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## DEPARTMENT OF VETERANS AFFAIRS

8320-01

### 38 CFR Part 8a

### RIN 2900-AP49

### Veterans' Mortgage Life Insurance—Coverage Amendment

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations governing the Veterans' Mortgage Life Insurance (VMLI) program in order to provide VMLI-eligible individuals the option to lower their premiums by purchasing less than the minimum coverage amount required under current VA regulations. The proposed rule would also amend current VA regulations to reflect that the statutory maximum amount of coverage available under the VMLI program was previously increased to \$200,000, to define the term "eligible individual," and to clarify that eligibility for VMLI coverage has been extended to include servicemembers as well as veterans. These additional amendments are necessary to conform the existing regulations to current statutory provisions.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand delivery to Director, Regulation

Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AP49—Veterans' Mortgage Life Insurance—Coverage Amendment." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jeanne King, Attorney-Advisor, Insurance Service, Department of Veterans Affairs (310/290B), 5000 Wissahickon Avenue, P.O. Box 8079, Philadelphia, PA 19101, (215) 842-2000, ext. 4839. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Veterans' Mortgage Life Insurance (VMLI) program was established in 1971 to provide mortgage protection insurance to service-disabled veterans who receive Specially Adapted Housing Grants from VA. Under 38 U.S.C. 2106(g), the amount of VMLI coverage for a veteran is the amount necessary to pay the veteran's mortgage indebtedness in full, except as limited by section 2106(b) or "regulations prescribed by the Secretary under this section." Section 2106(b) currently limits the amount of

VMLI available to \$200,000. Therefore, currently, a veteran who has a mortgage indebtedness that is greater than \$200,000 and seeks VMLI must be covered in the amount of \$200,000 and pay the corresponding premiums for such coverage. VA has concluded that requiring this level of coverage in such circumstance may cause some individuals to forego VMLI protection because they cannot afford the premiums. To address this specific problem and to allow veterans to pay lower premiums regardless of their mortgage indebtedness, VA proposes to exercise its explicit statutory authority set forth in section 2106(g) and amend its regulations to permit program participants to lower their premiums by carrying VMLI in an amount less than both the \$200,000 statutory maximum and the amount necessary to pay the covered mortgage indebtedness in full.

As noted, paying the premiums on the level of coverage required under current regulations can present a financial hardship to individuals insured under the program. We realize that allowing eligible individuals to carry an amount of VMLI lower than the amount outstanding on the mortgage loan may result in circumstances where an insured dies with a balance on the loan that exceeds the amount of VMLI in effect, which currently occurs when an individual's mortgage balance exceeds the statutory maximum level of coverage. In such a situation, the individual's survivors may have to assume payment on the mortgage. However, VA believes that it is preferable for individuals to participate in the VMLI program to the extent they can financially, rather than foregoing coverage entirely because they cannot afford it. If an eligible individual opts out of the program, and then dies with an outstanding balance on the loan, his or her

survivors could ultimately be forced to assume an even greater indebtedness than if the individual had carried partial VMLI coverage.

Individuals often seek to lower their VMLI premiums by requesting an amount of coverage less than both the statutory limit and the amount necessary to pay the mortgage indebtedness in full. For example, from January 1, 2005, to December 31, 2010, when the statutory coverage limit was \$90,000, VA received 231 requests to terminate existing VMLI coverage. VA reviewed approximately 100 requests to determine if financial hardship was a factor in individuals' decisions to terminate coverage. Thirty percent of veterans who terminated their coverage during that period stated that the premium charged for their coverage was the main factor motivating their requests.

Effective October 1, 2011, the Veterans' Benefits Act of 2010 raised the statutory maximum coverage for VMLI from \$90,000 to \$150,000, and to \$200,000 after January 1, 2012. See Public Law 111-275, Title IV, § 407, 124 Stat. 2864, 2880. Depending on a veteran's age and mortgage balance, this statutory change could cause an individual's monthly premiums to increase by almost \$400.00—from less than \$460.00 to more than \$850.00 per month. As such, VA has concluded that, because premiums for the new statutory maximum amount of \$200,000 are considerably higher than premiums for the former maximum amount, an increasing number of individuals may terminate their VMLI coverage or decline coverage entirely unless VA offers options to buy a lesser amount of VMLI.

To promptly address this problem, VA adopted an interim policy allowing insureds to select less than both the statutory maximum and their outstanding mortgage balance. VA implemented this interim policy to avoid unintended harm to program participants. VA now seeks to amend its regulations to make this policy permanent.

In establishing the VMLI program, Congress intended to provide seriously disabled veterans with a reasonable level of mortgage protection insurance. If individuals decline coverage because they cannot afford the premiums, the purpose of the program is undermined. Therefore, VA proposes to amend its Part 8a regulations to reflect the new statutory maximum and provide program participants the option to select a more affordable level of coverage that is lower than both the statutory maximum and their outstanding mortgage balance. VA believes this change would benefit all VMLI-eligible individuals because it would provide needed flexibility in the program and empower veterans to decide what level of coverage they can afford. As explained above, VA has concluded that it is preferable for individuals to make their own financial decisions as to what level of VMLI they can afford, rather than foregoing coverage because they cannot afford a higher amount mandated by statute. Absent VA's proposed amendment, current regulations would likely prompt some veterans to decline VMLI coverage because they cannot afford the required premiums, ultimately forcing more survivors into greater mortgage debt than if partial VMLI coverage were available.

We interpret 38 U.S.C. 2106 as authorizing VA to prescribe regulations permitting VMLI coverage in amounts less than the statutory maximum and the outstanding mortgage indebtedness. Section 2106(g) requires that VMLI participants carry the amount of insurance necessary to pay their mortgage indebtedness in full, but explicitly authorizes the Secretary to prescribe an exception to this requirement. Moreover, section 2106(b) imposes a cap of \$200,000 in coverage but does not mandate that VMLI participants carry the maximum amount of coverage available. Therefore, VA's proposed amendments to its regulations are implicitly authorized by 38 U.S.C. 2106.

The proposed amendment would exercise this authority by amending 38 CFR 8a.1(c) and 38 CFR 8a.2(a) to provide insureds with the option to select a more affordable level of coverage. We propose to revise the term "initial amount of insurance" in § 8a.1(c) to mean "the amount of insurance selected by the insured, which may be less than the statutory maximum of \$200,000 and less than the amount necessary to pay the mortgage indebtedness in full." This change would make clear that VMLI-eligible individuals are authorized to carry such VMLI coverage as they select, up to the lesser of the \$200,000 statutory maximum or the amount necessary to pay their mortgage indebtedness in full. We would also amend § 8a.2(a) and (b)(1) and § 8a.4(b) and (c) to reflect that the current statutory maximum of VMLI coverage, as previously increased, is \$200,000.

The proposed amendments to 38 CFR 8a.4(b)-(c) removing "available to" and adding in its place "selected by" are designed to ensure conformity with this

change by making clear that the amount of insurance on the life of the eligible individual may be a reduced amount selected by the eligible individual, up to the lesser of the \$200,000 statutory maximum or the amount necessary to pay their mortgage indebtedness in full. For the reasons discussed above, these amendments would benefit veterans and their beneficiaries by adding needed flexibility to the program and empowering individuals to make financial decisions based on the level of VMLI coverage they can afford. While such decisions require veterans and their families to consider the financial risk of choosing a lower amount of VMLI that may not cover their mortgage indebtedness in full, we feel that such personal financial decisions are best left to veterans and their families. Accordingly, VA's proposed amendments seek to provide veterans with the flexibility to choose the level of VMLI coverage that meets their financial needs. In doing so, we seek to minimize the number of eligible individuals who opt out of the program for financial reasons, and reduce instances where a veteran's survivors must assume greater indebtedness than if the veteran had carried at least partial VMLI coverage. In short, VA has concluded that veterans should enjoy the option to obtain VMLI coverage tailored to their specific needs.

We also propose a number of technical changes to 38 CFR Part 8a to ensure consistency with current statutory authority. In the Housing and Economic Recovery Act of 2008, Congress extended eligibility for VMLI coverage to servicemembers in addition to veterans. See Public Law 110-289, section 2602, 122 Stat. 2654, 2858-2860. We propose to add a new definition of "eligible individual" at § 8a.1(f) to reflect this extension of eligibility for VMLI

coverage and replace the term veteran with individual wherever appropriate in §§ 8a.1 through 8a.4. These substitutions would not cause any substantive change other than that brought about by Public Law 110-289.

Additionally, we propose one technical change to 38 CFR 8a.2(b)(8), which currently prescribes, “[a]ll claims, arising out of the deaths of insured veterans occurring prior to (date of final publication), shall be subject to the provisions of paragraph (a) of this section then in effect which limited the amount of VMLI coverage to a lifetime maximum per eligible veteran.” The parenthetical “(date of final publication)” appears to have been erroneously maintained in the Code of Federal Regulations, rather than being replaced by the appropriate date. We are correcting this error by striking “(date of final publication)” and inserting “December 24, 1987,” which is the effective date of the final rule that codified that regulation. See 52 FR 26356-01 (July 14, 1987) (proposed); 52 FR 48681-02 (Dec. 24, 1987) (final). No substantive change is intended.

We would also revise the authority citations at the end of § 8a.2 and § 8a.4 and add authority citations at the end of § 8a.1 and § 8a.3 to cite to 38 U.S.C. 501, 2101, 2101A, and 2106.

### 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 an 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

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety 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 12886 (Regulatory Planning and Review) defines a "significant regulatory action," which requires review by the Office of Management and Budget (OMB), unless OMB waives such review, as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an

action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s Web site at <http://www.va.gov/orpm/>, by following the link for “VA Regulations Published From FY 2004 Through Fiscal Year to Date.”

#### Regulatory Flexibility Act

The Secretary of Veterans Affairs 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. This proposed rule would directly affect only individuals and would not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on October 7, 2016, for publication.

Dated: October 7, 2016.

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Jeffrey Martin  
Office Program Manager  
Office of Regulation Policy & Management  
Office of the Secretary  
Department of Veterans Affairs

### **List of Subjects in 38 CFR Part 8a**

Life insurance, Mortgage insurance, Veterans.

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 8a as set forth below:

## **PART 8a—VETERANS MORTGAGE LIFE INSURANCE**

1. The authority citation for part 8a continues to read as follows:

AUTHORITY: 38 U.S.C. 501, and 2101 through 2106, unless otherwise noted.

2. Amend § 8a.1 as follows:

a. In paragraph (a), remove “veteran” each place it appears and add in its place “individual”;

b. In paragraph (b), remove “veterans” the second time it appears and add in its place “individuals”;

c. Revise paragraph (c);

d. In paragraph (d), remove “veteran” and add in its place “individual”;

e. In paragraph (e) introductory text, remove “veteran” and add in its place “individual”;

f. Add paragraph (f); and

g. Add an authority citation to the end of the section.

The revision and additions read as follows:

### **§ 8a.1 Definitions.**

\* \* \* \* \*

(c) The term initial amount of insurance means the amount of insurance selected by the insured, which may be less than the statutory maximum of \$200,000 and less than the amount necessary to pay the mortgage indebtedness in full.

\* \* \* \* \*

(f) The term eligible individual means a person who has been determined by the Secretary to be eligible for benefits pursuant to 38 U.S.C. chapter 21.

(Authority: 38 U.S.C. 501, 2101, 2101A, 2106)

3. Amend § 8a.2 as follows:

a. In paragraph (a), remove “veteran” each place it appears and add in its place “individual”, remove “\$90,000” and add in its place “\$200,000”, and add “an initial amount of insurance” between “authorized” and “up”;

b. In paragraph (b)(1), remove “\$90,000” and add in its place “\$200,000”;

c. In paragraph (b)(2), remove “veteran” and add in its place “individual”;

d. In paragraph (b)(3), remove “veteran” each place it appears and add in its place “individual”;

e. In paragraph (b)(4), remove “veteran” each place it appears and add in its place “individual”;

f. In paragraph (b)(5), remove “veteran” and add in its place “individual”;

g. In paragraph (b)(6), remove “veteran” each place it appears and add in its place “individual”;

h. In paragraph (b)(7), remove “veterans” each place it appears and add in its place “individuals”;

i. In paragraph (b)(8), remove “veteran” and add in its place “individual”, remove “veterans” and add in its place “individuals”, and remove “(date of final publication)” and add in its place “December 24, 1987”;

j. In paragraph (c), remove “veteran” and add in its place “individual”; and

k. Revise the authority citation at the end of section.

The revision reads as follows:

**§ 8a.2 Maximum amount of insurance.**

\* \* \* \* \*

(Authority: 38 U.S.C. 501, 2101, 2101A, 2106)

4. Amend § 8a.3 as follows:

a. In paragraph (a), remove “veteran” each place it appears and add in its place “individual”;

b. In paragraph (b), remove “veteran” each place it appears and add in its place “individual”;

c. In paragraph (c), remove “a veteran” and add in its place “an individual”, and remove “the veteran” each place it appears and add in its place “the individual”;

d. In paragraph (d), remove “veteran” each place it appears and add in its place “individual”;

e. In paragraph (e), remove “veteran” each place it appears and add in its place “individual”; and

f. Add an authority citation to the end of the section.

The addition reads as follows:

**§ 8a.3 Effective date.**

\* \* \* \* \*

(Authority: 38 U.S.C. 501, 2101, 2101A, 2106)

5. Amend § 8a.4 as follows:

a. In paragraph (b), remove “\$90,000” each place it appears and add in its place “\$200,000”, remove “available to” each place it appears and add in its place “selected by”, and remove “veteran” each place it appears and add in its place “individual”;

b. In paragraph (c), remove “\$90,000” and add in its place “\$200,000”, remove “available to” and add in its place “selected by”, remove “eligible veteran” each place it appears and add in its place “eligible individual”, and remove “a veteran” and add in its place “an individual”; and

c. Revise the authority citation at the end of section.

The revision reads as follows:

**§ 8a.4 Coverage.**

\* \* \* \* \*

(Authority: 38 U.S.C. 501, 2101, 2101A, 2106)

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