



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Parts 61 and 62

RIN 2900-AQ07

Homeless Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern homeless veterans to conform to recent statutory requirements. VA is amending the definition of homeless veterans by including veterans who would otherwise be ineligible to receive certain benefits because of their length of service or type of discharge from the Armed Forces. This rule will also increase the payment of per diem in cases where homeless veterans are placed in transitional housing that will become permanent housing. This final rule is an essential part of VA's attempts to eliminate homelessness among the veteran population.

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

FOR FURTHER INFORMATION CONTACT: Guy Liedke, guy.liedke@va.gov, Program Analyst, Grant/Per Diem Program, (673/GPD), VA National Grant and Per Diem Program Office, 10770 N. 46th Street, Suite C-200, Tampa, FL 33617, (877) 332-0334. (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: In an effort to reduce homelessness in the veteran population, Congress has required VA to expand its definition of veteran as it applies to benefits for homeless veterans. See Pub. L. 114-315, sec. 701, 702, and 703 (Dec. 16, 2016). This new definition will remove restrictions on length of military service for a homeless veteran receiving certain benefits from VA, as well as authorize certain benefits for veterans with types of discharges from the Armed Forces that would normally bar an individual from receiving VA benefits. Congress also required VA to increase the per diem payments for transitional housing assistance that will become permanent housing for homeless veterans. See Pub. L. 114-315, sec. 711 (Dec. 16, 2016). This increase will compensate for the increase in operational costs associated with transitional housing assistance. This final rule amends VA's Homeless Providers Grant and Per Diem Program regulations, at title 38 Code of Federal Regulations (CFR) sections 61.1, and 61.33, and Supportive Services for Veteran Families Program regulation at 38 CFR 62.2, to accurately reflect these changes in law.

61.1 Definitions.

Section 61.1 defines the terms that apply to the VA Homeless Providers Grant and Per Diem Program. VA defines the term veteran as “a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable.” We are amending the definition of veteran, as it applies to this part, to now state that a veteran is a person who served in the active military, naval, or air service, regardless of length of service, and who was discharged or

released therefrom. The definition excludes a person who received a dishonorable discharge from the Armed Forces or was discharged or dismissed from the Armed Forces by reason of the sentence of a general court-martial. This definition will also incorporate section 703 of the Public Law by clarifying that “the length of service restrictions under 38 U.S.C. 5303A do not apply.” VA similarly defines the term veteran in § 62.2 for the Supportive Services for Veteran Families Program (SSVF). We are amending the definition of veteran in § 62.2, as it applies to part 62, to mirror the new definition of veteran in § 61.1. These amendments are made to implement sections 701, 702, and 703 of Public Law 114-315.

61.33 Payment of per diem.

Section 61.33 provides for the payment of per diem for the VA Homeless Providers Grant and Per Diem Program. Paragraph (b) establishes the rate of payments for service to individual veterans. We are amending § 61.33 to revise paragraph (b) introductory text and add a new paragraph (b)(3) to state that for a veteran who is placed in housing that will become permanent housing for that veteran on termination of supportive housing services, the rate of payment will be the lesser of 150 percent of the current VA state home program per diem rate for domiciliary care, as set by the Secretary under 38 U.S.C. 1741(a)(1) or the daily cost of care estimated pursuant to paragraph (b)(1) of the section. We are making these changes to implement section 711 of Public Law 114-315.

Administrative Procedure Act

This final rule implements the mandates of sections 701, 702, 703 and 711 of Public Law 114-315. Section 705 of Public Law 114-315 mandates that VA have regulations in place to implement sections 701-704 of the law no later than 270 days after the enactment of the Public Law, which is September 12, 2017. Similarly, section 706 states “This subtitle and the amendments made by this subtitle shall apply to individuals seeking benefits under chapter 20 of title 38, United States Code, before, on, and after the date of the enactment of this Act.” VA has been applying the mandates of the Public Law, to include section 711, since its enactment on December 16, 2016, with no adverse impact and is merely codifying the Public Law into regulation. Accordingly, because this rule simply incorporates current statutory requirements, it is exempt from the prior notice-and-comment and delayed-effective-date requirements, in accordance with 5 U.S.C. 553(b)(3)(B) and 553(d)(3).

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

Regulatory Flexibility Act

The Secretary hereby certifies that this final 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. This final rule will directly affect only those small entities who seek to participate in the VA Homeless Providers Grant and Per Diem Program or SSVF. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking would be exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 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 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.”

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

The Catalog of Federal Domestic Assistance program number and title for this final rule are as follows: 64.024 VA Homeless Providers Grant and Per Diem Program; 64.033 VA Supportive Services for Veteran Families Program.

List of Subjects

38 CFR Part 61

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

38 CFR Part 62

Administrative practice and procedure, Day care, Disability benefits, Government contracts, Grant programs—health, Grant programs—social services, Grant programs—transportation, Grant programs—veterans, Grants—housing and community development, Health care, Homeless, Housing, Housing assistance payments, 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, 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 2, 2017, for publication.

Dated: October 31, 2017.

Michael Shores,
Director,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

For the reasons set forth in the preamble, we are amending 38 CFR parts 61 and 62 as follows:

PART 61 – VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

1. The authority citation for part 61 continues to read as follows:

Authority: 38 U.S.C. 501, 2001, 2002, 2011, 2012, 2061, 2064.

2. Amend § 61.1 by revising the definition of “Veteran” to read as follows:

§ 61.1 Definitions.

* * * * *

Veteran means a person who served in the active military, naval, or air service, regardless of length of service, and who was discharged or released therefrom.

Veteran excludes a person who received a dishonorable discharge from the Armed Forces or was discharged or dismissed from the Armed Forces by reason of the sentence of a general court-martial. The length of service restrictions under 38 U.S.C. 5303A do not apply.

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3. Amend § 61.33 by revising paragraph (b) introductory text and adding paragraph (b)(3) to read as follows:

§61.33 Payment of per diem.

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(b) Rate of payments for individual veterans. Except as provided in paragraph (b)(3) of this section, the rate of per diem for each veteran in supportive housing shall be the lesser of:

* * * * *

(3) For a veteran who is placed in housing that will become permanent housing for that veteran upon termination of supportive housing services, the rate of payment shall be the lesser of 150 percent of the current VA state home program per diem rate for domiciliary care, as set by the Secretary under 38 U.S.C. 1741(a)(1) or the daily cost of care estimated pursuant to paragraph (b)(1) of this section.

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PART 62 – SUPPORTIVE SERVICES FOR VETERAN FAMILIES PROGRAM

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

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

5. Amend § 62.2 by revising the definition of “Veteran” to read as follows:

§ 62.2 Definitions.

* * * * *

Veteran means a person who served in the active military, naval, or air service, regardless of length of service, and who was discharged or released therefrom.

Veteran excludes a person who received a dishonorable discharge from the Armed Forces or was discharged or dismissed from the Armed Forces by reason of the sentence of a general court-martial. The length of service restrictions under 38 U.S.C. 5303A do not apply.

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