c)(1) of § 36.4328 would include the heading of, ''Violations of underwriting requirements'', and state that, if VA determines the originating lender made a material misrepresentation relating to the credit underwriting of a loan pursuant to the provisions of § 36.4340, the originating lender must abstain from filing a guaranty or insurance claim in the event of a loan default and must indemnify VA for any and all losses arising from or related to a guaranty or insurance claim made on the loan within five years of the date of the loan guaranty certificate, including any subsequent interest rate reduction refinancing loans. A few examples of material misrepresentations related to the provisions of § 36.4340 are failures to (i) verify assets, employment, and credit reports (38 CFR 36.4340(j)); (ii) determine or accurately determine the veteran's acceptable debt-to-income ratio (38 CFR 36.4340(c)); or (iii) ensure residual income guidelines were met (38 CFR 36.4340(e)).

The proposed five-year indemnification for underwriting deficiencies would reflect VA's longstanding policy that underwriting is critical to a lender's assessment of a veteran's ability to repay, while also recognizing that as time passes any underwriting deficiencies are less likely to be responsible for a loan default by the veteran. VA believes that five years of stable payment history by the veteran provides enough time to assure VA that any default thereafter is likely due to factors unrelated to any underwriting deficiencies at origination. VA also believes a shorter period does not offer adequate protection against preventable defaults or deterrence against lenders who might otherwise adopt a pattern of noncompliance as a business model. A longer timeframe, however, may unduly damage lenders' interests and affect lender participation in helping to deliver the home loan benefit to veterans.

To further support VA's proposed five-year indemnification policy, VA reviewed the performance of 157 indemnified loans with five-year agreements signed on or after January 12, 2017. Historically, VA-guaranteed loans have maintained some of the lowest foreclosure rates in the industry, often below one percent. However, VA observed 12 foreclosures that occurred within the five-year indemnification period as opposed to only two foreclosures outside of the five-year indemnification period. Further, one-third of foreclosures occurring during the indemnification period (four out of 12 foreclosures) happened between years three and five. Based on this analysis, VA proposes to continue its current policy of requiring a five-year indemnification period for any underwriting deficiencies.

The proposed carryover to include interest rate reduction refinance loans likewise reflects VA's longstanding policy. Interest rate reduction refinance loans, unlike purchase loans and cash-out refinance loans, are guaranteed using the veteran's same entitlement from the loan being refinanced and do not require a new, full underwriting. See 38 U.S.C. 3710(e) and 38 CFR 36.4307. Because of this, the same risks associated with noncompliance in the original underwriting violations are associated with the interest rate reduction refinance loan. If VA were not to apply the indemnification,

unscrupulous lenders could avoid accountability because of a loophole (for example, through strategic noncompliance, then an interest rate reduction refinance loan, along with another origination fee to the lender, to thwart enforcement). Thus, VA believes it is necessary to close the loophole by ensuring the indemnification continues to cover interest rate reduction refinances, as well as the original loan, during the five-year indemnification period.

VA also proposes that recovery under the indemnification would be irrespective of whether the material misrepresentation in the loan underwriting directly leads to a loan default. VA's current standard practice for indemnification agreements is not based on VA having to establish a causal connection between the violation and the default, and VA believes establishing causation as a threshold would be inconsistent with proper risk management practices. Additionally, investigations necessary to establish the cause would be overly taxing on VA's limited resources, especially when viewed in light of the fact that, if VA had known of the underwriting violation, VA never would have guaranteed the loan in the first place.

Under proposed paragraph (c)(2) of § 36.4328, an originating lender would be required to indemnify VA for a longer period for the originating lender's fraud or for the originating lender's material misrepresentation related to non-underwriting violations. Specifically, paragraph (c)(2) would include the heading, ''Non-underwriting related violations'', and would state that if VA determines the originating lender committed fraud or made an uncorrectable material misrepresentation relating to noncompliance with requirements other than those prescribed in § 36.4340, the originating lender must abstain from filing a guaranty or insurance claim in the event of a loan default and must indemnify VA for any and all losses arising from or related to a guaranty or insurance claim, for the life of the loan, including any subsequent interest rate reduction refinancing loans.

Regarding fraud, VA believes there should not be a scenario where a lender can choose whether defrauding the Government is financially worth the risk. VA does not tolerate fraud. Indemnification for the life of the loan, as well as for any later interest rate reduction refinance loans, would protect the veteran by ensuring that the veteran receives all the loan servicing advantages that accompany a VA-guaranteed loan and would protect the government against any losses.

Even if made without fraudulent intent, a material misrepresentation that cannot be remediated or one that is not related to underwriting noncompliance can leave violations unresolved over the duration of the loan. The defects simply cannot be resolved. Accordingly, VA believes it is appropriate, and consistent with sound financial practice common among industry participants, to shift the risk from the entity harmed by the material misrepresentation (in this case, veterans, the integrity of VA's program, and taxpayers at-large) back to the originating lender that knew or should have known of an uncorrectable noncompliance. The indemnification would be irrespective of whether material misrepresentation is causally connected to a default and would apply to later interest rate reduction refinance loans, for the reasons explained above.

In proposed paragraph (c)(3), under the heading ''Notice of indemnification'', VA would specify that the Secretary would notify the lender when VA determines that a loan is subject to indemnification.

Procedurally, a paper agreement would no longer be used when completing an indemnification agreement. When VA discovers a fraud or material misrepresentation, VA and the originating lender would communicate via one or more of the designated APIs described under proposed § 36.4303. This would provide more efficiency, require fewer resources, and align with industry expectations of using technology to help ease administrative burden.

4. Guaranty Adjustments to Holders

VA proposes to add a new paragraph (d) to 38 CFR 36.4328, under the heading, ''Guaranty adjustments to holder'', to reduce possible confusion surrounding the current regulation's application to holders. VA proposes paragraph (d)(1), with the heading, ''Fraud in obtaining the guaranty or insurance'', to provide that VA would have no liability on account of a guaranty or insurance, or any loan guaranty certificate, with respect to a transaction in which VA determines the holder or holder's agent participated in fraud in obtaining the guaranty or insurance. In other words, the holder is not a holder in due course if the holder colluded with the originating lender in defrauding VA. So, the rule would mean that, even if a holder was not the originating lender, if the holder was directly involved or complicit in the fraud at origination, VA would not have liability on the guaranty.

In proposed paragraph (d)(2), VA would state, under the heading ''Holder fraud in obtaining a claim payment on the guaranty or insurance'', that VA would have no liability on a guaranty or insurance claim if the holder commits fraud in obtaining a claim payment from VA on the guaranty or insurance of a loan. As explained in the paragraphs related to fraud by lenders, VA believes a holder that commits fraud against the government forfeits the protections Congress wanted to provide the secondary market under 38 U.S.C. 3721.

Paragraph (d)(3) would include the heading ''Material misrepresentations related to the quantum or quality of title'', and would state that VA may adjust the amount of the guaranty or insurance, or any loan guaranty certificate, if VA determines the holder knew or should have known, at the time the holder reports the loan for guaranty claim, of a material misrepresentation as to the quantum or quality of, or title to, the property securing the loan such that the property would not have been acceptable to prudent lending institutions, investors, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated. VA would not, however, adjust the guaranty or insurance amount for title exceptions enumerated as acceptable under § 36.4354(b), unless otherwise specified in subpart B.

The proposed phrasing is almost identical to the current rule. The changes are intended as clarifications. For instance, VA would replace ''limitations'' under § 36.4354(b) with ''title exceptions enumerated as acceptable,'' to eliminate some of the current ambiguity that may surround VA's intent. Similarly, VA would add the caveat ''unless otherwise specified'' in subpart B, to remind readers that the rule is part of a coherent and consistent framework and cannot be taken out of context. A good example of how this might apply can be found in § 36.4327, which addresses authorized and unauthorized releases of security. If a holder allowed a new oil and gas lease—a type of title exception that could generally be acceptable under § 36.4354(b)—but did so without following the steps prescribed in § 36.4327 for partial releases in interest, the unauthorized release could affect the amount of guaranty payable on an eventual default. This is the way VA applies the current rule, but VA believes the current rule's text may not express it clearly enough. Thus, VA believes that, as a part of this regulatory update, VA should specify the scope of the rule more explicitly.

Paragraph (d)(4) would include the heading ''Noncompliance with servicing requirements and material misrepresentation in reporting.'' Paragraph (d)(4)(i) would provide that VA may adjust amounts payable to the holder if VA determines the holder failed to comply with the statutory requirements under 38 U.S.C. chapter 37 or the implementing regulations concerning guaranty or insurance of loans to veterans at 38 CFR part 36 or if VA determines the holder knew or should have known of a material misrepresentation in reporting to the Secretary or in submitting a claim to VA for payment of the guaranty or insurance. Paragraph (d)(4)(ii) would specify that the burden of proof would be upon the holder to establish that no increase of ultimate liability is attributable to such failure or misrepresentation. Paragraph (d)(4)(iii) would explain that the amount of increased liability of the Secretary would be offset by deduction from the amount of the guaranty or insurance otherwise payable, or if based upon loss related to property that secured the guaranteed loan, would be offset by crediting to the indebtedness the amount of the impairment as proceeds of the sale of security in the final accounting to the Secretary. Paragraph (d)(4)(iv) would provide that, to the extent the loss resultant from the failure or misrepresentation prejudices the Secretary's right of subrogation, acceptance by the holder of the guaranty or insurance payment would subordinate the holder's right to those of the Secretary.

In revising the rule, VA would eliminate the list of potential reasons for adjustment found in current paragraphs (b)(1) through (9). Stakeholders should not misconstrue this change to mean that VA would no longer consider the failures outlined in the current rule as reasons to adjust the guaranty. Rather, VA simply believes that the new rewrite would eliminate the need to enumerate them in the current way. For instance, current paragraph (b)(1) of § 36.4328 reminds that one of the fundamental requirements for a VA-guaranteed loan is that it be obtained and retained as a superior lien. See 38 CFR 36.4328(b)(1). See also, for example, 38 U.S.C. 3703(d) and 38 CFR 36.4327. The proposed rule would omit the specific enumeration of this as an example of a failure that would result in an adjustment. But even so, VA would, under the proposed rule, still adjust the guaranty for such a failure, because proposed paragraph (d)(4)(i) would provide that VA may adjust the amount of the guaranty or insurance, or any loan guaranty certificate, if VA determines the holder failed to comply with the statutory requirements under 38 U.S.C. chapter 37 or the implementing regulations concerning guaranty or insurance of loans to veterans. VA welcomes comment on whether stakeholders would prefer to retain a more illustrative list as a way of providing stakeholders further understanding. VA does not intend for an attempt at simplification of the rule to result in holders being unsettled about the reliability of the guaranty; nor does VA want veterans, consumer advocates, or those concerned about the welfare of program solvency to be concerned about the scope of the change.

5. Liability After Payment of Guaranty or Insurance, or VA Purchase

VA would redesignate current paragraph (c) of 38 CFR 36.4328 as new paragraph (e). VA would revise new paragraph (e) to clarify the wording for readability, but the proposed change is not substantive.

6. Additional Remedies

In § 36.4328, VA would add a new paragraph (f), under the heading, ''Additional remedies'', to ensure full transparency related to VA's enforcement authorities. VA would provide that, any action VA takes under this section may be taken in addition to other remedies available to VA, such as debarment and suspension pursuant to 38 U.S.C. 3704 and 2 CFR parts 180 and 801 or loss of automatic processing authority pursuant to 38 U.S.C. 3702, or other actions by the Government under any other law including but not limited to title 18 U.S.C. and 31 U.S.C. 3732. Although the paragraph is not legally necessary to preserve VA's rights of enforcement, VA believes an intentional, explicit redundancy would be helpful in emphasizing the point that this section does not constitute the full range of potential action VA could or would take if VA discovered, for instance, a pattern of intentional material misrepresentations, seemingly incorporated into business practices after a monetary cost-benefit calculus.

Lastly, VA would revise the authority citation for § 36.4328 to note 38 U.S.C. 3703, 3704, 3710, 3720, 3721, and 3732.

Executive Orders 12866, 13563, and 14094

Executive Order 12866 (Regulatory Planning and Review) directs 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 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this proposed rulemaking is a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would 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). To assess whether the proposed rule could be expected to have a ''significant economic impact'' on a substantial number of small entities, VA considers the annual costs and transfer payments of the rule for and from small entities compared to their annual revenue. As described in the impact analysis, the estimated impacts of this rulemaking on lenders include transfers from lenders to VA associated with overcharge fees and guarantee claim amounts, the cost of rule familiarization and system updates to lenders, and cost savings associated with reduced burden associate with API utilization. A more detailed discussion of these impacts can be found in the impact analysis.

VA was able to estimate the size of 1,203 out of 1,450 active lenders that originated VA loans within the past three fiscal years using a combination of sources. VA relied on the size standards from the Small Business Administration (SBA) [1] and used data from Data Axle and Factiva (two business data providers) along with data from the

[1] U.S. Small Business Administration, *SBA Table of Size Standards,* Retrieved from: *https://www.sba.gov/document/support-table-size-standards.*

Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA).[2] Of the 1,203 lenders with sufficient data for VA to estimate their size, 703 (58.4%) are considered small. The average annual revenue of these 640 lenders is estimated at $25.51 million.[3]

The costs of the one-time rule familiarization in the first year of the rule (fiscal year [FY] 2025) are estimated at approximately $240 for each lender, including the small lenders. VA estimates that the net cost savings to lenders from the reduction in reporting burdens and system updates ranges from $1,066 (FY 2025) to $1,110 (FY 2034) per small lender.[4] The estimated transfer payment from lenders in the form of overcharge fees and guarantee claim amounts ranges from $2,547 (FY 2025) to $9,373 (FY 2034) per small lender. Adding these impacts results in the average estimated annual burden of [$2,547 + $240 − $1,066 =] $1,721 to [$9,373 − $1,110 =] $8,263 per small lender from the first and final years of the analysis period (FY 2025 and FY 2034), respectively. VA considers a significant economic impact to equal or exceed 3 percent of annual revenue. The burden of the rule as a proportion of small lender revenue ranges from 0.007 percent to 0.032 percent for FY 2025 and FY 2034, respectively. On this basis, the Secretary certifies that adopting this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. Therefore, under 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

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 proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

As noted above, this proposed rule contains collections of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that are currently approved by OMB but do not require revision. These information collections have valid OMB control numbers of 2900–0516 and 2900–0521. Additionally, this proposed rule includes provisions constituting a revised collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that requires approval by OMB under existing OMB control number 2900–0909. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing the collection of information or take such other action as is directed by OMB.

Comments on the revised collection of information contained in this rulemaking should be submitted through *www.regulations.gov.* Comments should be sent within 60 days of publication of this rulemaking. The collection of information associated with this rulemaking can be viewed at: *www.reginfo.gov/public/do/PRAMain.*

OMB is required to make a decision concerning the collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on a revised collection of information in—

- Evaluating whether the revised collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the revised collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The revised collection of information associated with this rulemaking contained in 38 CFR 36.4303 is described immediately following this paragraph, under its respective title.

Title: Guaranteed or Insured Loan Reporting Requirements.

OMB Control No: 2900–0909.

CFR Provision: 38 CFR 36.4303.

- *Summary of collection of information:* The revised collection of information would require all lenders that participate in the VA-guaranteed home loan program to submit the reporting and certification requirements as noted in proposed 38 CFR 36.4303 in an electronic format using an API, as designated by the Secretary. While VA currently requires lenders to report certain loan information and certifications as part of the existing loan guaranty certificate and reporting process, this proposed rule would require additional information including the loan application (*e.g.,* Uniform Loan Application Dataset), closing disclosures (*e.g.,* Uniform Closing Dataset), and other information necessary for VA evaluation and oversight purposes. Additionally, lenders would be required to submit information using an API rather than the current system, WebLGY.
- *Description of need for information and proposed use of information:* VA would use this information to ensure that veterans have stronger protections

[2] VA uses data from Data Axle and Factiva to determine the industry (as identified by the primary North American Industry Classification System [NAICS] code) for the active VA home loan lenders. For industries where size standards are determined by annual revenue, VA compares the revenue of each lender in these industries as reported in Data Axle and Factiva to the SBA annual revenue threshold for small businesses. For industries where size standards are determined by assets, VA compares the relevant SBA threshold for small businesses to asset data from the FDIC for lenders with primary NAICS codes 522110 (Commercial Banking) and 522180 (Savings Institutions and Other Depository Credit Intermediation), and asset data from the NCUA for lenders with a primary NAICS code of 522130 (Credit Unions).

[3] VA averages the sales volumes from Data Axle and Factiva for all lenders considered small, including those primarily considered commercial banks, savings institutions, and credit unions.

[4] VA scales the costs/transfers by first dividing the total average annual volume of loans guaranteed by small lenders in the past three full fiscal years (319,924) by the total average annual loans guaranteed in the same period by all lenders with enough information to classify their size (1,004,465). Multiplying that ratio (31.85) by the total costs and transfers that vary depending on lender size gives VA the total costs and transfers that fall on small lenders. Dividing the total costs and transfers that fall on small lenders by the total estimated number of small lenders (703), which is the percent of small lenders from the classified population (58.4%) multiplied by all VA lenders (1,450)) provides the average annual cost and transfers for and from each small lender.

against lenders closing nonconforming loans through increased VA oversight, as the Guaranty Remittance API would allow VA to review 100 percent of guaranteed loans for policy conformance with certain VA statutory and regulatory requirements that VA only currently evaluates on three percent of loans as part of its full file loan review and audit processes. Specifically, VA would be able to evaluate loan closing data on 100 percent of guaranteed loans for VA policy conformance with certain statutory, regulatory, or other requirements. As a result, VA would be able to cite defenses to paying the guaranty based on fraud or material misrepresentation and establish partial defenses to the amount payable on the guaranty or insurance. Lenders and holders would have a clear understanding of how failure to comply with VA's statutory and regulatory requirements affect the guaranty to be paid by VA.

• *Description of likely respondents:* Lenders.

• *Estimated number of respondents:*

Loans reported and certified: 484,019 annually.

Loans requiring VA prior approval: 1,815 annually.

Loans requiring Late Reporting Statements: 24,201 annually.

• *Estimated frequency of responses:* One time per transaction.

• *Estimated average burden per response:*

Loans reported and certified: 0.008 hours (about 30 seconds). This proposed rulemaking would result in an estimated reduction of 0.15 average burden hour per response (about 9 minutes) for this information collection.

Loans requiring VA prior approval: 0.008 hours (about 30 seconds). This proposed rulemaking would result in an estimated reduction of 0.04 average burden hour per response (about 2 minutes and 30 seconds) for this information collection.

Loans requiring Late Reporting Statements: 0.03 hours (about 2 minutes). VA does not estimate any incremental change to the average burden hour per response for this information collection.

• *Estimated total annual reporting and recordkeeping burden:* VA estimates a total annual reporting and recordkeeping burden of 4,612 hours for lenders. Using VA's revised estimate of total annual responses (loans) of 484,019 (down from 843,150 loans) loan estimate, this rulemaking would result in incremental annual burden hour savings of 72,675 burden hours.

Loans reported for Guaranty (including prior approval): 3,886 hours ((484,019+1,815) × 0.008 hours).

• *Estimated cost to respondents per year:* VA estimates the annual burden cost to lenders to be $187,339.[5] Using VA's revised estimate of total annual responses (loans) of 484,019, this rulemaking would result in incremental annual burden cost savings of $2,836,172 for FY 2025 (average of high/low estimated net cost savings) and incremental annual burden cost savings of $2,952,050 in the following outyears.

• VA also estimates this proposed rulemaking results in a one-time system alignment cost to lenders and LOS providers ranging from $88,288 to $143,468. More details about this estimate can be found in the impact analysis.

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on November 12, 2024, 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.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 36 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 3720.

Subpart B—Guaranty or Insurance of Loans to Veterans with Electronic Reporting

■ 2. Revise and republish § 36.4303 to read as follows:

§ 36.4303 Reporting requirements.

(a) *Automatically guaranteed loans.* (1) For loans automatically guaranteed under 38 U.S.C. 3703(a)(1), a lender of a class described under 38 U.S.C. 3702(d) shall report the loan in an electronic format using an application programming interface, as designated by the Secretary. VA will announce in the **Federal Register** any designation of a new application programming interface at least 60 days before a lender would be required to use the application programming interface for reporting the loan. The lender must also submit the information required under paragraph (a)(2) of this section using the application programming interface designated by the Secretary.

(2) The lender must submit the following not later than 15 days after the loan closing date:

(i) The appropriate funding fee as prescribed by 38 U.S.C. 3729;

(ii) Required information regarding the loan, including but not limited to the loan application (*e.g.,* Uniform Loan Application Dataset), closing disclosures (*e.g.,* Uniform Closing Dataset), and any other information required by the Secretary as necessary to issue a loan guaranty certificate;

(iii) Required lender certifications related to the loan; and

(iv) Certification of the veteran at the time the loan is closed as to their occupancy of the property.

(A) In the case of a loan for the purchase or construction of a residential property, the veteran shall certify that the veteran intends to occupy such property as the veteran's home.

(B) In the case of a loan for the repair, alteration, or improvement of residential property, the veteran shall certify that the veteran presently occupies the property as the veteran's home. An exception to this paragraph (a)(2)(iv)(B) is if the home improvement or refinancing loan is for extensive changes to the property that will prevent the veteran from occupying the property while the work is being completed. In such a case, the veteran shall certify that the veteran intends to occupy or reoccupy the property as the veteran's home upon completion of the substantial improvements or repairs.

(C) In the event a veteran is in active-duty status as a member of the Armed Forces and is unable to occupy the property because of such status, VA will accept:

(*1*) A certification from the spouse of the veteran that the veteran's spouse occupies or intends to occupy the property as their home as required by paragraphs (a)(2)(iv)(A) and (B) of this section; or

(*2*) A certification from the veteran's attorney-in-fact or from the legal guardian of a dependent child of the veteran that the dependent child

[5] Bureau of Labor Statistics. (2024). *May 2023–National Occupational Employment and Wage Estimates.* Retrieved from: *https://www.bls.gov/oes/current/oes_nat.htm;* Occupation code 13–2072.

occupies or intends to occupy the property as the dependent child's home as required by paragraphs (a)(2)(iv)(A) and (B) of this section.

(D) In the case of an interest rate reduction refinancing loan, the veteran shall certify as to meeting one of the occupancy requirements at § 36.4307(a)(2).

(3) Upon acceptance of the information prescribed in paragraph (a)(2) of this section, VA shall issue the loan guaranty certificate subject to the provisions of § 36.4328.

(b) *Prior-approval loans.* (1) In the case of a loan made by a lender without the authority to close loans on an automatic basis or any loan where the Secretary provides advance notice of the need for prior approval, the lender must report the loan to the Secretary before the loan closing for the Secretary's review. The lender must report the loan in an electronic format and, if designated by the Secretary, using an application programming interface. VA will announce in the **Federal Register** any designation of a new application programming interface at least 60 days before a lender would be required to use the application interface for reporting the loan for review prior to the loan closing. The lender must also submit the information required under paragraph (b)(2) of this section.

(2) The lender must submit certain pre-closing and underwriting loan documents, including but not limited to—

(i) The loan application (*e.g.,* Uniform Residential Loan Application);

(ii) Credit reports obtained in connection with the loan;

(iii) Certain VA forms as required by the Secretary;

(iv) The occupancy certification prescribed in paragraph (a)(2)(iv) of this section obtained at the time of loan application; and

(v) Any other information requested by the Secretary.

(3) Upon review and approval of the of the information prescribed by paragraph (b)(2) of this section, VA shall:

(i) Issue a certificate of commitment which shall commit a loan guaranty certificate to the holder of the loan upon the payment of the full proceeds of the loan for the purposes described in the original report and provided the requirements in paragraph (b)(4) of this section are met; or

(ii) Notify the lender that the loan cannot close as a VA-guaranteed loan; however, the lender may resubmit the loan to VA for prior approval after the lender corrects any issues identified by VA.

(4) The lender would be required to report the loan to VA not later than 15 days after the loan closing date using the same application programming interface (API) as when reporting loans closed on an automatic basis. The lender must also submit the following, using the designated API, not later than 15 days after the loan closing date:

(i) The appropriate funding fee as prescribed by 38 U.S.C. 3729;

(ii) The information prescribed in paragraph (a)(2)(ii) of this section;

(iii) Evidence that any conditions identified by the Secretary in the certificate of commitment are satisfied in order for the Secretary to issue a loan guaranty certificate;

(iv) Evidence showing the property securing the loan is that for which the certificate of commitment was issued;

(v) Evidence that all property purchased or acquired with the proceeds of the loan has been encumbered as required by VA;

(vi) Required lender certifications for the loan; and

(vii) The occupancy certification prescribed in paragraph (a)(2)(iv) of this section obtained at the time of loan closing.

(5) Upon acceptance of the information prescribed in paragraph (b)(4) of this section, VA shall issue the loan guaranty certificate subject to the provisions of § 36.4328.

(6) If the lender does not close the loan for which VA prior approval was obtained, the certificate of commitment shall have no further effect.

(c) *Late reporting of closed loans.* For loans not reported within the timing requirements of this section, evidence of guaranty will be issued only if the loan report is accompanied by a statement from the lending institution that explains why the loan was reported late and whether, since origination, the loan was in default. The statement must identify the case or cases in issue and set forth the specific reason or reasons why the loan was not submitted on time. Upon receipt of such a statement, evidence of guaranty will be issued. A pattern of late reporting and the reasons therefore will be considered by VA in taking action under §§ 36.4336 and 36.4353.

(d) *Form of guaranty evidence.* Evidence of a guaranty shall be issued by the Secretary as a loan guaranty certificate. For insured loans, notice of credit to an insurance account will be given to the lender.

(e) *Exclusions from the guaranty or insurance amount.* Any amounts that are disbursed by a lender for an ineligible purpose shall be excluded in computing the amount of guaranty or insurance credit.

(f) *Veteran's right to exit purchase contract.* No guaranty or insurance commitment or evidence of guaranty or insurance will be issuable in respect to any loan to finance a contract that:

(1) Is for the purchase, construction, repair, alteration, or improvement of a dwelling or farm residence;

(2) Is dated on or after June 4, 1969;

(3) Provides for a purchase price or cost to the veteran in excess of the reasonable value established by the Secretary; and

(4) Was signed by the veteran prior to the veteran's receipt of notice of such reasonable value; unless such contract includes, or is amended to include, a provision that reads substantially as follows:

Figure 1 to Paragraph (f)(4)

It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the property described herein, if the contract purchase price or cost exceeds the reasonable value of the property established by the Department of Veterans Affairs. The purchaser shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs.

(g) *Processing and reporting a loan assumption.* With respect to any loan for which a commitment was made on or after March 1, 1988, the Secretary must be notified whenever the holder receives knowledge of disposition of the residential property securing a VA-guaranteed loan.

(1) If the seller applies for prior approval of the assumption of the loan, then:

(i) A holder (or its authorized servicing agent) who is an automatic lender must examine the creditworthiness of the purchaser and determine compliance with the provisions of 38 U.S.C. 3714. The creditworthiness review must be performed by the party that has automatic authority. If both the holder and its servicing agent are automatic lenders, then they must decide between themselves which one will make the determination of creditworthiness, whether the loan is current, and whether there is a contractual obligation to assume the loan, as required by 38 U.S.C. 3714. If the actual loan holder does not have automatic authority and

its servicing agent is an automatic lender, then the servicing agent must make the determinations required by 38 U.S.C. 3714 on behalf of the holder. The actual holder will remain ultimately responsible for any failure of its servicing agent to comply with the applicable law and VA regulations.

(A) If the assumption is approved and the transfer of the security is completed, then the notice required by this paragraph (g) shall consist of the credit package (unless previously provided in accordance with paragraph (g)(1)(i)(B) of this section) and a copy of the executed deed and/or assumption agreement as required by VA office of jurisdiction. The notice shall be submitted to the Department with the VA receipt for the funding fee provided for in § 36.4313(e)(2).

(B) If the application for assumption is disapproved, the holder shall notify the seller and the purchaser that the decision may be appealed to the VA office of jurisdiction within 30 days. The holder shall make available to that VA office all items used by the holder in making the holder's decision in case the decision is appealed to VA. If the application remains disapproved after 60 days (to allow time for appeal to and review by VA), then the holder must refund $50 of any fee previously collected under the provisions of § 36.4313(d)(8). If the application is subsequently approved and the sale is completed, then the holder (or its authorized servicing agent) shall provide the notice described in paragraph (g)(1)(i)(A) of this section.

(C) In performing the requirements of paragraph (g)(1)(i)(A) or (B) of this section, the holder must complete its examination of the creditworthiness of the prospective purchaser and advise the seller no later than 45 days after the date of receipt by the holder of a complete application package for the approval of the assumption. The 45-day period may be extended by an interval not to exceed the time caused by delays in processing of the application that are documented as beyond the control of the holder, such as employers or depositories not responding to requests for verifications, which were timely forwarded, or follow-ups on those requests.

(ii) If neither the holder nor its authorized servicing agent is an automatic lender, the notice to VA shall include:

(A) Advice regarding whether the loan is current or in default;

(B) A copy of the purchase contract; and

(C) A complete credit package developed by the holder which the Secretary may use for determining the creditworthiness of the purchaser.

(D) The notice and documents required by this section must be submitted to the VA office of jurisdiction no later than 35 days after the date of receipt by the holder of a complete application package for the approval of the assumption, subject to the same extensions as provided in paragraph (g)(1)(i) of this section. If the assumption is not automatically approved by the holder or its authorized agent, pursuant to the automatic authority provisions, $50 of any fee collected in accordance with § 36.4313(d)(8) must be refunded. If the Department of Veterans Affairs does not approve the assumption, the holder will be notified and an additional $50 of any fee collected under § 36.4313(d)(8) must be refunded following the expiration of the 30-day appeal period set out in paragraph (g)(1)(i)(B) of this section. If such an appeal is made to the Department of Veterans Affairs, then the review will be conducted at the Department of Veterans Affairs office of jurisdiction by an individual who was not involved in the original disapproval decision. If the application for assumption is approved and the transfer of security is completed, then the holder (or its authorized servicing agent) shall provide the notice required in paragraph (g)(1)(i)(A) of this section.

(2) If the seller fails to notify the holder before disposing of property securing the loan, the holder shall notify the Secretary within 60 days after learning of the transfer. Such notice shall advise whether or not the holder intends to exercise its option to immediately accelerate the loan and whether or not an opportunity will be extended to the transferor and transferee to apply for retroactive approval of the assumption under the terms of this paragraph (g).

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900–0516, 2900–0521, and 2900–0909).

(Authority: 38 U.S.C. 3702, 3703, 3704, 3710, 3714, and 3729)

■ 3. Revise and republish § 36.4328 to read as follows:

§ 36.4328 Partial or total loss of guaranty or insurance.

(a) *No liability on the guaranty or insurance due to forgery or falsification of documents.* VA will have no liability on account of a guaranty or insurance of a loan, or any certificate or other evidence thereof, if—

(1) A signature to the note, the mortgage, or any other loan papers is a forgery;

(2) The application for guaranty or insurance is a forgery; or

(3) The certificate of discharge or the certificate of eligibility is counterfeited or falsified or is not issued by the Government.

(b) *Material misrepresentation by a lender.* If a lender knew or should have known of a material misrepresentation at the time of the reporting of the loan to VA under § 36.4303, VA may adjust the maximum guaranty amount on the loan guaranty certificate or VA may demand indemnification from the lender, as provided in paragraph (c) of this section.

(1) *Material misrepresentation is identified before VA issues the loan guaranty certificate.* VA will notify the lender of VA's findings that the lender made a material misrepresentation when reporting the loan and VA will issue the loan guaranty certificate with a maximum guaranty amount of one dollar.

(2) *Material misrepresentation is identified after VA issues the loan guaranty certificate.* VA will notify the originating lender of VA's findings and that—

(i) If the originating lender is the current loan holder, the maximum guaranty amount on the loan has been reduced to one dollar; or

(ii) If the originating lender is not the current loan holder, VA is requiring the lender to indemnify VA for a guaranty or insurance claim for the life of the loan, including any subsequent interest rate reduction refinancing loans, as provided in paragraph (c) of this section.

(3) *Corrective action by lender.* (i) When notifying the lender of VA's findings under paragraph (b)(1) or (2) of this section, VA will also identify corrective action(s), if any, VA determines necessary to remediate the effects of the material misrepresentation. After VA receives evidence confirming the effects of the material misrepresentation have been remediated, VA may either restore the guaranty to the full amount or cancel the indemnification, as applicable.

(ii) If VA determines the effects of the material misrepresentation cannot be remediated, VA will require the originating lender to indemnify VA, as provided in paragraph (c) of this section.

(c) *Indemnification after VA issues the loan guaranty certificate.* Except as provided in paragraph (b) of this section, for loans closed on or after [EFFECTIVE DATE OF FINAL RULE], a

lender agrees to indemnify VA in accordance with the following:

(1) *Violations of underwriting requirements.* If VA determines the originating lender made a material misrepresentation relating to the credit underwriting of a loan pursuant to the provisions of § 36.4340, the originating lender must abstain from filing a guaranty or insurance claim in the event of a loan default and must indemnify VA for any and all losses arising from or related to a guaranty or insurance claim made on the loan within five years of the date of the loan guaranty certificate, including any subsequent interest rate reduction refinancing loans. Examples of a material misrepresentation related to the provisions of § 36.4340 include the lender's failure to—

(i) Verify assets, employment, and credit reports (§ 36.4340(j));

(ii) Determine or accurately determine the veteran's acceptable debt-to-income ratio (§ 36.4340(c)); or

(iii) Ensure residual income guidelines were met (§ 36.4340(e)).

(2) *Non-underwriting related violations.* If VA determines the originating lender committed fraud or made an uncorrectable material misrepresentation relating to noncompliance with requirements other than those prescribed in § 36.4340, the originating lender must abstain from filing a guaranty or insurance claim in the event of a loan default and must indemnify VA for any and all losses arising from or related to a guaranty or insurance claim, for the life of the loan, including any subsequent interest rate reduction refinancing loans.

(3) *Notice of indemnification.* The Secretary will notify the lender when VA determines that a loan is subject to indemnification.

(d) *Guaranty adjustments to holder*—(1) *Fraud in obtaining the guaranty or insurance.* There shall be no liability on account of a guaranty or insurance, or any loan guaranty certificate, with respect to a transaction in which VA determines the holder or holder's agent participated in fraud in procuring the guaranty or insurance.

(2) *Holder fraud in obtaining a claim payment on the guaranty or insurance.* There shall be no liability on a guaranty or insurance claim if the holder commits fraud in obtaining a claim payment from VA on the guaranty or insurance of a loan.

(3) *Material misrepresentations related to the quantum or quality of title.* VA may adjust the amount of the guaranty or insurance, or any loan guaranty certificate, if VA determines the holder knew or should have known, at the time the holder reports the loan for guaranty claim, of a material misrepresentation as to the quantum or quality of, or title to, the property securing the loan such that the property would not have been acceptable to prudent lending institutions, investors, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated. VA will not, however, adjust the guaranty or insurance amount for title exceptions enumerated as acceptable under § 36.4354(b), unless otherwise specified in this subpart.

(4) *Noncompliance with servicing requirements and material misrepresentation in reporting.* (i) VA may adjust the amounts payable to the holder if VA determines—

(A) The holder failed to comply with the statutory requirements under 38 U.S.C. chapter 37 or the implementing regulations concerning guaranty or insurance of loans to veterans at 38 CFR part 36; or

(B) The holder knew or should have known of a material misrepresentation in reporting to the Secretary or in submitting a claim to VA for payment of the guaranty or insurance.

(ii) The burden of proof would be upon the holder to establish that no increase of ultimate liability is attributable to such failure or misrepresentation.

(iii) The amount of increased liability of the Secretary would be offset by deduction from the amount of the guaranty or insurance otherwise payable, or if based upon loss related to property that secured the guaranteed loan, would be offset by crediting to the indebtedness the amount of the impairment as proceeds of the sale of security in the final accounting to the Secretary.

(iv) To the extent the loss resultant from the failure or misrepresentation prejudices the Secretary's right of subrogation, acceptance by the holder of the guaranty or insurance payment would subordinate the holder's right to those of the Secretary.

(e) *Liability after payment of guaranty or insurance, or VA loan purchase.* If after the payment on a guaranty or an insurance loss, or after a loan is transferred pursuant to § 36.4320(a), the Secretary discovers any fraud, material misrepresentation, or failure to comply with the regulations at 38 CFR part 36 and determines that an increased loss to the Government resulted therefrom, then the transferor or person to whom such payment was made shall be liable to the Secretary for the amount of the loss caused by such fraud, material misrepresentation, or failure.

(f) *Additional remedies.* Any action VA takes under this section may be taken in addition to other remedies available to VA, such as debarment and suspension pursuant to 38 U.S.C. 3704 and 2 CFR parts 180 and 801 or loss of automatic processing authority pursuant to 38 U.S.C. 3702, or other actions by the Government under any other law including but not limited to title 18 U.S.C. and 31 U.S.C. 3732.

(Authority: 38 U.S.C. 3703, 3704, 3710, 3720, 3721, and 3732)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2024–0451; FRL–12278–02–R4]

Tennessee: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Tennessee has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The EPA has reviewed Tennessee's application and has determined, subject to public comment, that these changes satisfy all requirements needed to qualify for final authorization. Therefore, in the ''Rules and Regulations'' section of this **Federal Register**, we are authorizing Tennessee for these changes as a final action without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Comments must be received on or before December 20, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2024–0451, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written