



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: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern the Supportive Services for Veteran Families (SSVF) Program. This final rule will 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: This final rule is effective [Insert 30 days after the date of publication in the FEDERAL REGISTER].

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.)

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on May 17, 2019, VA published a proposed rule, which proposed 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.). 84 FR 22407. VA provided a 30-day comment period, which ended on June 17, 2019. We received 9 comments on the proposed rule.

Section 2044 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 extends 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.

One commenter was in favor of the proposed rule stating that by allowing for shallow, flat subsidies linked to fair market residential rental rates, families served by rapid rehousing programs will be able to further stabilize in housing and, ultimately, achieve greater self-sufficiency. The commenter added that the communities in which these families reside will benefit from the residual socio-economic value of a reduced demand for emergency services, improved physical and mental well-being for participating households, greater neighborhood stability, and similarly improved educational outcomes for affected youth. As such, the proposed rule will not only fulfill our moral imperative to our fellow citizens, but will pay for itself as a result of reduced demand on local community systems. Another commenter stated that this was a great rule. We make no changes based on these comments.

Another commenter was also in support of the proposed rule stating that this is a highly valuable program, to the extent that it provides additional, and

longer, housing assistance, especially for low income veterans and their families in high cost areas. The commenter stated that there are numerous instances in the San Francisco Bay Area of veterans needing housing assistance, because the San Francisco Bay Area, with its limited land space, and hi-tech industries, has some of the highest housing costs in the country. The commenter added that the result is that low income veterans will have difficulty finding and maintaining payments for housing. VA agrees that the proposed changes provide additional and longer housing assistance for low income veterans and their families in high cost areas, such as the San Francisco Bay Area. We are not making any changes based on this comment.

Another commenter supportive of the proposed rule stated that by giving veterans rental assistance, we are allowing them more breathing room in terms of becoming financially stable. The commenter added that VA should also provide veterans with extra money every month so that they can purchase food and pay for utilities. The commenter also stated that if the government cannot come up with this extra money for food allowance, then the government must at least provide them with discounts when veterans go grocery shopping. VA agrees that it is important for some veterans to receive assistance to pay for food and utilities. Under § 62.34 grantees may provide services that are necessary for maintaining independent living in permanent housing and housing stability. Such services include rental and utility assistance. For ongoing support, SSVF works with participants to get mainstream benefits assistance, for example linking participants to Supplemental Nutrition Assistance Program (SNAP), commonly

known as food stamps, to address food needs. In emergent situations, SSVF grantees can make purchases of food for grantees under § 62.34(e)(1). We are not making any changes based on this comment.

A commenter stated that the proposed rule would potentially enhance SSVFs innovative model of public-private partnership. However, the commenter added that the rule could be strengthened by requiring or effectively encouraging beneficiaries to also engage in alternatively-funded, complimentary VA and/or Continuum of Care (CoC) local or telehealth services that are likely to improve the veteran's future capacity to maintain housing stability. The commenter recommended that beneficiaries of expanded federal assistance under the proposed rule, in collaboration with SSVF personnel, be required to identify and actively engage in whole health or related services to strengthen relationships with family, friends and social supports, and/or increase opportunities to pursue, obtain and maintain employment throughout the period of assistance. As such, veteran families themselves would be more actively represented in the partnership throughout their period of participation.

The commenter also suggested that defining expectations, recommendations and/or commitments around the unique circumstances, goals and priorities of each unique veteran family, including the ability of SSVF personnel to issue time-limited waivers as appropriate based on veteran circumstances and/or local conditions, can contribute to greater integration, collaboration, modernization, and cost efficiencies in our commitment to ending veteran homelessness.

We agree that SSVF should be provided in conjunction with VA health care to eligible veterans to address all of the veteran's needs. As such, VA provides eligible veterans a whole health approach to health care that addresses not only the veteran's health care needs, but also identifies the aspects of the veteran's life that are affecting their health, then work with a team to establish strategies to address them as needed. This approach includes assisting homeless veterans obtain and retain permanent housing. Also, eligible veterans may receive health care in locations that are convenient for the veteran, which includes care in the community as well as telehealth services. Providing accessible care to veterans allows for better management of a veteran's health care needs.

Furthermore, SSVF requires that grantees provide case management services in accordance with 38 CFR 62.31. Such case management includes linkages with appropriate agencies and service providers in the area or community to help participants obtain needed supportive services. SSVF is uniquely positioned in that it can provide case management services to each family member, even non-veterans, to develop a service plan tailored to meet the needs of each family. The case management services are extensive and in addition to facilitating access to health care include delivering or facilitating access to legal services, transportation, benefits, employment, child care, and a host of other services. Accordingly, it is not necessary to make any changes based on this comment.

Another commenter inquired whether the Continuum of Care and SSVF grantees can agree to set different rates, up to the 35 percent cap, for different subpopulations of veterans and suggested that they be able to set different rates. The commenter included two examples. First, can a higher rental subsidy, expressed as a percent of the Fair Market Rent (FMR), be offered to extremely low-income households compared to very-low income households? In addition, can higher subsidy rates be offered to those with disabilities who are on a fixed income? The Continuum of Care and the SSVF grantees can recommend setting differing rates for different sub-populations. This flexibility affords the best level of assistance to those veterans with greater need. We make no changes based on this comment.

This same commenter also stated that at the time of recertification (after two years), if the household is still eligible for the shallow subsidy, it would be useful if the subsidy were reset at the new Fair Market Rent level published for that location and that year rather than the original Fair Market Rent level from a year or two prior. VA agrees with the commenter, and if the household is retained in SSVF and provided another period of shallow subsidy, the new period would be based on the Fair Market Rent in effect at the time of recertification. We are not making any changes based on this comment.

Another commenter asked whether, if a household seeks other SSVF services while enrolled in the shallow subsidy program, they would also only be required to get re-certified after the two-year period described in the proposed rule for other types of financial assistance, or would participants still need to get

re-certified every three months for other (non-shallow subsidy) financial assistance? The two-year recertification period would apply to all SSVF services and benefits, including other types of financial assistance. The only exception would be for rental assistance, other than the shallow subsidy, as a household cannot receive both the shallow subsidy and other forms of rental assistance described in § 62.34(a)(1). Should the household receive a Housing Choice voucher, or any similar form of subsidy designed to make the housing unit affordable for very-low income residents, including rental units with a significant underlying subsidy such as those found in Housing and Urban Development (HUD) supported Public Housing, the shallow subsidy would be discontinued. See § 62.34(a)(6). We are not making any changes based on this comment.

Two commenters were in support of the proposed rule, but suggested that VA add Contra Costa County to the list of CoCs that will receive enhanced rental assistance funding with the proposed amendment. The commenters stated that there is a clear and serious need for this assistance in Contra Costa County: the HUD-published Fair Market Rate (FMR) in Contra Costa is \$2,126 for a 2-bedroom unit, which is identical to Alameda and Berkeley's FMR of \$2,126 up from \$1,295 only ten years ago. According to the commenters, this massive rise in rental costs has put a strain on the county's low-income residents, including its homeless and at-risk veteran population. Residents are considered severely burdened by living costs if they pay more than 50 percent of their income on housing. In Contra Costa County, 25.8 percent, or one out of every four residents, pay more than half of their entire income on rent (U.S. Census

Bureau). With a very low 4.8 percent vacancy rate, Contra Costa has one of the highest FMRs, lowest vacancy rates, and most severely housing-burdened populations of any county in California. These commenters contend that increased rental assistance for service providers in Contra Costa would make a huge impact in the fight to alleviate this housing crisis for veterans and their families. The commenters added that recent data shows that there is a growing number of veterans in this community that would benefit from this assistance. Contra Costa's 2019 Point in Time (PIT) Count revealed a 14 percent increase in the number of homeless veterans compared to the previous year. The commenters explained that expanding the proposed rule to include Contra Costa County would make a difference in the lives of hundreds of at-risk veterans in the coming years.

These comments are beyond the scope of the final rule. Nevertheless, VA understands the commenters' concerns, and it is VA's intention to review the list of potential shallow subsidy locations and publish the list of counties in the Federal Register as required by the regulation soon after it becomes final and annually thereafter.

Another commenter suggested that VA remove the subsidy level cap of 35 percent of the FMR. The commenter stated that they understand the importance of differentiating this subsidy from the rental supports provided by the U.S. Department of Housing and Urban Development-VA Supportive Housing (HUD-VASH) Program. However, there are eligibility requirements for HUD Housing Choice Vouchers that exclude a substantial number of homeless veterans in

need of long-term rental assistance. The commenter added that many homeless veterans fall well below 30 percent Area Median Income. With the FMR as high as \$2,126 in Alameda County and \$3,170 in San Francisco County for a 2-bedroom unit, even with a 35 percent subsidy exceptionally few homeless veterans will be able to afford the \$1,381-\$2,060 remaining for the rental unit. This amendment would enable SSVF grantees to provide a subsidy program for veterans who do not otherwise qualify for HUD-VASH. VA acknowledges the commenter's concern and will now allow States and communities to offer State and local housing subsidy funds to participants in order to increase the level of subsidy up to the rent paid. We are amending § 62.34(a)(6) to allow State and local rental subsidies to be combined with SSVF rental assistance described at § 62.34(a). However, Federal subsidies still cannot be accepted by the participant who is receiving a subsidy under section 62.34. In instances where a higher level of federal rental assistance is required, the use of HUD housing vouchers, or other forms of subsidized housing, including other available rental subsidies should be considered. We are amending § 62.34(a)(6) to now state that rental assistance payments cannot be provided on behalf of participants for the same period of time and for the same cost types that are being provided through another Federal housing subsidy program; however, State and local funds may be combined as long as the total subsidy does not exceed the rent.

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 as final with one change as explained above.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this rule, represents 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 are authorized. All existing or subsequent VA guidance must be read to conform with this rule if possible. If not possible, such guidance is superseded by this rule.

Paperwork Reduction Act

This 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 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. 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 Orders 12866, 13563 and 13771

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is

necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule 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.

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

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

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 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 August 23, 2019, for publication.

Dated: August 23, 2019.

Michael P. Shores,
Director,
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 amends 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 § 62.34 by revising paragraph (a)(6) and adding paragraph (a)(8) to read as follows:

§ 62.34 Other supportive services.

* * * * *

(a) * * *

(6) Rental assistance payments cannot be provided on behalf of participants for the same period of time and for the same cost types that are being provided through another Federal housing subsidy program; however, such payments may be provided even though the participant is receiving State and local housing subsidy funds as long as the total subsidy received (including payments under this section) does not exceed the rent.

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(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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[FR Doc. 2019-18521 Filed: 8/27/2019 8:45 am; Publication Date: 8/28/2019]