

the loan; and (2) provide for an initial adjustment in the interest rate at the end of the initial fixed rate period. While the initial adjustment may not occur until 36 months after the first payment is due, it is not required to occur prior to any set date.

In connection with its previous adjustable rate mortgage program VA issued regulations which are currently at 38 CFR 36.4311. VA proposes to amend that section to provide for a hybrid adjustable rate mortgage with adjustment provisions that conform to the requirements of section 303 of Pub. L. 107-330.

B. Proposed Rule

This proposed rule would make changes to the time at which the initial interest rate must occur and minor changes to the wording of the regulations. Except for these changes the proposed regulations are the same as those for the previous adjustable rate mortgage program. They provide that the interest rate adjustments: (1) Correspond to changes in the weekly average yield on one year Treasury bills adjusted to a constant maturity; (2) be made by adjusting the monthly payment on an annual basis; (3) be limited with respect to any single annual interest rate adjustment, to a maximum increase or decrease of 1 percentage point; and (4) be limited, over the term of the mortgage, to a maximum increase of 5 percentage points above the initial contract interest rate.

Because the new program is proposed to become effective October 1, 2003, VA proposes to add the words "Effective October 1, 2003," to the beginning of the introductory text of paragraph (d) of § 36.4311.

VA proposes to change the time at which the initial interest rate adjustment must occur, as required by Pub. L. 107-330. Section 36.4311(d)(2) provides "that the first adjustment may occur no sooner than 12 months nor later than 18 months from the date of the borrower's first mortgage payment." This proposed rule would amend the first sentence of this paragraph by changing "12 months" to "36 months" and by deleting the words "nor later than 18 months."

Because VA no longer sets maximum interest rates this proposed rule would remove from paragraph (d)(4) of § 36.4311 the second sentence which reads, "The rate must be reflective of adjustable rate lending." The interest rate on all VA loans is negotiated between the borrower and the lender.

VA proposes to change language concerning the pre-loan disclosure in paragraph (d)(6) of § 36.4311. This

proposed rule would remove the second part of the first sentence, which states that the lender must explain the nature of the obligation "no later than on the date upon which the lender provides the prospective borrower with an application," and in its place add "at the time of loan application." This change is necessary to conform with industry practice whereby lenders make a copy of the loan application available to the borrower for review prior to the actual beginning of the loan application process. This proposed rule would also remove the language that states a copy of the signed certification shall be "included in the loan submission to VA" and in its place add "furnished to VA upon request." This change is necessary to conform to current practice whereby paper copies of loan application papers are retained by lenders until such time as they are requested by VA.

The VA guaranteed hybrid adjustable rate mortgage with the above features will be similar to the adjustable rate mortgages eligible for Federal Housing Administration (FHA) insurance. This should facilitate pooling of these mortgages together in Government National Mortgage Association (GNMA) mortgage-backed securities pools.

Because there has been no activity in the manufactured home loan program for the past several years, this pilot program for VA hybrid adjustable rate mortgages will not be made available for manufactured homes under the provisions of 38 U.S.C. 3712. However, manufactured housing which qualifies as conventional housing under the provisions of 38 U.S.C. 3710 (a)(9) will be eligible.

Section 307 of Pub. L. 107-330 increases the fee payable to VA by a person assuming a VA guaranteed loan from .50 percent to 1.00 percent of the loan amount. VA is making conforming changes to 38 CFR 36.4312 to reflect the increase. Under the provisions of Pub. L. 107-330, this increase is effective for the period beginning December 13, 2002, and ending September 30, 2003.

Administrative Procedure Act

Section 6(a)(1) of Executive Order 12866 indicates that, in most cases, a comment period should be "not less than 60 days." However, section 303 of Pub. L. 107-330 only permits a limited, 2 year test program for Hybrid ARMs between October 1, 2003 and September 30, 2005. We believe that this proposed rule is essential to the efficient and consistent implementation of the Hybrid Adjustable Rate Mortgage demonstration program created by that section. In order to avoid delays in implementing this

program, we believe it is important that final regulations be published expeditiously. For this reason, we have shortened the comment period for this rulemaking action to 30 days.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

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

Executive Order 12866

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

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed 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. The addition of hybrid adjustable rate mortgages will benefit lenders by providing an additional loan product for use in making VA-guaranteed loans. Therefore, pursuant to 5 U.S.C. 605(b) this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers applicable to this rule are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Flood insurance, 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.

Approved: August 20, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is proposed to be amended as set forth below.