



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 62

RIN 2900-AQ40

Rental and Utility Assistance for Certain Low-Income Veteran Families

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations that govern the Supportive Services for Veteran Families (SSVF) Program. This proposed rule would enable grantees to augment available housing options for homeless veterans in high rent burden communities by increasing the rental assistance for up to two years before recertification. Conditions in some local housing markets such as low vacancy rates and higher costs have made it increasingly difficult to recruit landlords and help homeless veteran families find and sustain permanent housing. Providing enhanced rental assistance in these communities is necessary to help VA progress in its goal to end veteran homelessness.

DATES: Comments must be received on or before **[Insert date 30 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, Office of

Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1064, Washington, DC 20420; or by fax to (202) 273-9026. (This is not a toll-free telephone number.) Comments should indicate that they are submitted in response to “RIN 2900AQ40-Rental and Utility Assistance for Certain Low-Income Veteran Families.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 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 telephone 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: John Kuhn, Homeless Program Office, Supportive Services for Veteran Families Program Office, 810 Vermont Ave. N.W., Washington DC 20420 (202) 632-8596 (This is not a toll-free number.) ssvf@va.gov.

SUPPLEMENTARY INFORMATION: VA proposes to revise its regulations that govern the Supportive Services for Veteran Families (SSVF) Program which is authorized under section 2044 of title 38 United States Code (U.S.C.). This section requires the Secretary to provide financial assistance to eligible entities, approved under this section to provide and coordinate the provision of supportive services for very low-income veteran families occupying permanent housing. VA

implements the SSVF Program under the regulations in title 38 Code of Federal Regulations (CFR), Part 62. Through the SSVF Program, VA awards supportive services grants to private non-profit organizations or consumer cooperatives to provide and coordinate the provision of supportive services to very low-income veteran families who are occupying permanent housing. Pursuant to 38 CFR 62.11, there are three situations in which a very low-income veteran family is considered to be occupying permanent housing. The first possibility is if a family is residing in permanent housing at the risk of becoming homeless but for the grantee's assistance. The second possible situation is if a family is lacking a fixed, regular, and adequate nighttime residence; is at risk of remaining in that state if they do not receive grantee assistance; and is scheduled to become a resident of permanent housing within 90 days pending the location or development of housing suitable for permanent housing. Finally, if a family is lacking a fixed, regular, and adequate nighttime residence after exiting permanent housing within the previous 90 days to seek other housing that is responsive to their needs and preferences, that very low-income family is considered to be occupying permanent housing. This rulemaking would extend the ability of SSVF grantees to provide rental assistance in areas where the limited availability of affordable housing makes it difficult to reduce a community's population of homeless veterans. Through the provision of these subsidies, the pool of available housing can be expanded as program participants have access to a broader rental market.

62.34 Other supportive services.

We propose to revise § 62.34 to allow grantees to provide greater rental assistance to very low and extremely low-income participants. This revision would permit grantees to provide a new rental subsidy for up to two years at a time, without the need for recertification, for homeless veteran families residing in areas where VA has determined that the cost and limited availability of affordable housing necessitates this benefit to promote housing stability. We believe that extremely low-income veteran families subsisting on an income that does not exceed 30 percent of the median income (as defined in § 62.2) face particularly high barriers to placement in or retention of permanent housing, and, therefore, should be eligible for a higher level of assistance relative to very-low income veteran families who subsist on an income that does not exceed 50 percent of the median income. Under this rule, VA would, therefore, provide different levels of rental subsidy assistance for these two groups by offering a longer duration of rental subsidy for extremely low-income households. Barriers to housing stability may be exacerbated by local economic conditions that severely restrict the availability of affordable housing. VA has received feedback from SSVF grantees stating that veteran families at lower levels of income are more difficult to reach and require more resources for the interventions authorized under this program to succeed, particularly in communities with a limited stock of affordable housing. Based on that feedback, we believe that the increased benefit authorized under the proposed rule would help ensure that grantees can be successful in supporting very low and extremely low-income veteran families.

Proposed paragraph § 62.34(a)(1) would limit the payment of rental assistance to extremely low-income veteran families to 9 months in any 12-month period and to 12 months during a 2-year period, such period beginning on the date that the grantee first pays rent on behalf of the participant. The payments of rental assistance to very-low income veteran families are limited to 6 months in any 12-month period and to 10 months during a 2-year period. Proposed § 62.34(a)(8) would allow for a rental subsidy exceeding the restrictions in § 62.34(a)(1) under certain conditions. This subsidy could be provided from the end of the participant's rental support under § 62.34(a)(1). The new subsidy would not exceed a period of 2 years before recertification. Then, if the veteran family qualifies for SSVF services after that 2-year period, the veteran family would again be eligible for all benefits described in § 62.34. Because the new subsidy under § 62.34(a)(8) would provide different periods and frequency of support than the rental assistance of § 62.34(a)(1), the provisions of § 62.34(a)(1) would not apply to assistance under the proposed regulation. However, payment of this subsidy by a grantee would otherwise conform to the rental assistance requirements set forth in § 62.34(a)(2)-(7).

The applicable counties in which the subsidy may be offered would be chosen based on the cost and availability of affordable housing for both individuals and families within that community. The maximum amount of the rental subsidy would be based on a percentage of the applicable Fair Market Rent (FMR) published by Housing and Urban Development (HUD). This subsidy level would be set at a level no higher than 35 percent of the FMR. This

maximum subsidy level is intended to provide a meaningful level of support, yet still differentiate it from rental supports provided by HUD-VASH where a Housing Choice Voucher can pay the entire rent. This level of subsidy was recommended in a scholarly article by Mary Cunningham, Josh Leopold, and Pamela Lee (“A Proposed Demonstration of a Flat Rental Subsidy for Very Low Income Households”).

The amount of the subsidy for each county would be proposed by the SSVF grantees serving the targeted community with a letter of support from the Continuum of Care (CoC), as defined at 24 CFR 578.3, that is organizing homeless services for that community. Agreement between the grantees and the CoC regarding the subsidy amount would allow for a local determination of the optimal subsidy amount. As this proposed rule would represent a new approach to rental subsidies, these amounts must be reviewed and approved by the SSVF Program Office before going into effect. This would help ensure that these subsidy amounts meet the intent of the proposed rule.

As the gap between housing costs and income is larger for those veteran households defined as extremely low income, their subsidy would be available for a longer period. Under this proposed rule, very low-income families may receive this subsidy for a period of two years before recertification, minus the number of months in which the recipient received the rental assistance provided under § 62.34(a)(1). In addition, extremely low-income veteran families may receive this subsidy for up to a two-year period before recertification following receipt of the § 62.34(a)(1) rental assistance. The duration of the subsidy for

extremely low-income veteran families may be longer than for very-low income families because VA believes that extremely-low income veteran families would be in greater need for a subsidy. However, no family may receive an amount of subsidy greater than the total amount of rent that such family pays in a given month. The rental subsidy amount would not change for the veteran families in the second year of the 2-year period, even if the annual amount published changes.

Under § 62.36(a), grantees must recertify the participant's eligibility as a very low-income veteran family at least once every 3 months. For this subsidy, we would only apply this recertification requirement to very-low and extremely-low income veteran families who are receiving this subsidy or a combination of the rental assistance in § 62.34(a)(1) and rental subsidy of § 62.34(a)(8) every two years. A more frequent recertification process for participants who receive this rental subsidy could reduce the time that the subsidy is available and make the commitment of up to a two-year period of rental subsidy meaningless. This would undermine the intent of this proposed rule, which would seek to expand available affordable housing stock by providing landlords with assurance of ongoing support for rental payments. Recertification every two years, however, would ensure the subsidy is provided to the veteran families who need it the most.

Effect of Rulemaking

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

Paperwork Reduction Act

This rule would contain 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 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. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12866, 13563 and 13771

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.”

OMB has determined that this is not 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 FYTD.” This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

Executive Order 12866 also directs agencies to “in most cases . . . include a comment period of not less than 60 days.” This rulemaking proposes to amend regulations that govern the Supportive Services for Veteran Families (SSVF) Program. Providing a 30-day comment period will allow the Secretary to ensure the provisions of this proposed rule would provide greater rental assistance to very low and extremely low-income participants within the SSVF Program sooner. Delays in expanding the rental assistance may mean continued or recurring homelessness for extremely low-income veterans, creating imminent risks to the health of the veteran and their family members. Moreover, we believe the SSVF Program is now a familiar benefit to the public and that providing less than 60 days would still be a sufficient period of time for the public to comment on this single aspect of the new SSVF Program. In sum, providing a 60-day public comment period instead of a 30-day public comment period would be against the public interest and the health and safety of eligible veterans. For the above reasons, the Secretary issues this rule with a 30-day public comment period. VA will consider and address comments that are received within 30 days of the date this proposed rule is published in the Federal Register.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires 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 rule would 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.

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.

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. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on May 14, 2019, for publication.

Dated: May 14, 2019

Consuela Benjamin,

Regulations Development Coordinator,
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 proposes to amend 38 CFR part 62 as follows:

PART 62 – SUPPORTIVE SERVICES FOR VETERAN FAMILIES PROGRAM

1. The authority citation for part 62 would continue to read as follows:
AUTHORITY: 38 U.S.C. 501, 2044, and as noted in specific sections.
2. Amend § 62.34 by adding paragraph (a)(8) to read as follows:

§ 62.34 Other supportive services.

* * * * *

(a) * * *

(8) Extremely low-income veteran families and very low-income veteran families who meet the criteria of § 62.11 may be eligible to receive a rental subsidy for a 2-year period without recertification. The applicable counties will be published annually in the Federal Register. A family must live in one of these applicable counties to be eligible for this subsidy. The counties will be chosen based on the cost and availability of affordable housing for both individuals and families within that county. The maximum amount of this rental subsidy is 35 percent of the applicable Fair Market Rent (FMR) published by HUD. Grantees must collaborate with their local Continuum of Care (CoC) as defined at 24 CFR 578.3 to determine the proper subsidy amounts to be used by all grantees in each applicable county. Grantees must provide a letter of support from their local CoC to the SSVF Program Office when requesting VA approval of this subsidy. The SSVF Program Office must approve all subsidy requests before the subsidy is used. Very low-income veteran families may receive this subsidy for a period of two years before certification minus the number of months in which the recipient received the rental assistance provided under paragraph (a)(1) of this section. Extremely low-income veteran families may receive this subsidy for up to a 2-year period before recertification following receipt of the paragraph (a)(1) rental assistance. For any month, the total rental payments provided to a family under this paragraph cannot be more than the total amount of rent. Payment of this subsidy by a grantee must conform to the requirements set forth in paragraphs (a)(2) through (7) of this section. The rental subsidy amount will not change for the veteran family in the second year of the two-year

period, even if the annual amount published changes. A veteran family will not need to be recertified as a very low-income veteran family as provided for by § 62.36(a) during the initial two-year period. After an initial two-year period, a family receiving this subsidy, or a combination of the rental assistance under paragraph (a)(1) and this subsidy, may continue to receive rental payments under this section, but would require recertification at that time and once every two years.

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