

GUIDANCE FOR IMPLEMENTING NEW SAH REGULATIONS

1. **PURPOSE**. New VA regulations published in Title 38, Code of Federal Regulations, sections 36.4400 through 36.4411, update the regulations and implement changes to the Specially Adapted Housing (SAH) program that have developed over the past few years. The purpose of this circular is to provide guidance on processing SAH cases under the new rules.

2. **BACKGROUND**. Updating the regulations was necessary to include various new laws and policy decisions. The new regulations are also more reader-focused and provide more detailed guidance in order to make it easier for participants to understand the program.

3. **PROGRAM CHANGES**. There are two primary programmatic changes in the new regulations for which guidance is necessary: 1) The regulations implement a two-phase approval process, consisting of a conditional approval and final approval, and 2) the regulations also specify the circumstances under which a family can be reimbursed for costs incurred prior to grant approval. The other items discussed in this circular are for informational purposes: definitions, grant types, subsequent use, and eligibility.

4. **GRANT APPROVAL**. New regulations, at 38 CFR § 36.4405, implement a two-stage grant approval process, consisting of “conditional approval” and “final approval.”

a. Conditional approval, under 38 CFR § 36.4405(a), is based only upon the program’s disability requirements, feasibility and suitability requirements, and prior use. The construction plans or property requirements do not factor into conditional approval. Once the individual has conditional approval for his or her grant, the Secretary can authorize certain pre-construction costs under § 36.4406, which include architectural services, land surveys, and legal fees. Conditional approval can be granted once the Secretary finds that disability requirements of 38 CFR § 36.4404(a) and the feasibility and suitability requirements of 38 CFR § 36.4404(b) have been met, and the eligible individual has not exceeded the usage and dollar limitations under 38 CFR § 36.4402(d) and 38 CFR § 36.4403.

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b. Suitability and Feasibility Requirements for Conditional Approval

(1) Grant feasibility under § 2101(a), as described at 38 CFR § 36.4404, means that an applicant's medical condition does not prevent him or her from living in the proposed housing unit, in the proposed locality, and that the applicant's present or anticipated income and expenses bear a proper relation to the proposed housing unit. Evidence of such feasibility might include, among other things, doctors' orders and credit reports. Grant suitability for § 2101(a) means that the nature and condition of the proposed housing unit are suitable to the applicant's living needs.

(2) Grant feasibility and suitability under § 2101(b) are based on residency and can be satisfied by the applicant certifying that he or she resides, and reasonably intends to reside, in the proposed housing unit. If the residence is not yet constructed, then the applicant must certify that he or she will be residing in, and reasonably intends to be residing in, the housing unit. An applicant may also be eligible for a grant pursuant to § 2101(b) if the existing housing unit, or the housing unit to be constructed, is owned by a member of the applicant's family.

c. Final approval, under 38 CFR § 36.4405(b), is based on the plans and property requirements. Final approval is contingent upon satisfaction of the property requirements at 38 CFR § 36.4405(b), which include proof that the plans and specifications meet the minimum property and design requirements of the program. Upon final approval, all remaining grant funds may be disbursed in the same manner as before.

d. There will be a function created in the Specially Adapted Housing / Special Housing Adaptation (SAHSHA) system to capture the conditional approval and final approval data. Until that enhancement is released, stations will be provided guidance on how to handle such cases in SAHSHA.

5. REIMBURSEMENT. The regulations formalize reimbursement procedures, at § 36.4406, for situations in which construction costs are incurred, but the project is terminated for any reason, including the death of the eligible individual. Because these regulations implement the new conditional approval procedure, reimbursement amounts vary based on whether the individual had received conditional or final approval for the grant.

a. If the individual had conditional grant approval, then allowable preconstruction costs, listed at 38 CFR § 36.4406(a)(1) are payable to the individual, but they are deducted from the aggregate amount of assistance available to the eligible individual and will constitute one of the three grant uses under 38 CFR § 36.4403.

b. Following final grant approval, the Secretary has discretion to determine the method

of payment for any construction costs incurred, which will typically be payable directly to third-party contractors, an escrow agent, or the individual's lender. Payments will be made directly to the eligible individual if he or she paid for authorized pre-construction or construction-related costs using personal funds.

6. DEFINITIONS. The regulations add and clarify certain definitions. In order to fully implement policies related to issues the eligible interests in property and rights in property abroad, as well as the new conditional approval and reimbursement processes, the following substantive definitions were added.

a. Ownership Interest – The definition of ownership interest allows eligible individuals to use their grants for less traditional forms of property ownership and accounts for property ownership trends that vary by region. It also incorporates the statutory language allowing the grants to be used outside of the United States.

b. Beneficial Property Interest – The definition ensures that SAH grants can be used outside of the United States by providing flexibility for the property laws in various countries.

c. Construction-related Costs, Preconstruction Cost, and Reimburse – These definitions are necessary to implement the reimbursement policy discussed in paragraph 4, above.

7. GRANT TYPES

a. The regulations now include detailed information about the three types of grants under 38 USC § 2101 and 2102A, and the plan options under which eligible individuals can use the grant; information that was not previously included in the regulations. This language was added to the regulations to make the grant programs easier to understand.

b. The regulations also clarify VA's interpretation of 38 USC § 2102(a)(2), which governs grants for remodeling dwellings acquired prior to the individuals' application for SAH assistance. The regulations specify that if an individual uses the option authorized under 38 USC § 2101(a)(3), the Secretary should pay the greater of the available sums.

c. The regulations associate the grant amounts with the aggregate amount of assistance available, eliminating references to a specific grant amount. This will allow for the grant amounts to change due to the cost-of-construction index provisions or future legislation without requiring subsequent amendment of the regulations.

8. SUBSEQUENT USE. The regulations formally implement the subsequent use procedures, and, while there are no programmatic changes related to the enactment of this rule, program participants should be aware that the procedures are now fully published at

38 CFR § 36.4403. The regulations specify that an eligible individual can receive up to three grants, that the aggregate amount of assistance for Temporary Residence Adaptation (TRA) grant and Paraplegic Housing grant usage or TRA grant and Adapted Housing grant usage are limited to the aggregate amount of assistance available to the individual under the respective grant programs, and that the TRA grant counts as one of the three grant uses.

9. ELIGIBILITY. The eligibility regulations at 38 CFR § 36.4402 were revised so that only the essential SAH eligibility criteria were included: disability requirements and feasibility and suitability requirements. This section formerly included descriptions of the necessary legal property interests, non-discrimination certifications, and flood insurance certifications that are necessary for approval of the SAH grant, but that are not conditions of eligibility. Because these factors are not considered in determining an individual's eligibility, they have been moved to a separate section, 38 CFR § 36.4404.

10. STATION PROCEDURES. Stations should disseminate this information as widely as possible using their local websites. It is not necessary to prepare "hard copy" local releases, although, stations may do so at their discretion. Central Office will be placing this information on the Loan Guaranty [SAH website](#).

11. RESCISSION: This circular is automatically rescinded January 1, 2013.

By Direction of the Acting Under Secretary for
Benefits

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