



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 62

RIN 2900-AP61

Supportive Services for Veteran Families Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern the Supportive Services for Veteran Families (SSVF) Program. This rulemaking clarifies VA's procedures for continuing to fund SSVF Program services in communities that have lost grants due to the non-renewal or termination of services of an existing award to a grantee. VA can now award the non-renewed or deobligated funds to other existing SSVF grantees in or near the affected community. This award of non-renewed or deobligated funds prevents potential access issues associated with grant termination. This rulemaking also reduces the number of satisfaction surveys grantees are required to provide to participants in order to reduce the burden on grantees and participants.

DATES: This final rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: John Kuhn, National Center for Homelessness Among Veterans, Supportive Services for Veteran Families

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SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on July 27, 2016, VA proposed to revise its regulations that addressed the Supportive Services for Veteran Families (SSVF) Program. 81 FR 49198. VA provided a 60-day comment period, which ended on September 26, 2016. We received 14 comments on the proposed rule. Section 2044 of title 38 U.S.C. requires the Secretary to provide financial assistance to eligible entities to provide and coordinate the provision of supportive services for very low-income veteran families occupying permanent housing. The Secretary's implementing regulations are in 38 CFR Part 62, which established the SSVF Program. Through the SSVF Program, VA awards supportive services grants to private non-profit organizations or consumer cooperatives to provide or coordinate the provision of supportive services to very low-income veteran families who are residing in permanent housing and at risk of becoming homeless. The grants provide services to low-income families who are lacking a fixed, regular, and adequate nighttime residence, are at risk of remaining so but for grantee assistance, and scheduled to become residents of permanent housing within 90 days pending the location or development of housing suitable for permanent housing. The grants also provide services to low-income families who, after exiting permanent housing, are seeking other housing that is responsive to their needs and preferences. This rulemaking clarifies existing VA policy regarding

award of non-renewed or deobligated funds to other existing SSVF grantees in or near the affected community where the funds were originally used in order to maintain continuity in the services offered to these communities. This rulemaking also reduces the number of satisfaction surveys grantees are required to provide to participants in order to reduce the burden on grantees and participants.

We received several comments in support of the proposed rule. One commenter stated that the proposed rule was “needed from multiple perspectives, most importantly, in maintaining all momentum toward ending Veteran homelessness.” A commenter stated that “non-renewed and deobligated funds are critical to our community as we are seeing a strong inflow of newly homeless in our area.” Another commenter stated that the proposed rule would eliminate the “hoops to jump through and the grant will still be awarded to those who qualify.” A commenter agreed that reducing the number of surveys would yield a higher response rate. Lastly, a commenter stated that the proposed changes “are reasonable and would make an effective program more so.” We thank the commenters for supporting the rule.

One commenter recommended that VA revise the proposed rule to “take into account the impact of unexpected need, such as occurs in natural disasters where Federal Disaster Area designation is affirmed.” The commenter further recommended that VA distribute SSVF grant assistance to grantees serving in Federal disaster areas to assist veterans in need or who are displaced from their homes or become homeless “due to a natural disaster, regardless of whether the Veteran family meets the income eligibility requirements of SSVF.” Additionally,

VA should focus the availability of SSVF funds to those veterans who were impacted by a natural disaster and do not have sufficient resources to relocate to “new housing because of trauma, an inability to access records, and/or an inability to access personal resources.” As previously stated in this rulemaking 38 U.S.C. 2044 is the authority that establishes the SSVF program. Under this program, VA may only provide assistance to very low-income veteran families. Section 2044(f)(6) defines “very low-income veteran family” to mean “a veteran family whose income does not exceed 50 percent of the median income for an area” as determined by VA. Because the SSVF funds are limited, VA cannot use these funds to assist veteran families that do not otherwise meet the eligibility criteria under section 2044. Also, the loss of SSVF funds would adversely affect the veterans being served in the community whose deobligated funds were lost due to the funds being transferred to a different community that was affected by a natural disaster. We are not making any edits based on this comment.

Several commenters suggested that VA reconsider the requirement that 60% of funding support rapid re-housing of homeless veterans and 40% may be used for prevention of homelessness in rural communities and instead allow an even 50/50 split of funding because the needs for homeless veteran families in rural communities differ from those in urban settings. The commenters further stated that there is a housing shortage and it is difficult to use all of the SSVF funds, “particularly when Veterans who are in danger of literal homelessness present to our program and we are unable to assist them due to the 60/40 mandate. If that mandate was to be lifted, and we could focus a larger pool of

resources on prevention, fewer of our clients would cycle back through as RRH.” Under section 2044(a)(4), SSVF has an obligation to give preference to “entities providing or coordinating the provision of supportive services for very low-income veteran families who are transitioning from homelessness to permanent housing.” The 60/40 requirement in the current Notice of Fund Availability (NOFA) means that a minimum of 60% of SSVF funds can be used for supporting rapid re-housing of homeless veterans and a maximum of 40% of SSVF funds can be used for prevention. Where the local needs of homeless veterans have been met, the NOFA has a process in place so communities can ask for a waiver of the 60/40 split of temporary financial assistance. (See December 7, 2016 NOFA, section V.B.3(a): “Waivers to this 60 percent requirement may be requested when grantees can demonstrate significant local progress towards eliminating homelessness in the target service area. Waiver requests must include data from authoritative sources such as USICH certification that a community has ended homelessness as defined by Federal Benchmarks and Criteria or have reached Community Solution’s Functional Zero. Waivers for the 60 percent requirement may also be requested for services provided to rural Indian tribal areas and other rural areas where shelter capacity is insufficient to meet local need. Waiver requests must include an endorsement by the impacted CoC explicitly stating that a shift in resources from rapid rehousing to prevention will not result in an increase in homelessness.”). The waiver would allow for an increased spending on prevention. However, any

amendment to this requirement is beyond the scope of the proposed rule. We are not making any edits based on this comment.

A commenter suggested that VA allow SSVF grantees to use funds to assist veterans who have been rated by VA as 100% service-connected disabled, are homeless, and over the income limit for the SSVF, because these veterans would benefit from the “intensive case management services to navigate through their housing issues.” SSVF funds may only be used to assist veteran families that meet the eligibility criteria in 38 U.S.C. 2044. By law, VA cannot use SSVF funds to assist veterans that are over the income limits of 38 U.S.C. 2044(f). However, homeless veterans who do not qualify for the SSVF program may receive assistance under the VA homeless providers grant and per diem program, part 61 of 38 CFR. This comment is beyond the scope of the proposed rule and we are not making any edits based on this comment.

Several commenters suggested that VA use SSVF funds to include aftercare case management, which would “be classified as continuing case management after the veteran is housed and/or case management after the veteran is exited from SSVF services.” SSVF is designed to resolve a veteran’s household’s housing crisis. Grantees make the decision when to exit a veteran’s household from the SSVF program based on the household’s ability to achieve housing stability. Longer term supports and case management are outside of the scope of SSVF program and grantees need to link participants to other VA resources that address veteran homelessness or to community health care and social services. Amendments to SSVF services are beyond the scope of the

proposed rule. We are not making any edits based on this comment.

A commenter stated that the SSVF program guidelines can create barriers to providing services “due to the strict documentation requirements and extensive intake process.” The commenter recommended that VA allow concessions and latitude to case managers so that the lack of documentation provided by a veteran does not become an exclusionary factor to receive SSVF assistance. SSVF allows for a variety of substitutes for documentation requirements, including, at times, self-certification. However, VA has a fiduciary responsibility to ensure that those enrolled in services are eligible and grantees adequately document the services provided. This comment is beyond the scope of the proposed rule and we are not making any edits based on this comment.

Another commenter indicated that it would be helpful if the rule included a “basic overview of the scoring criteria used in making decisions” for granting SSVF funds. The scoring criteria for supportive services grant applicants is found in 38 CFR 62.22, which we did not propose to amend in the proposed rule. Additionally, the scoring criteria for grantees applying for renewal of supportive services grants is found in 38 CFR 62.24, which we also did not propose to amend in the proposed rule. We are not making any edits based on this comment.

One commenter stated that reducing the number of satisfaction surveys would not yield a higher response rate. We respectfully disagree with the commenter and believe that reducing the number of satisfaction surveys might prompt participants of the SSVF to provide feedback of their experience with the

program upon completion of the program. We are not making any edits based on this comment.

One commenter stated that proposed 38 CFR 62.36 should be further amended to state that “there should be a mail in option for Veterans who do not have access to email or internet.” Another commenter stated that older veterans did not want to create an email account for submitting the satisfaction surveys. VA is aware that not all veterans are able to submit the survey electronically and is also aware of the limitation of electronic submissions for the survey. For this reason, we have added a phone-based survey option for fiscal year 2017. We are not making any edits based on this comment.

A commenter stated that limiting the SSVF grant to “a 10% base admin rate is creating large deficits to the non-profits and sub-grantees who implement the program.” The commenter suggested that VA allow the use of “a non-profit’s allowable federal rate (typically around 15%) as a standard for both the grantee and sub-grantees.” The commenter also stated that some sub-grantees have abandoned the SSVF grant due to losses the non-profits bear in administering the SSVF program. The limitations on costs for the administration of the SSVF program are stated in 38 CFR 62.10 and 62.70, which we did not propose to amend in the proposed rule. Any change to the limitations on administrative costs is beyond the scope of the proposed rule. We are not making any edits based on this comment.

A commenter said that limiting a veteran household to a single option of moving or storage expenses is counterintuitive because stored items will need to

be moved from the storage facility to the new domicile once the domicile becomes available. The commenter asks “that these two costs be allowed as separate eligible expenses for each veteran household (as needed).” Veterans may receive both types of assistance under the current regulation. Section 62.34 addresses other supportive services, which includes moving costs under paragraph (d). Paragraph (d)(2) states that moving costs assistance includes “reasonable moving costs, such as truck rental, hiring a moving company, or short-term storage fees for a maximum of 3 months or until the participant is in permanent housing, whichever is shorter.” The storage of household items and the transportation of these items to the new domicile are two separate services that are included as part of the moving costs. Also, we did not propose to amend section 62.34 in the proposed rule and so any changes to this section are beyond the scope of the proposed rule. We make no edits based on this comment.

A commenter said that the SSVF no longer covers the payment of property debt, which includes arrears and damages. However, that is incorrect: 38 CFR 62.34(a)(1) states, “rental assistance may be for rental payments that are currently due or are in arrears, and for the payment of penalties or fees incurred by a participant and required to be paid by the participant under an existing lease or court order.” Also, we did not propose to amend section 62.34 in the proposed rule and so any edits to this section are beyond the scope of the proposed rule. We are not making any edits based on this comment.

A commenter supported the rule, but stated that “if this assessment and reallocation of funding occurs in real time (i.e., quarterly benchmarks during the

grant year) this creates a new burden on the grantees by not giving the necessary flexibility to spend appropriately based on each veteran household's needs or the seasonal enrollment spikes that occur throughout the grant year.” VA has the capacity to sweep funds on a quarterly basis as stated in the grant agreement between VA and the grantee. Prior to any sweep, VA would review the funds with the grantee to assess the needs of the community. We are not making any edits based on this comment.

We are making a technical edit to 38 CFR 62.25. Proposed paragraph (d)(1) stated in part that “Such applicant or grantee must have the capacity and agree to provide immediate services to the affected community.” We are amending this sentence by deleting the term “immediate” and replacing it with “prompt” to make this term consistent with language used in existing program materials. We are making a similar edit to 38 CFR 62.80(d)(2)(i). We are also clarifying in § 62.25(d)(1) and § 62.80(d)(2)(i) that the grantee in the last sentence of each paragraph is the grantee who is offered the additional funds. The sentence as it was written in the proposed rule left some ambiguity as to who we were referencing. We are not making any edits to the meaning of the language in the proposed rule.

Based on the rationale set forth in the Supplementary Information to the proposed rule and in this final rule, VA is adopting the proposed rule with the edits discussed in the previous paragraph.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This action contains provisions constituting collections of information, at 38 CFR 62.36, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). The information collection requirements for § 62.36 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900-0757. However, this regulatory action includes a provision reducing the number of surveys used for this collection from 2 to 1. VA estimates the number of responses for the information collection will decrease from 5,625 to 2,813. VA is in the process of recertifying this collection number under a separate action.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule does 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 final rule only

impacts those entities that choose to participate in the SSVF Program. Small entity applicants will not be affected to a greater extent than large entity applicants. Small entities must elect to participate, and it is considered a benefit to those who choose to apply. To the extent this final rule has any impact on small entities, it will not have an impact on a substantial number of small entities. Therefore, under 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of section 603 and 604.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct 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 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by 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 Website at <http://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

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

Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits, and 64.033, VA Supportive Services for Veteran Families Program.

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. Farrissee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on August 28, 2017, for publication.

List of Subjects in 38 CFR Part 62

Administrative practice and procedure, Day care, Disability benefits, Government contracts, Grant programs—health, Grant programs—housing and community development, Grant programs—veterans, , Heath care, Homeless, Housing, Indian—lands, Individuals with disabilities, Low and moderate income housing, Manpower training program, Medicare, Medicaid, Public assistance programs, Public housing, Relocation assistance, Rent subsidies, Reporting and recordkeeping requirements, Rural areas, Social security, Supplemental Security Income (SSI), Travel and transportation expenses, Unemployment compensation.

Dated: August 29, 2017.

Janet Coleman,
Chief,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs is amending 38 CFR part 62 as follows:

PART 62 – SUPPORTIVE SERVICES FOR VETERAN FAMILIES PROGRAM

1. The authority citation for part 62 continues to read as follows:

AUTHORITY: 38 U.S.C. 501, 2044, and as noted in specific sections.

2. Amend § 62.25 by adding paragraph (d) to read as follows:

§ 62.25 Selecting grantees for renewal of supportive services grants.

* * * * *

(d) At its discretion, VA may award any non-renewed funds to an applicant or existing grantee. If VA chooses to award non-renewed funds to an applicant or existing grantee, funds will be awarded as follows:

(1) VA will first offer to award the non-renewed funds to the applicant or grantee with the highest grant score under the relevant Notice of Fund Availability that applies for, or is awarded a renewal grant in, the same community as, or a proximate community to, the affected community. Such applicant or grantee must have the capacity and agree to provide prompt services to the affected community. Under this § 62.25, the relevant Notice of Fund Availability is the most recently published Notice of Fund Availability which covers the geographic area that includes the affected community, or for multi-

year grant awards, the Notice of Fund Availability for which the grantee, who is offered the additional funds, received the multi-year award.

(2) If the first such applicant or grantee offered the non-renewed funds refuses the funds, VA will offer to award the funds to the next highest-ranked such applicant or grantee, per the criteria in paragraph (d)(1) of this section, and continue on in rank order until the non-renewed funds are awarded.

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3. Amend § 62.36 by revising paragraph (c)(2) to read as follows:

§ 62.36 General operation requirements.

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(c)* * *

(2) The grantee must provide each participant with a satisfaction survey, which the participant can submit directly to VA, within 30 days of such participant's pending exit from the grantee's program.

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4. Amend § 62.80 by revising paragraph (d)(2) to read as follows:

§ 62.80 Withholding, suspension, deobligation, termination, and recovery of funds by VA.

* * * * *

(d)* * *

(2) At its discretion, VA may re-advertise in a Notice of Fund Availability the availability of funds that have been deobligated under this section or award deobligated funds to an applicant or existing grantee. If VA chooses to award deobligated funds to an applicant or existing grantee, funds will be awarded as follows:

(i) VA will first offer to award the deobligated funds to the applicant or grantee with the highest grant score under the relevant Notice of Fund Availability that applied for or was awarded funds in the same community as, or proximate community to, the affected community. Such applicant or grantee must have the capacity and agree to provide prompt services to the affected community. Under this section the relevant Notice of Fund Availability is the most recently published Notice of Fund Availability which covers the geographic area that includes the affected community, or for multi-year grant awards, the most recently published Notice of Fund Availability which covers the geographic area that includes the affected community for which the grantee, who is offered the additional funds, received the multi-year award.

(ii) If the first such applicant or grantee offered the deobligated funds refuses the funds, VA will offer to award funds to the next highest-ranked such applicant or grantee, per to the criteria in paragraph (d)(2)(i) of this section, and continue on in rank order until all deobligated funds are awarded.

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