

(NPGA) submitted a similar request to extend the public comment period for the NPR by 60 days. The Commission has considered these requests to extend the comment period. To provide additional time for stakeholders to prepare comments for the rulemaking, the Commission will grant an extension of the comment period to January 25, 2024.¹

Alberta E. Mills,
Secretary, Consumer Product Safety Commission.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AS02

Loan Guaranty: Minimum Property Requirements for VA-Guaranteed and Direct Loans

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is requesting public comment on the minimum property requirements (MPRs) for VA-guaranteed and direct loans. VA will consider information received in response to this advance notice of proposed rulemaking (ANPRM) in implementing the

Improving Access to the VA Home Loan Benefit Act of 2022 (the Act). The Act requires VA to consider making changes to MPRs in prescribing updated regulatory requirements regarding appraisals. This ANPRM seeks public input to better understand areas for improvement in MPRs, including whether VA should consider adopting an approach that aligns with other industry-wide property standards already in existence.

DATES: Comments must be received on or before February 9, 2024.

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 the following website as soon as possible after they have been received: <https://www.regulations.gov>. 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. We will post acceptable 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.

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Assistant Director for Regulations, Legislation, Engagement and Training, and Terry Rouch, Assistant Director for Loan Policy and Valuation, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202-632-8862. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: VA must ensure that any property financed through a VA-guaranteed or direct loan is suitable for dwelling purposes.¹ Additionally, any loan for either the purchase or construction of a residential property, in which construction was completed within one year of the loan, must meet or exceed minimum requirements for planning, construction, and general acceptability, as prescribed by VA.² Also, any direct housing loan made by VA under the Native American Direct Loan (NADL) program must meet minimum requirements for planning, construction, improvement, and general acceptability, as prescribed by VA.³

In 38 CFR 36.4351 and 36.4527(c)(4), VA implemented the above noted statutory requirements, and in the Lenders Handbook, VA maintains a list of MPRs.⁴ The following table reflects that list.⁵

TABLE 1—VA PAMPHLET 26-7, LENDERS HANDBOOK, CHAPTER 12—MINIMUM PROPERTY REQUIREMENTS

Topic	Topic name	Topic	Topic name
1	Minimum Property Requirement Procedures.	23	Heating.
2	Marketable Real Estate Entity.	24	Leased Mechanical Systems and Equipment.
3	Space Requirements.	25	Alternative Energy Equipment.
4	Access.	26	Roof Covering.
5	Encroachments.	27	Attics.
6	Drainage and Topography.	28	Crawl Spaces.
7	Geological or Soil Instability, Subsidence, and Sinkholes.	29	Basements.
8	Special Flood Hazard Area.	30	Swimming Pools.
9	Coastal Barrier Resources System.	31	Burglar Bars.
10	Lava Flow Hazard Areas.	32	Lead-Based Paint.
11	Non-Residential Use.	33	Wood Destroying Insects/Fungus/Dry Rot.
12	Zoning.	34	Radon Gas.
13	Local Housing/Planning Authority Code Enforcement.	35	Potential Environmental Problem.
14	Utilities.	36	Stationary Storage Tanks.
15	Water Supply and Sanitary Facilities.	37	Mineral, Oil and Gas Reservations or Leases.
16	Individual Water Supply.	38	High Voltage Electric Transmission Lines.
17	Individual Sewage Disposal.	39	High Pressure Gas and Liquid Petroleum Pipelines.
18	Shared Wells.	40	Properties Near Airports.
19	Community Water Supply/Sewage Disposal Requirements.	41	Manufactured Home Classified as Real Estate.
20	Hazards.	42	Modular Homes.
21	Defective Conditions.	43	Energy Conservation and Sustainability.
22	Mechanical Systems.	44	Requests for Waiver of MPR Repairs.

¹ The Commission voted 4-0 to approve publication of this notice of extension of comment period.

¹ 38 U.S.C. 3710(b)(4); see also 38 U.S.C. 3711.

² 38 U.S.C. 3704(a).

³ 38 U.S.C. 3762(c)(2).

⁴ Lenders Handbook, VA Pamphlet 26-7, https://www.benefits.va.gov/warms/pam26_7.asp.

⁵ *Id.*

In addition to MPRs being a legal requirement, they also serve as a safeguarding function by exposing potential defects or maintenance issues that could have a significant effect on a property’s value.

Section 3 of the Act⁶ directs the Secretary to consider making changes applicable to MPRs.⁷ Therefore, VA is issuing this ANPRM to request public comment as the agency considers regulatory amendments pertaining to MPRs. While VA welcomes all comments regarding MPRs, VA is particularly interested in hearing from the public on the below noted questions.

Questions for Comment

(1)(a) What are the advantages and/or disadvantages of VA MPRs noted in the above table as compared with similar requirements found in other Federal housing programs and conventional sources of financing (e.g., property condition requirements)?

(b) What policies or processes specific to VA MPRs could be streamlined, modified, or eliminated to enhance your

experience with the VA home loan program?

(c) Please also provide any general suggestions for improvement or comments on the current VA MPRs.

(2)(a) Should VA replace the above noted VA MPRs with the property condition ratings outlined in Fannie Mae’s *Selling Guide* or Freddie Mac’s *Single-Family Seller/Servicer Guide*, and included in the Uniform Appraisal Dataset (UAD)⁸

(b) If VA were to guarantee or make loans only on properties with a condition rating of C1, C2, C3, or C4, either based on the initial appraisal or following repairs, what would be the advantages and/or disadvantages for a borrower? For VA and taxpayers? For lenders and servicers?

(c) Could the below noted property condition ratings be used by VA in another way to determine MPRs?

By way of background, the UAD defines all fields required for an appraisal submission for specific appraisal forms (e.g., Fannie Mae Form 1004) and standardizes definitions and responses for a key subset of fields.

When completing an appraisal that conforms to the UAD, the appraiser assigns one of the standardized condition ratings pursuant to the definitions in the Fannie Mae *Selling Guide* or Freddie Mac *Seller/ Servicer Guide* and presented in Table 2 below. These ratings identify the condition of the improvements for the subject property and comparable sales.

VA appraisers utilize industry-standard forms to complete appraisals for VA-guaranteed loans. As such, VA already collects information regarding the UAD property condition rating as part of a VA appraisal.⁹ As VA considers how to streamline the appraisal process, one option could be to utilize this existing appraisal information to determine whether a property is suitable for dwelling purposes rather than provide appraisers with a lengthy list of specific MPRs to evaluate. In reviewing the UAD property condition ratings, VA believes that properties rated C1 through C4 would best align with VA’s statutory requirement and existing MPRs, but is open to public feedback on this issue.

TABLE 2—UNIFORM APPRAISAL DATASET (UAD) PROPERTY CONDITION RATINGS

Rating	Description in Fannie Mae Selling and Freddie Mac Seller/Servicer Guides
C1	The improvements have been very recently constructed and have not previously been occupied. The entire structure and all components are new and the dwelling features no physical depreciation.
C2	The improvements feature no deferred maintenance, little or no physical depreciation, and require no repairs. Virtually all building components are new or have been recently repaired, refinished, or rehabilitated. All outdated components and finishes have been updated and/or replaced with components that meet current standards. Dwellings in this category either are almost new or have been recently completely renovated and are similar in condition to new construction.
C3	The improvements are well-maintained and feature limited physical depreciation due to normal wear and tear. Some components, but not every major building component, may be updated or recently rehabilitated. The structure has been well-maintained.
C4	The improvements feature some minor deferred maintenance and physical deterioration due to normal wear and tear. The dwelling has been adequately maintained and requires only minimal repairs to building components/mechanical systems and cosmetic repairs. All major building components have been adequately maintained and are functionally adequate.
C5	The improvements feature obvious deferred maintenance and are in need of some significant repairs. Some building components need repairs, rehabilitation, or updating. The functional utility and overall livability are somewhat diminished due to condition, but the dwelling remains useable and functional as a residence.
C6	The improvements have substantial damage or deferred maintenance with deficiencies or defects that are severe enough to affect the safety, soundness, or structural integrity of the improvements. The improvements are in need of substantial repairs and rehabilitation, including many or most major components.

(3) VA is interested in hearing how the current MPRs may be impacting certain groups of veteran borrowers, including those traditionally underserved in the housing finance industry. As VA considers changes to the MPRs, VA is exploring how best to ensure all eligible individuals for the VA home loan benefit are served.

(a) Please describe any needs of groups of veterans who might be

underserved due to the current MPRs and how the VA home loan program could address those needs.

(b) Please describe any VA MPRs that might restrict utilization by any group(s) of veterans that are traditionally underserved in the housing finance industry. What changes could VA make to its MPRs to encourage more utilization by these groups?

(4) VA is interested in hearing how changes to the MPRs might affect lender participation which, in turn, could affect a veteran borrower’s access to the benefit.

(a) As an interested stakeholder, in your opinion, what type(s) of MPRs are helpful in protecting veteran borrowers, lenders, servicers, and VA?

(b) What type(s) of changes related to MPRs would encourage more lenders

⁶Public Law 117–308, 136 Stat. 4393.

⁷Id.

⁸*Selling Guide: Fannie Mae Single Family*, B4–1.3–06, Fannie Mae, (Aug. 2, 2023), <https://selling-guide.fanniemae.com/>; *The Single-Family Seller/*

Servicer Guide, Exhibit 36 Condition and Quality Ratings and Level of Updating Definitions, Freddie Mac, (May 31, 2017), [<learning/uniform-mortgage-data-program/uad#business-resources> \(last visited Aug. 23, 2023\).](https://guide.freddiemac.com/app/guide/exhibit/36; Uniform Appraisal Dataset, Freddie Mac, https://sf.freddiemac.com/tools-</p>
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⁹This information collection is approved by the Office of Management and Budget (OMB) under Control Number 2900–0890.

and broker/agent entities to increase their participation in the VA home loan program?

(5)(a) As an interested stakeholder, in your opinion, are waivers of certain MPRs necessary in the VA home loan buying process? If so, please explain.

(b) Would your answer change if VA adopted a more generalized approach to MPRs, such as the property condition ratings in the Fannie Mae Selling Guide or Freddie Mac Seller/Servicer Guide and UAD, versus the current MPRs?

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 rule 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.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on December 4, 2023, 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.

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