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DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 62

RIN 2900-AO50

Supportive Services for Veteran Families Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This rule adopts as final, with changes, a proposed rule of the Department of Veterans Affairs (VA) to amend its regulations concerning the Supportive Services for Veteran Families Program (SSVF). In the proposed rule published on May 9, 2014, VA proposed to make a number of changes to the SSVF program to emphasize the intended goals of SSVF. VA is making minor changes to the proposed rule based on comments we received.

DATES: Effective Date: This rule is effective on [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 Program Office (10NC1), 4100 Chester Avenue, Suite 200, Philadelphia, PA 19104, (877) 737-0111. (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 9, 2014, VA published a proposed rule in the Federal Register, at 79 FR 26669, to amend its regulations concerning the

Supportive Services for Veterans Families (SSVF) program. Under authority provided by 38 U.S.C. 2044, VA has offered grants to eligible entities, identified in the regulations, that provide supportive services to very low-income veterans and families who are at risk for becoming homeless or who, in some cases, have recently become homeless. The program has been a tremendous success, providing services to over 62,000 participants in fiscal year (FY) 2013, 20,000 more than projected. To date, over 80 percent of those discharged from SSVF have been placed in or saved their permanent housing. VA received 27 comments on the rule, and many of them supported the proposed changes in whole or in part. This final rule adopts the proposed rule with changes as discussed below.

Definitions

Several commenters offered suggestions regarding the definition of various terms. The most common recommendation was to amend the definition of the term “homeless.” Several of these comments recommended that VA establish different standards for homelessness in urban and rural areas. However, “homeless” is a term defined in statute. In 38 U.S.C. 2044(f)(3), the term “homeless” is defined as having the same meaning given that term in section 103 of the McKinney-Vento Homelessness Assistance Act, codified at 42 U.S.C. 11302, which does not differentiate between urban and rural areas. Consequently, VA lacks the authority to vary the definition of “homeless” between urban and rural areas. Even if VA did have authority to apply different definitions for different areas, one of the aims for the proposed rule was to adopt a common definition that would be used by both VA and the Department of

Housing and Urban Development (HUD), which similarly does not contemplate a difference between urban and rural areas in its regulatory definition of “homeless.” See 24 CFR 576.2. Use of a common definition simplifies operations for community providers and ensures access to a range of services from both Departments. This goal was supported by several commenters, who endorsed the adoption of a common definition. VA agrees with these commenters and is not making a change to the definition of homeless in this final rule.

The SSVF program does allow for some variation between urban and rural areas, and to the extent permitted by statute at 38 U.S.C. 2044(a)(5) and 2044(f)(6)(C), VA encourages community providers to consider the local conditions and needs of veterans in their community when developing programs and delivering services. VA can also use Notices of Funding Availability (NOFA) to emphasize areas where SSVF recipients should concentrate resources or support, and VA believes the NOFA process provides sufficient flexibility to address the needs of urban and rural veterans alike.

One commenter suggested the definition of homeless be revised to match that used in the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act, Public Law 111-22. The changes to the definition of homeless enacted with the HEARTH Act are codified at 42 U.S.C. 11302, which is the same definition VA uses based on 38 U.S.C. 2044(f)(3). VA believes HUD’s implementing regulations, at 24 CFR 576.2, take into account the recent changes in law and provide the best source for a reference to homelessness because it will ensure a common Federal definition for homeless benefits. Another commenter suggested that HUD’s definition at 24 CFR 576.2 was out of date and antiquated, and suggested that VA should emphasize that

veterans who are at-risk for homelessness should be eligible. VA's definition of "homeless" includes those who are at-risk for homelessness, and in each NOFA, VA identifies the prevention of homelessness among those who are at risk as the first category of eligible persons. Additionally, HUD's regulations are used to implement the Homelessness Prevention and Rapid Rehousing Program and the Emergency Solutions Grants Program, which are designed to assist beneficiaries who are homeless or at risk for homelessness by coordinating the provision of services and short-term housing. VA is therefore not making a change based on these comments.

Another commenter noted that while HUD's definition of "homeless" does not take into account the length of time between homeless episodes when defining chronically homeless, VA should develop a clearer definition for chronically homeless as it relates to other VA homeless assistance programs. However, and as the commenter notes, the SSVF program is not designed to address the problems of the chronically homeless. Additionally, VA believes maintaining a common definition with HUD is important to ensure that providers are using a term with a common meaning when providing services to homeless veterans. VA is not making a change based on this comment.

One issue also concerning the definition of "homeless" was whether persons temporarily residing with others ("couch surfing") are included in the definition. This issue was raised by several commenters, some of whom came to opposite conclusions on the matter. To clarify, so-called couch surfers are not literally "homeless," as the term is used by HUD and VA, but they are at risk of homelessness, and hence could still be eligible for benefits through the SSVF program. VA annually produces a NOFA to

advise interested parties to apply for SSVF funding, and in the NOFA, VA describes different categories for funding and support. Category 1 refers to prevention, and entities providing services to “couch surfers” would be assisting persons at risk for homelessness, and hence would qualify.

VA also received a comment recommending a revised definition for the term “permanent housing” to refer to housing without a designated length of stay. VA agrees with this comment and is revising the definition of permanent housing accordingly to clarify that an undesignated length of stay is one where an individual or family has a lease that is renewable and terminable only for cause. This change will ensure that homeless veterans with permanent housing will have full tenancy rights under the law and would ensure that they cannot be placed into settings that SSVF is not intended to support, such as transitional housing or institutional care facilities.

We also received two recommendations to add a definition of “rapid rehousing.” Both commenters believed that adding this definition would assist grantees by providing a better understanding of the principal mission of SSVF. We agree, and are adopting the definition of “rapid re-housing” recommended by one of the commenters. Both commenters offered recommendations, and VA is selecting the proposal with a more robust and well-developed definition. That definition will provide that “rapid re-housing” is an intervention designed to help individuals and families quickly exit homelessness and return to permanent housing. It will emphasize that rapid re-housing is provided without preconditions (such as employment, income, absence of criminal record, or sobriety), and that resources and services should be tailored to the unique needs of the household. It will clarify that there are three goals associated with rapid re-housing:

identifying housing, providing rent and move-in financial assistance, and case management and services. We also state that while a rapid re-housing program must have all three core components available, it is not required that a single entity provide all three services nor that a household utilize them all. Although this term is not used in these regulations, it is a term that is commonly used in NOFAs and administration of the SSVF program.

Finally, we received one comment recommending we amend the definition for the term “veteran.” While 38 U.S.C. 2044 does not include a definition for the word “veteran,” this term is defined in statute at 38 U.S.C. 101(2). VA is not making a change based on this comment.

Eligibility for SSVF Services

Another related issue raised by several commenters dealt with eligibility for SSVF services. One commenter recommended that children and former spouses of veterans be eligible for benefits through the SSVF program. VA does not have authority to provide assistance to such persons unless they are part of a “veteran family,” which is defined in 38 U.S.C. 2044(f)(7) to include “a veteran who is a single person and a family in which the head of the household or the spouse of the head of the household is a veteran.” The term spouse is defined at 38 U.S.C. 101(31), and does not include divorcees. VA is not making a change based on these comments.

One commenter expressed support for the “but for” test used to determine a veteran’s eligibility for assistance from SSVF, but encouraged VA to adopt a mandatory assessment for application in VA’s screening requirements to ensure consistent and

intelligent application of this standard. Another commenter suggested that such guidance could be provided through a guidebook or through SSVF University. The “but for” test determines eligibility by asking if a veteran would be homeless if SSVF services were not being provided. This standard is used in HUD’s programs, and ensures that recipients are not determined to be ineligible for a program’s benefits upon receiving such benefits. VA does not believe it should articulate additional requirements in regulations. VA has published an SSVF Program Guide (updated March 31, 2014, available online at:

http://www.va.gov/HOMELESS/ssvf/docs/SSVFUniversity/SSVF_Program_Guide_Marc_h31_2014.pdf) that provides guidance to SSVF recipients to consider when applying the

“but for” test, and VA’s NOFAs provide further guidance as well. Indeed, another commenter supported adoption of the “but for” test and specifically noted that the next SSVF NOFA would offer necessary guidance in this area. As this commenter assumed, VA will update its guidance in the next NOFA we issue to reflect the changes made by this regulation. VA staff is also available to assist recipients in making these determinations when appropriate. VA is concerned that if it provided further guidance in regulation, it could produce a national standard that cannot be adjusted to account for local variations, and that hence would be inadequate for serving homeless veterans and their families in at least some communities. VA is not making a change from the proposed rule based on this comment.

Another commenter suggested that grantees should focus their resources on the lowest-income veterans, and that programs with such a focus tend to have the greatest results in terms of reducing homelessness. VA agrees and believes that the new

requirement for grantees to identify extremely low-income veterans and target resources to this population will have a positive effect. Another commenter recommended that VA pilot this approach, rather than establish a common requirement across the country, to ensure that local variables are taken into account. VA's definition of extremely low-income veteran family focuses on the area median income (AMI) specifically so that differences in income and cost of living can be taken into account. Additionally, grantees are located in the communities they serve and are uniquely equipped to address the needs of the local homeless population. VA is not making any changes based on these comments.

VA received several comments concerning VA's proposed standard in § 62.34(f), which would have limited SSVF emergency housing assistance to situations where permanent housing has been identified. In the supplemental information of the proposed rule, VA stated that permanent housing must be both identified and secured. These commenters expressed concern that the requirement that such housing be "secured" could result in homeless veterans having no short-term assistance, and would be inconsistent with the "housing first" model of the program. VA agrees with these concerns and is eliminating the requirement that such housing be secured. Under the revised provision, it will be sufficient to generally identify a housing unit to provide emergency housing assistance, as long as the other requirements of § 62.34 are satisfied.

VA also proposed that homeless veterans could receive up to 72 hours of emergency housing assistance if no identified housing is available. In recognition of a comment that 72 hours may not always be enough time to secure housing for a single

veteran, VA is including a new provision that will allow for continued provision of emergency housing assistance when the grantee can certify that no other housing is available. For example, if a grantee can certify that no beds are available in a Grant and Per Diem (GPD) residence or a Health Care for Homeless Veterans (HCHV) residential program, the grantee can continue to provide emergency assistance to a homeless veteran through the SSVF program to ensure the veteran has a place to stay. VA is also extending the period of time in which a veteran and his or her spouse with dependent(s) can receive emergency housing assistance from 30 days to 45 days. We believe that by including this flexibility, more homeless veterans and their families will avoid a relapse into homelessness while waiting for permanent housing.

One commenter suggested that extremely low-income veteran families may need extended assistance, but that such extensions should be determined for each individual family through routine reassessments. VA notes that SSVF grantees decide the type and amount of assistance to offer participants, and that they can provide sustained support when appropriate. VA believes that the latitude provided for extremely low income families in the proposed rule is appropriate, and that no further changes are needed as a result of this comment.

Another commenter suggested that veterans who are in a GPD program for more than 30 days should be able to receive assistance through the SSVF program. VA notes that such veterans, if they otherwise meet the eligibility criteria for the SSVF program, may receive services from both programs. SSVF is intended to provide rapid re-housing assistance through a short-term, focused intervention. As long as the assistance that GPD participants require is consistent with this mission and the veteran

meets established eligibility criteria, SSVF grantees should not hesitate to provide services to them. VA is not making a change based on this comment.

Another commenter suggested that the proposed rule would mean that service-connected disabled women veterans would not be eligible for services from the SSVF program if they did not have a spouse or minor dependents. This is not a correct reading of the rule. A veteran family, as defined in § 62.2, includes a veteran who is a single person. Nothing in the proposed rule would change this standard, and as a result, VA is not making a change based on this comment.

Finally, one commenter recommended that VA only include two categories of eligible veterans under § 62.11: those needing prevention and those seeking rapid re-housing. While these are the two primary forms of assistance, VA believes the three criteria identified in § 62.11 represent the best description of eligible veterans, and therefore, VA is making no changes based on this comment.

Types of Covered Services

Several commenters provided recommendations concerning the types of services that SSVF assistance should be able to provide. One commenter recommended that emergency housing assistance be available for up to 9 months during any 12 month period to ensure that families are able to resolve crises that could otherwise result in them becoming homeless. The proposed rule would allow for this extension, so we are not making any changes based on this comment.

Commenters recommended that VA create a separate category of assistance to cover a reasonable broker's fee for finding and arranging permanent housing. The

commenters explained that broker's fees are often necessary in high population density areas, such as New York City or Los Angeles, and that fees can sometimes use the entire available amount of housing stability assistance. VA agrees with these comments and is including a new paragraph (e)(3) under § 62.34 to cover the category of assistance that would specifically allow for provision of a reasonable broker's fee when appropriate.

Another commenter urged VA to allow SSVF funds to pay for emergent medical or dental needs and medication. We do not believe we have authority to allow grant recipients to provide financial assistance for such purposes, and as a result, are not making a change based on this comment. The supportive services VA can provide are identified at 38 U.S.C. 2044(b), and paragraph (b)(1)(D) of section 2044 only permits VA to offer "assistance in obtaining and coordinating the provision of other public benefits . . . including—(i) health care services (including obtaining health insurance)." In this context, VA interprets the statute to only authorize making funds available for coordinating and obtaining health care services from other providers, not to pay for or furnish such care or services. Eligible veterans may receive health care through VA medical facilities to address their medical needs.

One commenter suggested VA allow increased flexibility for child care services. The commenter noted that veteran families can have a multitude of compositions, and that there may not be adequate community resources to support a child after school. VA understands that different families and children have different needs, but we believe it is necessary that we establish some standards to ensure that services are not provided for children who do not require child care. We believe that 13 is an

appropriate age to draw that line, as children over that age are generally considered capable of taking care of themselves for short periods of time that would otherwise require supervision or care. Removing the age limit could allow misuse of these benefits, which would result in fewer resources being available to assist homeless veterans and their families.

Another commenter recommended that VA ensure that basic air conditioning and heating should be an allowable expense in certain situations. VA believes that the proposed revisions would allow this when appropriate. In § 62.36(f), which cites to HUD's regulations at 24 CFR 583.300(b), we establish standards of habitability. HUD's regulations provide in 24 CFR 583.300(b)(7) that "[t]he housing must have adequate heating and/or cooling facilities in proper operating condition." If the residence requires but lacks heating or cooling based on the local climate, it would not be eligible for housing. As a result, VA is not making a change based on this comment.

One commenter stated that women veterans look for, but are not finding, additional assistance from other VA, Federal, state, or local programs. VA currently requires SSVF grantees to coordinate access for other public benefits, and our reviews of these programs indicate that such coordination is taking place. As a result, we are not making any changes from this comment.

Another commenter suggested that the proposed changes to general housing stability assistance are acceptable if the limits identified in the rule are followed. VA intends to ensure that SSVF grantees adhere to the requirements of the program, and is not making a change based on this comment.

Several commenters recommended that SSVF funding should be available to assist homeowners. One commenter provided several scenarios in which a homeowner should qualify for financial assistance, including when the home's value is below the local average, when the home is uneconomical based on the potential sale price versus the demolition cost, when the home's tax value is less than 100% of the area median income, or when relocating the veteran would increase the risk for homelessness. This commenter argued that because poverty is often inter-generational, VA should provide greater flexibility to assist homeowners.

VA agrees that poverty and homelessness can impact multiple generations of a family, and that is why it has supported the SSVF program, which provides assistance to a veteran's family to help prevent and escape from homelessness. VA also notes that homeowners are eligible under § 62.11(a) if they would be lacking a fixed, regular, and adequate nighttime residence but for the grantee's assistance. Under the proposed rule at § 62.38(a), SSVF grant recipients could assist homeowners in a number of ways, but could not provide mortgage assistance. Homeowners often require substantial assistance to cover costs or fees associated with a mortgage, and hence would require a greater share of resources than renters or leasers of property, resulting in an uneven distribution of assistance. Additionally, there are many programs at the Federal, state, and local levels to assist homeowners with their mortgages. Also, there is little evidence that homeowners become homeless upon losing a property. VA can ensure more persons receive support through the SSVF program by excluding mortgage costs from eligible financial assistance. Consequently, VA is not making a change to allow for financial assistance to cover costs associated with a mortgage.

One commenter asked VA to clarify what “other costs associated with home ownership” includes. This was a phrase we used in the supplemental information of the proposed rule to describe § 62.38(a). That paragraph says that SSVF funds may not be used to pay for “mortgage costs or costs needed by homeowners to assist with any fees, taxes, or other costs of refinancing.” We believe this language is clear and refers to costs associated with paying a security interest or tax assessment for real property, and we are not making a change based on this comment.

One commenter suggested that SSVF funds be made available to cover the cost of home repairs or alterations. VA does not believe this would be an appropriate use of SSVF funds for the same reason that mortgage costs are not included. SSVF is not a capital grant program, and other programs, such as Adapted Housing grants overseen by the Veterans Benefits Administration, already provide this service. VA is not making a change based on this comment.

One commenter suggested that VA should specifically state that legal assistance can be made available to resolve transportation issues. We agree that difficulty securing transportation resulting from the lack of a driver’s license can be an obstacle to escaping homelessness. While we believe the proposed rule would have allowed for this, VA is making a minor revision to § 62.33(g) to specifically note that authorized legal assistance also includes assistance such as the lack of a driver’s license.

One commenter expressed concern with extending the period of Temporary Financial Assistance (TFA) because it could foster more reliance on the program. As explained in the proposed rule, VA received feedback from grantees suggesting that veteran families at lower levels of income are more difficult to reach and require more

resources for interventions to succeed. Based on this feedback, we believe that the increased benefit amounts will help ensure that grantees can be successful in supporting extremely low-income veteran families while minimizing the risk that veteran families become dependent on such assistance over the long term. As a result, VA is making no changes based on this comment.

Another commenter recommended that providers be authorized to make emergency housing assistance available once every 2 years instead of once every 3 years, as it is not unusual for a person who is homeless, formerly homeless, or at risk of homelessness to face another crisis that would require emergency assistance within a 2 year period of initially receiving support. VA agrees with this comment, and is changing the 3 year standard proposed in § 62.33 and 34 to now permit such assistance no more than once every 2 years. These revisions include changes to § 62.34(c)(1)-(2), which were not previously identified in the proposed rule but which would be inconsistent given these changes.

Another commenter noted that limitations on the use of general housing stability assistance funds is appropriate, so long as the limits in the rule are followed, and VA intends to do so. We are not making a change based on this comment.

Finally, one commenter suggested that caps on TFA for otherwise eligible families fleeing domestic violence should be lifted in the event that a new episode of domestic violence occurs. The commenter noted that this change would allow SSVF grantees to serve the immediate needs of households fleeing domestic violence. VA agrees with this recommendation and is including a provision in a new paragraph (e) of § 62.35 that would allow families experiencing domestic violence to receive additional

TFA resources. This would apply even if the veteran was the aggressor in the situation. Under the law, a veteran family is defined to include a veteran who is a single person, and a family in which the head of household or the spouse of the head of household is a veteran. 38 U.S.C. 2044(f)(7). Through regulation, VA has interpreted this to authorize support if a veteran becomes absent from a household or dies while other members of the veteran family are receiving supportive services for a grace period, not to exceed 1 year, following the absence or death of the veteran. 38 CFR 62.35(c). In the event a participant becomes ineligible to receive supportive services under this Program, the grantee must provide the participant with information on other available programs or resources. 38 CFR 62.35(d). VA would apply these same principles and practices to cases of domestic violence. Families experiencing domestic violence should not be forced to remain in a volatile situation that can contribute to continued homelessness. VA is additionally revising the provisions concerning TFA to specifically authorize additional allocations in the event of a subsequent episode of domestic violence. Receipt of such support would reset the time period during which a family could not receive services under § 62.34; for example, under § 62.34(b)(1), a participant may receive payments for utilities for a maximum of 10 months during a 2-year period, and the 2-year period would be re-started after providing additional assistance under § 62.35(e) for a family fleeing domestic violence. It is important to understand that these benefits will be provided on a temporary basis and grantees should work to connect the family with other resources within the Continuum of Care. In addition, these benefits will only be available for families who are already receiving supportive services

through this Program. If a family has previously left the household of an eligible veteran and seeks services from this Program, VA would not be able to provide support.

In developing the final rule, VA identified an area of potential confusion or conflict. In proposed § 62.34(a)(1), VA proposed allowing for rental assistance to be used to pay for penalties or fees incurred and required to be paid by the participant under an existing lease or court order. In proposed § 62.38(g), VA proposed prohibiting grantees from using supportive services grant funds to pay for court-ordered judgments or fines. These provisions could be read in conflict, but were not intended to be. To remove any confusion, VA is modifying § 62.38(g) to prohibit the use of funds to pay for court-ordered judgments, except when such payments are authorized under § 62.34(a)(1). This revision is purely technical and will clarify VA's original intent.

Logistical and Operational Issues

Several commenters raised questions or offered recommendations on the logistics and operations of the SSVF program. One asked if the proposed revisions would prohibit a participating organization from reviewing the classification of participants to determine in which category they should be placed. The rule only requires that a reclassification occur once every 3 years, but it does not prohibit a review more often than that, so if a provider wanted to review these classifications more frequently, they would be free to do so. VA is not making a change based on this comment.

One commenter, in noting the proposed changes, suggested that the percentage of funds allocated for homelessness prevention should be increased to support

extremely low-income veteran families, case management services, and other supportive services. Determinations regarding the allocation of funds are outside the scope of this rule, as they are announced in each year's NOFA. Future NOFAs will consider the changes made by this rule when allocating resources. The same commenter suggested that grant recipients in the same geographic area will coordinate outreach efforts to identify appropriate veteran families. This is a stated expectation for the program already, and VA agrees with this approach wholeheartedly. Such a strategy will ensure that assistance is available for more veterans in a given area. VA is not making a change based on this comment.

One commenter also recommended that VA provide more HUD-VA Supportive Housing (HUD-VASH) vouchers to assist veterans in securing housing. This comment is outside the scope of this rulemaking, and the number of the HUD-VASH vouchers issued each year is determined based on the availability of appropriations. As a result, VA is not making a change based on this comment.

Two commenters suggested that participation in a Continuum of Care's (CoC) coordinated assessment system should be required for participating grantees. VA agrees with this recommendation, and adopts the specific language provided by one commenter in this area as a new paragraph (g) in § 62.36. Specifically, VA will require grantees to participate in the "development, implementation, and ongoing operations of their local Continuum of Care's coordinated assessment system, or equivalent, as described in the McKinney-Vento Act as amended by the HEARTH Act." Many providers under the SSVF program are already familiar with participating in these efforts, and VA agrees with the commenters that this will compel greater collaboration

among VA, HUD, and CoC partners and strengthen VA's oversight of coordination activities among all grantees and their communities.

Another commenter recommended that VA allow SSVF administrators to exceed identified limits on the amount of assistance that can be provided in a limited number of cases. While VA understands the point that some special cases may require assistance in excess of the limits, allowing exceptions to these limits would be counterproductive by encouraging high resource use to a small number of veterans at the expense of providing assistance to a larger number of veterans. Moreover, these exceptions could ultimately render the rule meaningless, and the administrative burden for tracking or approving such exceptions would divert resources from assisting homeless veterans. As a result, VA is not making changes based on this comment.

Another commenter offered a similar recommendation by suggesting that rather than establishing maximum amounts of financial assistance that can be offered over a set period of time (e.g., no more than \$1,500 per 2-year period for general housing stability under § 62.34(e)(2)), VA should allow smaller amounts of assistance over a longer period of time. We believe that such a system would be extremely difficult to administer and would provide limited benefits for veterans. SSVF grantees would have to track every allocation made to every veteran family for every purpose to determine if such allocations were in excess of the authorized amount over an extended period of time. This would require greater overhead expenses, which would detract from the amount made available to homeless veterans.

One commenter expressed concern that funds distributed through the SSVF program were being provided to grantees in the Atlanta metro area who were not using

these resources to provide assistance to homeless veterans. The commenter asked that no funding be provided to these entities until after there has been a formal investigation by the Office of Inspector General (OIG). VA takes seriously any concerns about the allocation of available resources. OIG recently completed an audit of the SSVF program (“Audit of the Supportive Services for Veterans Families Program,” OIG Report 13-01959-109, published March 31, 2014) and found that it has “adequate financial controls in place that are working as intended to provide reasonable assurance that funds are appropriately expended by grantees.” VA forwarded this comment to the OIG, which has authority to determine whether it will conduct a review. If OIG investigates and finds there are or were issues, we will take appropriate corrective action to ensure that resources are used for authorized purposes only.

Based on the rationale set forth in the preamble to the proposed rule and in this preamble, VA is adopting the proposed rule as a final rule, with the above stated changes.

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

Although this action contains provisions constituting collections of information, at 38 CFR 62.20, 62.36, and 62.60, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), no new or proposed revised collections of information are associated with this final rule. The information collection requirements for §§ 62.20, 62.36, and 62.60 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900-0757.

In § 62.20(a), we state that the collection of information must include a description of how the applicant will ensure that the program is targeted to very-low income families. Under the current OMB-approved application, VA Form 10-10072, VA requires the applicant to “[d]escribe the proposed outreach and referral plan to identify and assist eligible very low-income Veteran families who are most in need of supportive services.” The current application specifies that the response should include an explanation of the “[i]dentification of target population(s) to be served.” Because this specific question on the application correlates directly with the requirement that we are adding in § 62.20(a), the information collection and corresponding burden hours remain unchanged.

In a final rule published on November 10, 2010, we stated that OMB had approved collections of information contained in, inter alia, § 62.36(c). 75 FR 68975, 68979-80, Nov. 10, 2010. In both the proposed and final regulation, a collection also appeared in § 62.36(a). That collection required grantees to classify all participants and verify and document participant eligibility at least once every 3 months. The verification of eligibility is reflected on VA Form 10-0508b, one of the forms approved by OMB and

assigned OMB control number 2900-0757, which requires quarterly reports of detailed information and data on participant screenings and compliance with all SSVF requirements. However, the requirement to reclassify participants every 3 months was not contained on that form. In § 62.36(a), we remove the requirement that grantees reclassify participant eligibility every 3 months; however, we retain the requirement that the grantee certify participant eligibility. Therefore, although we are amending the collection that appears at § 62.36(a), the amendment will not result in a change to the form. Moreover, although we omitted specific reference to § 62.36(a) in the final rulemaking published on November 10, 2010, we did in fact seek approval for the collection requirements in VA Form 10-0508b, which appear in this rule. Therefore, we do not believe that this rulemaking contains amendments to collections approved under OMB control number 2900-0757.

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 only impact those entities that choose to participate in SSVF. 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 will have any impact on small entities, it will not have an impact on a substantial number of small entities. In FY 2013, 151 organizations successfully submitted applications for SSVF funding and would be effected by this rule. The changes described in this rule

should have a positive impact compared to the existing rule, as changes will generally aid grantees in providing service and thereby reduce time demands. On this basis, the Secretary certifies that the adoption of 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. 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 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,” requires 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 Web site at <http://www.va.gov/orpm/>, by following the link for VA Regulations Published from FY 2004 to FYTD.

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 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. Jose D. riojas, Chief of Staff, approved this document on February 12, 2015, 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-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.

Dated: February 19, 2015

William F. Russo,
Acting Director,
Office of Regulation Policy & Management,
Office of the General Counsel,
U.S. Department of Veterans Affairs.

For the reasons set out in the preamble, the Department of Veterans Affairs amends 38 CFR part 62 as follows:

PART 62 – SUPPORTIVE SERVICES FOR VETERAN FAMILIES PROGRAMS

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 § 62.2 by:

a. Removing the definition of “Emergency supplies”.

b. Adding the definitions of “Emergency housing”, “Extremely low-income veteran family”, “General housing stability assistance”, and “Rapid re-housing”, in alphabetical order.

c. Revising the definitions of “Homeless”, “Occupying permanent housing”, and “Permanent housing”.

The additions and revisions read as follows:

§ 62.2 Definitions.

* * * * *

Emergency housing means temporary housing provided under § 62.34(f) that does not require the participant to sign a lease or occupancy agreement.

Extremely low-income veteran family means a veteran family whose annual income, as determined in accordance with 24 CFR 5.609, does not exceed 30 percent of the median income for an area or community.

General housing stability assistance means the provision of goods or payment of expenses that are directly related to supporting a participant's housing stability and are authorized under § 62.34(e).

* * * * *

Homeless has the meaning given that term in 24 CFR 576.2.

* * * * *

Occupying permanent housing means meeting any of the conditions set forth in § 62.11.

* * * * *

Permanent housing means community-based housing without a designated length of stay where an individual or family has a lease in accord with state and Federal law that is renewable and terminable only for cause. Examples of permanent housing include, but are not limited to, a house or apartment with a month-to-month or annual lease term or home ownership.

* * * * *

Rapid re-housing means an intervention designed to help individuals and families quickly exit homelessness and return to permanent housing. Rapid re-housing assistance is offered without preconditions (such as employment, income, absence of criminal record, or sobriety) and the resources and services provided are typically tailored to the unique needs of the household. The three core components of rapid re-housing include housing identification, rent and move-in financial assistance, and rapid re-housing case management and services. While a rapid re-housing program must

have all three core components available, it is not required that a single entity provide all three services nor that a household utilize them all.

* * * * *

3. Revise § 62.11 to read as follows:

§ 62.11 Participants—occupying permanent housing.

A very low-income veteran family will be considered to be occupying permanent housing if the very low-income veteran family:

(a) Is residing in permanent housing and at risk of becoming homeless, per conditions in paragraph (b)(1) of this section, but for the grantee's assistance;

(b)(1) Is lacking a fixed, regular, and adequate nighttime residence, meaning:

(i) That the veteran family's primary nighttime residence is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned bus or train station, airport, or camping ground;

(ii) That the veteran family is living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals); or

(iii) That the veteran family is exiting an institution where the veteran family resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) Are at risk to remain in the situation described in paragraph (b)(1) of this section but for the grantee's assistance; and

(3) Scheduled to become a resident of permanent housing within 90 days pending the location or development of housing suitable for permanent housing; or

(c) Has met any of the conditions described in paragraph (b)(1) of this section after exiting permanent housing within the previous 90 days to seek other housing that is responsive to the very low-income veteran family's needs and preferences.

Note to paragraph (c): For limitations on the provision of supportive services to participants classified under paragraph (c) of this section, see § 62.35.

(Authority: 38 U.S.C. 501, 2044)

4. Amend § 62.20 by:

a. Redesignating paragraphs (a)(2) through (7) as paragraphs (a)(3) through (8) respectively.

b. Adding a new paragraph (a)(2).

c. Adding a parenthetical at the end of the section.

The additions to read as follows:

§ 62.20 Applications for supportive services grants.

(a) * * *

(2) A description of how the applicant will ensure that services are provided to very low-income veteran families for whom:

(i) No appropriate housing options have been identified for the veteran family;
and

(ii) The veteran family lacks the financial resources and/or support networks to obtain or remain in permanent housing;

* * * * *

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0757.)

5. Amend § 62.22 by revising paragraph (b)(2)(i) to read as follows:

§ 62.22 Scoring criteria for supporting services grant applicants.

* * * * *

(b) * * *

(2) * * *

(i) Applicant has a feasible outreach and referral plan to identify and assist very low-income veteran families occupying permanent housing that may be eligible for supportive services and are most in need of supportive services. The plan ensures that the applicant's program will assist very low-income families who also meet the requirements of § 62.20(a)(2).

* * * * *

6. Amend § 62.31 by:

a. Revising the introductory text.

b. In paragraph (d), removing the word "and".

c. In paragraph (e), removing the period at the end of the paragraph and adding in its place "; and".

d. Adding paragraph (f).

The revisions and additions read as follows:

§ 62.31 Supportive service: Case management services.

Grantees must provide case management services that prioritize housing stability as the primary goal of SSVF services and include, at a minimum:

* * * * *

(f) Assisting participants in locating, obtaining, and retaining suitable permanent housing. Such activities may include: Identifying appropriate permanent housing and landlords willing to work with homeless veteran families; tenant counseling; mediation with landlords; and outreach to landlords.

* * * * *

7. Amend § 62.33 by:

- a. Revising paragraph (c).
- b. In paragraph (d)(3)(i), removing “\$1,000” and adding in its place “\$1,200”.
- c. Revising paragraph (g).
- d. Revising paragraph (h) introductory text.
- e. Revising paragraph (h)(2)(i).

The revisions read as follows:

§ 62.33 Supportive service: Assistance in obtaining and coordinating other public benefits.

* * * * *

(c) Personal financial planning services, which include, at a minimum, providing recommendations regarding day-to-day finances and achieving long-term budgeting and financial goals. SSVF funds may pay for credit counseling and other services necessary to assist participants with critical skills related to household budgeting, managing money, accessing a free personal credit report, and resolving credit problems.

* * * * *

(g) Legal services, including court filing fees, to assist a participant with issues that interfere with the participant's ability to obtain or retain permanent housing or supportive services, including issues that affect the participant's employability and financial security (such as the lack of a driver's license). However, SSVF funds may not be used to pay for court-ordered judgments or fines, pursuant to § 62.38.

(h) Child care for children under the age of 13, unless disabled. Disabled children must be under the age of 18. Child care includes the:

* * * * *

(2) * * *

(i) Payments for child care services must be paid by the grantee directly to an eligible child care provider and cannot exceed a maximum of 6 months in a 12-month period, and 10 months during a 2-year period, such period beginning on the date that the grantee first pays for child care services on behalf of the participant. For extremely low-income veteran families, payments for child care services on behalf of that participant cannot exceed 9 months in a 12-month period and 12 months during a 2-

year period, such period beginning on the date that the grantee first pays for child care services on behalf of the participant.

* * * * *

8. Amend § 62.34 by:

- a. Revising paragraphs (a)(1), (b)(1), (c)(1) and (2), and (e).
- b. Redesignating paragraph (f) as paragraph (g).
- c. Adding a new paragraph (f).

The revisions and addition read as follows:

§ 62.34 Other supportive services.

* * * * *

(a) * * *

(1) A participant may receive rental assistance for a maximum of 10 months during a 2-year period (consecutive or nonconsecutive), such period beginning on the date that the grantee first pays rent on behalf of the participant; however, a participant cannot receive rental assistance for more than 6 months in any 12-month period beginning on the date that the grantee first pays rent on behalf of the participant. For extremely low-income veteran families, payments for rent cannot exceed 9 months in any 12-month period and 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 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. In all instances, rental assistance

may only be provided if the payment of such rental assistance will directly allow the participant to remain in permanent housing or obtain permanent housing.

* * * * *

(b) * * *

(1) A participant may receive payments for utilities for a maximum of 10 months during a 2-year period, such period beginning on the date that the grantee first pays utility fees on behalf of the participant; provided, however, that a participant cannot receive payments for utilities for more than 6 months in any 12-month period beginning on the date that the grantee first pays a utility payment on behalf of the participant. For extremely low-income veteran families, payments for utilities cannot exceed 9 months in any 12-month period and 12 months during a 2-year period, such periods beginning on the date that the grantee first pays a utility payment on behalf of the participant. The payment for utilities may be for utility payments that are currently due or are in arrears, provided that the payment of such utilities will allow the participant to remain in permanent housing or obtain permanent housing.

* * * * *

(c) * * *

(1) A participant may receive assistance with the payment of a security deposit a maximum of one time in every 2-year period, such period beginning on the date the grantee pays a security deposit on behalf of a participant.

(2) A participant may receive assistance with the payment of a utility deposit a maximum of one time in every 2-year period, such period beginning on the date the grantee pays a utility deposit on behalf of a participant.

* * * * *

(e) General housing stability assistance. (1) A grantee may provide to a participant items necessary for a participant's life or safety on a temporary basis, in order to address a participant's emergency situation.

(2) A grantee may pay directly to a third party (and not to a participant), in an amount not to exceed \$1,500 per participant during any 2-year period, beginning on the date that the grantee first submits a payment to a third party, the following types of expenses:

(i) Expenses associated with gaining or keeping employment, such as obtaining uniforms, tools, certifications, and licenses.

(ii) Expenses associated with moving into permanent housing, such as obtaining basic kitchen utensils, bedding, and other supplies.

(iii) Expenses necessary for securing appropriate permanent housing, such as fees for housing applications, housing inspections, or background checks.

(3) A grantee may pay directly to a third party (and not to a participant) a reasonable amount for a broker's fee when such a third party has assisted in identifying permanent housing. The reasonableness of a fee will be determined based on conditions in the local housing market.

(f) Emergency housing assistance. If permanent housing, appropriate shelter beds and transitional housing are not available and subsequent rental housing has been identified generally but is not immediately available for move-in by the participant, then a grantee may place a participant in emergency housing, subject to the following limitations:

(1) Placement for a single veteran may not exceed 72 hours, unless the grantee can certify that appropriate shelter beds and transitional housing are still unavailable at the end of the 72 hour period.

(2) Placement for a veteran and his or her spouse with dependent(s) may not exceed 45 days.

(3) A participant may be placed in emergency housing only once during any 2-year period, beginning on the date that the grantee first pays for emergency housing on behalf of the participant.

(4) Permanent housing will be available before the end of the period during which the participant is placed in emergency housing.

(5) The cost of the emergency housing must be reasonable in relation to the costs charged for other available emergency housing considering the location, quality, size, and type of the emergency housing.

* * * * *

9. Amend § 62.35 by:

a. Revising paragraph (a).

b. In paragraph (b), remove “§ 62.11(a)(3)” and add in its place “§ 62.11(c)” in all places it occurs.

c. Adding a new paragraph (e).

The revision and additions read as follows:

§ 62.35 Limitations on and continuations of the provision of supportive services to certain participants.

(a) Extremely low-income veteran families. A participant classified as an extremely low-income veteran family will retain that designation as long as the participant continues to meet all other eligibility requirements.

* * * * *

(e) Families fleeing domestic violence. Notwithstanding the limitations in § 62.34 concerning the maximum amount of assistance a family can receive during defined periods of time, a household may receive additional assistance if it otherwise qualifies for assistance under this Part and is fleeing from a domestic violence situation. A family may qualify for assistance even if the veteran is the aggressor or perpetrator of the domestic violence. Receipt of assistance under this provision resets the tolling period for the limitations on the maximum amount of support that can be provided in a given amount of time under § 62.34.

* * * * *

10. Amend § 62.36 by:

- a. Revising paragraph (a).
- b. Adding new paragraphs (f) and (g).
- c. Adding a parenthetical at the end of the section.

The revision and additions read as follows:

§ 62.36 General operation requirements.

(a) Eligibility documentation. Prior to providing supportive services, grantees must verify and document each participant's eligibility for supportive services and classify the participant under one of the categories set forth in § 62.11. Grantees must

recertify the participant's eligibility as a very low-income veteran family at least once every 3 months.

* * * * *

(f) Habitability standards. (1) Grantees using supportive services grant funds to provide rental assistance, payments of utilities fees, security deposits, or utilities deposits, as set forth under § 62.34, on behalf of a participant moving into a new (different) housing unit will be required to conduct initial and any appropriate follow-up inspections of the housing unit into which the participant will be moving. Such inspections shall ensure that the housing unit meets the conditions set forth in 24 CFR 583.300(b) and do not require the use of a certified inspector. Inspections should occur no later than three (3) working days after the housing unit has been identified to the SSVF grantee, unless the Alternative Inspection Method is used to meet the requirements of this paragraph.

(2) Alternative inspection method. An inspection of a property will be valid for purposes of this paragraph if:

(i) The inspection was conducted pursuant to the requirements of a Federal, State, or local housing program (including, but not limited to, the Home investment partnership program under title II of the Cranston-Gonzalez National Affordable Housing Act or the low-income housing tax credit program under section 42 of the Internal Revenue Code of 1986);

(ii) If the inspection was not conducted pursuant to the requirements of a Federal housing program, the public housing agency has certified to the Secretary that such

standard or requirement provides the same (or greater) protection to occupants of inspected dwelling units;

(iii) Pursuant to the inspection, the property was determined to meet the requirements regarding housing quality or safety applicable to properties assisted under such program; and

(iv) The inspection was conducted within the past 2 years.

(g) Continuum of Care coordinated assessment. Grantees must participate in the development, implementation, and ongoing operations of their local Continuum of Care's coordinated assessment system, or equivalent, as described in the McKinney-Vento Act, as amended by the HEARTH Act (42 U.S.C. 11302).

* * * * *

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0757.)

11. Add § 62.38 to read as follows:

§ 62.38 Ineligible activities.

Notwithstanding any other section in this part, grantees are not authorized to use supportive services grant funds to pay for the following:

(a) Mortgage costs or costs needed by homeowners to assist with any fees, taxes, or other costs of refinancing.

(b) Construction or rehabilitation of buildings.

(c) Home care and home health aides typically used to provide care in support of daily living activities. This includes care that is focused on treatment for an injury or

illness, rehabilitation, or other assistance generally required to assist those with handicaps or other physical limitations.

(d) Credit card bills or other consumer debt.

(e) Medical or dental care and medicines.

(f) Direct cash assistance to participants.

(g) Court-ordered judgments or fines, except for those supported under § 62.34(a)(1).

(h) Pet care.

(i) Entertainment activities.

(Authority: 38 U.S.C. 501, 2044)

12. Amend § 62.60 by adding a parenthetical at the end of the section to read as follows:

§ 62.60 Program or budget changes and corrective action plans.

* * * * *

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0757.)

[FR Doc. 2015-03753 Filed 02/23/2015 at 8:45 am; Publication Date: 02/24/2015]