

10:00 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Wednesday, October 11, 2017.

**ADDRESSES:** The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Send Submissions to CC:PA:LPD:PR (REG-112800-16), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG-112800-16), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-112800-16).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Jennifer C. Bernardini (202) 317-6853; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Regina Johnson at (202) 317-6901 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is the notice of proposed rulemaking (REG-112800-16) that was published in the **Federal Register** on Thursday, December 29, 2016 (81 FR 95929). The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by March 29, 2017, must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by Wednesday, October 11, 2017.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or by contacting the Publications and Regulations Branch at (202) 317-6901 (not a toll-free number).

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER**

**INFORMATION CONTACT** section of this document.

**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 61

**RIN 2900-AP54**

### VA Homeless Providers Grant and Per Diem Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations concerning the VA Homeless Providers Grant and Per Diem (GPD) Program. These amendments would provide GPD with increased flexibility to: respond to the changing needs of homeless veterans; repurpose existing and future funds more efficiently; and allow recipients the ability to add, modify, or eliminate components of funded programs. The proposed rule updates these regulations to better serve our homeless veteran population and the recipients who serve them.

**DATES:** Comments must be received by VA on or before September 25, 2017.

**ADDRESSES:** Written comments may be submitted through [www.regulations.gov](http://www.regulations.gov); by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AP54—VA Homeless Providers Grant and Per Diem Program.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, 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 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:** Guy Liedke, Program Analyst, Grant/Per Diem Program, (673/GPD), VA National Grant and Per Diem Program Office,

10770 N. 46th Street, Suite C-200, Tampa, FL 33617, (877) 332-0334, [guy.liedke@va.gov](mailto:guy.liedke@va.gov). (This is a toll-free number.)

**SUPPLEMENTARY INFORMATION:** VA is proposing to amend its regulations for supportive housing benefits for homeless veterans at 38 CFR part 61. Currently, these regulations set forth the general provisions for the homeless grant and per diem program; capital grant application information; per diem payment criteria; special need grant requirements; technical assistance grant information; and the specifics on awarding, monitoring, and enforcing grant agreements. This proposed rulemaking would make additions, revisions, deletions, or technical changes to §§ 61.1, 61.5, 61.33, 61.61 and 61.80. Each of these proposed changes is described below in more detail. VA’s authority for this rulemaking is 38 U.S.C. 501, 2001, 2011, 2012, 2061, and 2064.

### § 61.1—Definitions

VA proposes revisions to the definition of supportive housing in § 61.1 to remove the requirement for recipients to transition homeless veterans into permanent housing “within a period that is not less than 90 days” after the date the veteran has been placed into supportive housing. The ninety (90) day supportive housing requirement was intended to ensure that veterans have sufficient time to take full advantage of all supportive services, thereby enabling their successful transition to permanent housing. However, as each veteran has an individualized treatment plan, they may choose to exit the program before 90 days for a host of reasons (*e.g.*, availability of permanent housing, desire for different environment, family reconciliation, access to new financial resources, dislike of program rules). VA does not see the benefit of maintaining the 90-day requirement. Therefore, we would amend the regulation and propose requiring that recipients transition veterans into permanent housing “as soon as possible but no later than 24 months.” VA would intend for recipients to expedite the transition of veterans from supportive housing into permanent housing in a period far less than twenty-four (24) months, if possible. Transitional housing would still be subject to the requirements of § 61.80, which provides general operational requirements for transitional housing. These requirements, in our experience, would ensure successful transition into permanent housing better than the current requirement stipulating

that veterans remain in transitional housing for at least 90 days.

We also would add the term “bridge housing” to the definition of “supportive housing” in § 61.1 for consistency and clarity along with differentiating it from “shelter care” which is impermissible by law. Shelter care provides a temporary stay for an evening. At the end of the shelter stay, veterans are free to exit back to their surroundings the following morning. The current definition of supportive housing also includes other types of transitional housing (e.g., transition-in-place, clinical treatment, service intensive transitional housing), which recipients receive information about in the Notice of Funding Availability (NOFA), as applicable.

VA would use “bridge housing” as a short-term, transitional housing option in a safe environment for veterans who have accepted a permanent housing placement, but access to the permanent housing is not immediately available for occupancy. The “formal” use of bridge housing is relatively new for VA Grant Per Diem (GPD) program. We undertook the program starting in February 2016. Typically, the bridge housing model length of stay is less than 90 days (e.g., seven to fourteen calendar days), absent additional services, and devoid of a specific clinical care component. Contrast this with detoxification, respite care, and hospice care, which do have clinical components. The data VA collects through its Homeless Operations Management and Evaluation System (HOMES) detailed that homeless veterans used bridge housing with an average length of stay of approximately forty-one (41) days. VA uses this design model because it is intended to align with community goals of housing homeless veterans rapidly within 90 days or less on average. Utilizing this model allows VA to avoid placing veterans on the street while they wait for permanent housing.

Recipients seeking to provide bridge housing are provided the parameters for service when they request to offer the service. Our rationale for placing the term “bridge housing” in this rulemaking is to notify prospective recipients that it is one of many eligible activities they may undertake under supportive housing.

At its basis, bridge housing is a benefit to veterans and VA because it serves as a short-term preventive measure, reduces homelessness, and provides veterans with a safe and structured environment. Finally, “bridge housing” would prove cost effective since it utilizes existing transitional housing stock, and it

eliminates the costs of having to re-engage the veteran and relocate suitable housing, particularly if VA had to discharge the veteran.

#### **§ 61.5—Implementation of VA Limits on Payments Due to Funding Restrictions**

VA would add a new § 61.5 to address the instances where VA needs to impose limits on per diem payments due to funding restrictions. Proposed § 61.5(a) would state that payments would generally continue for the time frame specified in the relevant federal award. It would also clarify that all payments are subject to the availability of funds and would continue as long as the recipient continues to provide the supportive services and housing described in its grant application, meets GPD performance goals, and meets the applicable requirements of part 61.

Proposed § 61.5(b)(1) would establish three (3) factors for VA to use in decisions regarding continuing per diem payments in the case of an anticipated or unanticipated limit on funding which may arise during the time frame specified in the federal award. The first factor has two (2) components, and it is required under 38 U.S.C. 2011(b)(4)(A)–(B). One component would involve consideration of the equitable distribution of the grant agreements across geographic regions in order to prevent a loss of service to homeless veterans. The other component would require that VA ensure that the grant agreements do not duplicate ongoing services.

The second factor would allow VA to consider and protect capital investments that have been made in the recipients. VA, on occasion, makes or facilitates substantial infusions of capital to recipients providing services congruent to VA’s mission and goals through grant agreements and enhanced use leases (EUL). This is consistent with Title V of the McKinney-Vento Homeless Assistance Act allowing for the use of excess federal property. See 42 U.S.C. 11411–11412; 24 CFR 581. The number of these grant agreements and enhanced use leases although minimal (i.e., eight (8) transitional housing EULs and four (4) that are a combination of transitional and permanent housing). Without consideration of this factor, VA may affect negatively the investment decisions that have previously been made and destabilize or even disrupt the recipients’ ability to offer services. VA seeks to avoid this scenario.

Finally, VA’s third factor would consider the performance of recipients with respect to GPD performance goals in an effort to continue quality services

for homeless veterans. VA would prefer to continue funding recipients who demonstrate their ability to meet these goals. GPD’s performance goals are developed by its VHA Homeless Programs Office, and they are evaluated annually. The goals are neither tied to the Office of Housing and Urban Development’s (HUD) performance goals nor are they codified in statute or regulation. Although VA has made adjustments in its data collection to more closely reflect items in HUD’s HMIS (Homeless Management Information System), current GPD performance metrics have three (3) major areas: focusing on exits to permanent housing, reducing negative exits, and increasing veteran employment at exit.

Proposed § 61.5(b)(2) would clarify that VA would refrain from applying the recapture provisions of 38 CFR 61.67 where termination of a grant agreement is due to no fault by the recipient. VA’s rationale for employing this mechanism is to prevent penalizing recipients by applying the recapture provisions when VA lacks sufficient funding and the recipient is without fault. We believe it would be in VA’s best interest to provide such relief to recipients rather than placing a financial burden upon community partners with whom we might wish to collaborate on future projects.

#### **§ 61.33—Payment of Per Diem**

VA is proposing revisions to multiple parts of the “payment of per diem” section at § 61.33. The revisions VA is proposing would make both minor cosmetic (e.g., removal of a word, re-lettering) and major substantive changes (e.g., inserting a new requirement) to the section.

In paragraph (a), we propose adding a requirement that homeless veterans be provided “a bed day of care” as a condition of payment for per diem. This is a clarifying change because we have always interpreted “per diem” to require that the recipient provide a bed day of care. Currently per diem is paid by totaling the current number of bed days of care. For example, if a recipient has ten (10) beds, then they multiply ten (10) beds times the thirty (30) day billing period. This equals 300 bed days of care. If the recipient has any empty beds on any given day, then the number of bed days of care drops while the number of available beds remains the same. VA pays for the total bed days of care, which is a fee for service relationship. We would also clarify the conditions under which VA would pay per diem for veterans referred to recipients. Proposed paragraph (a)

would provide notice to all recipients not to exceed their total obligated funding. It would prevent each of the providers of supportive housing from exceeding the agreed upon total bed days of care. It would also prevent each of the service centers from exceeding the total hours of service. VA would need this limitation to prevent a recipient from exceeding the negotiated limits. We have found that many recipients have requested or seek to increase their award(s) beyond the number of authorized bed days of care. By including this express limitation, VA seeks to clarify the boundaries of the recipient's award(s). Once VA sets its limits for total bed days of care, total hours of service, and/or total obligated funding, we may not revisit these limits at a later date without significant burden on the agency. This proposed revision provides current and future providers with adequate notice of VA's capabilities for paying per diem payments, thereby reducing the possibility that the provider will exhaust funds prior to the end of the period or that VA would exceed the authorization for the entire program.

In addition, we are proposing paragraph (a)(3), which would allow VA the opportunity to review whether supportive housing and services provided to veterans are still needed and appropriate. This proposed change is intended to ensure individual veterans remain on track with their service plans and move towards permanent housing as quickly as possible. VA's goal is to prevent recipients from keeping veterans in their care even if not needed or appropriate in order to continue receiving per diem payments from VA.

Proposed paragraphs (d), (f), and (h) restate, without substantive change, material that currently appears at § 61.33(e), (g), and (i).

Proposed paragraph (e) would revise material that currently appears at § 61.33(f). The current regulation authorizes per diem payments for absent veterans whether or not the absence was a scheduled absence. This is not a *de minimus* exception. Currently, the regulations allow for seventy-two (72) hours scheduled or unscheduled absence. There have been occurrences where providers were interpreting this as permission to add three (3) days of care to the discharge date of individuals who leave the program without notice (AWOL). Originally, the 72-hour provision covered providers who located a homeless veteran on a weekend when VA staff were unavailable to verify the veteran's eligibility status. The recipient could

serve the veteran until the next duty day for VA and receive payment. It also covered 3-day program passes and short medical stays in the hospital. The rationale for these actions is to eliminate paying for unscheduled program departures such as AWOLs. We propose that payments for absent veterans be made only if recipients schedule with veterans their absences in advance. Under the proposed amendment, VA would not provide per diem payments to recipients unable to ensure that veterans are complying with the terms of their program (*i.e.*, veterans who in many cases have failed to continue with the program and therefore are absent).

Proposed paragraph (g) would revise material that currently appears at § 61.33(h) to make clear that where a veteran is receiving supportive housing and supportive services from the same per diem recipient, VA will not pay a per diem for supportive services.

We propose deleting current paragraph 61.33(d) on continuing payments because the rules on continuing payments would appear at § 61.5.

#### **§ 61.61—Agreements and Funding Actions**

Currently, § 61.61(a) is silent on VA's authority as the final arbiter on selecting applicants and the agency's ability to negotiate or re-negotiate grant applications and funding. It simply states that VA must incorporate the requirements of 38 CFR part 61 into a GPD grant agreement when selecting a recipient. We propose amending this section by inserting language that would expressly authorize VA to make the final decisions on applicant selection as well as negotiate with an applicant regarding the details of the agreement or funding, as necessary.

#### **§ 61.80—General Operation Requirements for Supportive Housing and Service Centers**

We propose removing and replacing in its entirety § 61.80(c). Proposed new § 61.80(c) would address: (1) Performance goals; (2) reporting requirements; and (3) conditions requiring a corrective action plan. Further, we would correct some terminology. The revised provision would help align data on recipient outcomes for comparison with VA national performance goals. VA developed the performance goals internally in VHA's Homeless Programs Office, and they are evaluated and calibrated annually, as needed. This data is stored at the VHA Support Service Center. The current VA homeless performance metrics focus on

exits to permanent housing, reducing negative exits, and employment at exit. Presently, recipients are permitted to establish their own metrics to determine success. We are seeking uniformity among recipients with this rulemaking so they meet the same performance metrics VA has developed regardless of their individual program methodologies. We would include a detailed description of the performance metrics in the federal award and also obtain OMB approval under the Paperwork Reduction Act for all related collections of information.

We believe this would increase the likelihood of successful outcomes. In addition, it would allow for proper program evaluation and assist VA in identifying non-performing entities. Veterans would benefit from the quality changes that would be made by recipients in order to meet the new goals.

Current 61.80(c) requires recipients to conduct an ongoing assessment of the supportive services veterans need. Recipients must provide VA with evidence of this assessment regarding the plan as described in their grant application, including information on whether they have met the performance goals established in that grant application. Recipients can accomplish this by submitting a quarterly technical performance report to their VA liaison. If recipients deviate from their performance goals by more than fifteen percent on any goal, then they must initiate a corrective action plan (CAP). Depending upon the grant application there may be anywhere from ten (10) to twenty (20) goals and objectives on which the recipients must report. The goals and objectives developed by recipients serve as benchmarks for their grant applications. Essentially, the goals and objectives serve as the basis for the tactics recipients use to end homelessness for the veterans they serve. VA has six hundred-fifty active grant agreements, which makes outcome measurement difficult because each grant agreement has different goals and objectives. Therefore, it is difficult to compare the best practices and actual recipient performance as it relates to VA's homeless veteran mission.

Nationally, VA must meet its own set of performance goals for successful outcomes in its homeless initiatives. Previously, VA did not have a platform to accumulate data, review it, and assess subsequent performance. However, VA now has this capability. VA's current reporting system now tracks veterans in all homeless programs. In addition to capturing veteran demographics, VA can capture data indicating how

homeless programs are meeting specific performance goals for VA homeless outcomes. This provides VA with a portrait of recipient and contract performance of homeless initiatives. We believe this has the potential to increase oversight and performance measurement, and correct substandard performance.

Proposed 61.80(c) would change the performance goals that individual recipients must meet. VA would provide the performance goals to recipients in the federal award, initial NOFA, and annually. VA would initiate quarterly assessments with recipients. This would take the burden of developing performance goals off the recipient without VA losing any oversight capabilities. VA would also reduce the number of performance items recipients are responsible for from the range of ten (10) to twenty (20) per recipient project to a number that accurately captures acceptable performance (*e.g.*, currently there are three VA Homeless Programs goals). We believe this will reduce recipient burden and allow the recipients more flexibility in changing treatment/housing modalities to meet ever changing veteran needs. For example, VA measures the number of veterans “permanently housed at discharge.” Recipients possess the flexibility to meet this measure in any number of ways. However, the recipient must operationalize the methods they believe are best to measure it internally with their respective homeless veteran populations. VA provides recipients with this type of discretion to engage their respective homeless veteran populations because recipient possesses unique expertise in their geographic area.

With these proposed changes, recipients may continue to use their grant application measures internally, or they may submit changes of scope to add or eliminate services to best meet VA’s goals. The condition for triggering CAPs would be not meeting GPD performance goals for two consecutive quarters, and CAPs would be triggered only for negative deviations from GPD performance goals. Additionally, VA would delineate specific timeframes in § 61.80(c)(3)(A)(i)–(iv), (F) for review of quarterly assessments and for submission of CAPs. Finally, in proposed § 61.80(c) we would make a distinction between the VA Liaison and VA National GPD Program Office. These are different entities, but current 61.80(c) refers to them both by using the term “VA National GPD Program Liaison” throughout.

In proposed paragraph (c), VA would make changes in an effort to make the review of GPD performance goals and recipient performance outcomes more collaborative. Previously, VA only required recipients to submit their quarterly reports for review. Under proposed paragraph (c)(3), VA would provide recipients with access to VA’s National Performance Scoring. Additionally, VA would provide recipients with data on how they are meeting GPD performance goals. Under proposed paragraph (c)(1), all recipients would conduct their own monthly, ongoing assessment of the need for and availability of supportive housing and services for their residents. However, VA would still request quarterly assessments from recipients. Once they conduct this assessment, they would provide VA with the assessment as required under proposed paragraph (c)(2). Then, VA would examine these activities to ascertain whether they align with our performance goals. This is consistent with the federal initiative to use data-based, collaborative outcomes of performance as goals in VA’s effort to end veteran homelessness.

In proposed paragraph (c)(2), each recipient would be required to submit sufficient evidence of the recipient’s activities in providing supportive housing and services to veterans. With this information, VA and the recipient would be able to identify those activities that do and do not support GPD’s performance goals. We believe this would permit recipients the opportunity to make targeted adjustments to improve veteran care.

In proposed subparagraph (c)(3)(A), we would clarify the dates of the quarterly assessment periods.

In proposed subparagraphs (c)(3)(B)(i)–(ii), VA would set forth what a valid assessment must include. Under proposed subparagraph (c)(3)(B)(i), the assessment would include a comparison of the recipient’s actual performance with GPD’s performance goals. We would use this comparison to ensure there are no inconsistencies between the recipient’s stated projected plan and its actual activities. VA would require that the comparison address both quantifiable (*i.e.*, performance goals) and non-quantifiable (*i.e.*, community orientation and awareness activities) goals to ensure that the recipient’s programming is all encompassing and meets veterans’ needs. VA plans to examine these measures in concert with one another to ascertain whether the recipient, through its programs, is making an impact on the veteran homeless problem in that community. For VA, these measures provide the

most reliable data on whether the recipient is meeting veterans’ needs. Finally, in proposed subparagraph (c)(3)(B)(ii), VA would require the identification of administrative and program problems which may affect performance and proposed solutions. We believe this would permit VA to have the ability to identify these problems earlier and provide the recipient with time to develop solutions to prevent poor performance. VA believes this would improve outcomes.

Proposed subparagraph (c)(3)(C) would require recipients and VA GPD Liaisons to prepare and retain in their records summaries of the quarterly assessments, which would be used to provide a cumulative annual assessment. This comports with 2 CFR 200.333. VA believes this would provide an accurate portrait for continuous program performance and improvement.

VA is proposing in subparagraph (c)(3)(D) that recipients must immediately inform the VA GPD Liaison of any significant developments affecting the recipient’s ability to accomplish the work. This comports with 2 CFR 200.328(d). We have determined that any actions interfering with the recipient’s ability to perform require immediate notice, so VA can provide the necessary technical assistance to avoid service disruption.

VA is proposing subparagraph (c)(3)(E) to set forth possible consequences of falling below the established performance goals. VA has determined that scores falling more than five (5%) percent below the established measure are indicative of serious deficiencies and service issues for the veterans served. Proposed subparagraph (c)(3)(E) would reference possible enforcement actions where there is a failure to meet GPD performance goals to this degree. When there is such a failure, VA may by award revision either: (1) Withhold placements of veterans; (2) withhold payment; (3) suspend payment; or (4) terminate the grant agreement. See 2 CFR 200.338. The recipient would be provided with an opportunity to correct deficiencies. Continued failure to correct the deficiencies could ultimately result in termination of the grant agreements.

Proposed subparagraph (c)(3)(F) would require recipients who do not meet established GPD performance goals for two (2) consecutive quarters to submit a corrective action plan (CAP). This provision is intended to ensure that recipients provide services and maintain acceptable levels of performance. VA would use this requirement to prevent extended

periods of non-performance. Proposed subparagraphs (c)(3)(F)(i)–(ii) would identify what must be in a CAP and the process for VA review and approval. The CAP would identify the: (1) Activities falling below a performance measure; (2) reasons why the measure is unmet; (3) proposed corrective action (that may include modifying the grant agreement); and (4) a timetable for completion of the corrective action. Under proposed subparagraph (c)(3)(F)(ii), VA would review received CAPs at the national GPD Program Office. The program office would then either approve or disapprove the plan. If disapproved, the VA GPD Liaison would make suggestions to the recipient to improve the CAP. The recipient could then resubmit the CAP for approval. This subparagraph reflects a desire for a nationwide, standardized level of performance, while maintaining a collaborative relationship with recipients.

#### Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

#### Paperwork Reduction Act

This proposed rule includes provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The two collection of information provisions in this proposed rule are located at §§ 61.33(h) and 61.80(c).

Both collections were previously approved by OMB under OMB control number 2900–0554, which expired on August 31, 2016, and is being considered for reinstatement by OMB. One of these collections will remain unchanged, and the other will update the procedures and thereby reduce the burden of this information collection on the public. A discussion of each collection follows.

The first collection provision, at proposed § 61.33(h), contains a collection that is being considered for

reinstatement under OMB control number 2900–0554. This collection requires recipients to report to VA all sources of income it has received for the project for which VA has awarded a grant. This provision appears at § 61.33(g) of the current GPD regulations, and would simply be moved and renamed 61.33(h), due to a proposed re-numbering. The proposed rule makes no other changes to this collection.

The second collection provision, at proposed § 61.80(c), contains a collection that is being revised to reduce the burden collection, which has been submitted to OMB for approval and previously approved under OMB control number 2900–0554. Under current § 61.80(c), recipients are required to submit quarterly reports to VA Liaisons, who are VA staff members, about how the recipients are meeting the performance measures that are outlined in their grant applications. Both the grant application and the quarterly report are collections approved under OMB control number 2900–0554. The VA Liaisons document these quarterly reports on the internal-only VA Form 10–0361(c).

Consistent with current § 61.80(c), under proposed § 61.80(c)(1), recipients would continue to send VA a quarterly report, as well as conduct an ongoing assessment of capacity: *i.e.*, “the supportive housing and services needed by their residents and the availability of housing and services to meet this need.” VA would begin setting the performance measures for recipients under the proposed rule based on a set of uniform performance metrics that would be established annually by VA, rather than using the various measures established by recipients in their applications. VA would also reduce the number of performance measures from the current range of about ten to twenty per recipient project, to a number that more accurately captures acceptable performance—*e.g.*, currently there are three VA Homeless Programs goals. VA would announce these measures in the federal award, initial NOFA, and annually. These changes to the quarterly reports will reduce the burden of information collection on the recipients by removing from them the burden of developing the measures and reducing the number of measures they must report on.

Consistent with the current regulations, a VA Liaison will document the quarterly discussions on internal VA Form 10–0361(c) and put them in the VA Liaison’s administrative file. Finally, the VA Liaison will use all of this information to complete VA Form

10–0361(c) when conducting the annual physical inspection of the recipient under § 61.65 to ensure compliance with regulatory, clinical, and housing requirements.

VA and recipients would benefit from these proposed information collection changes by having uniform performance metrics for reporting on and assessing project outcomes, which will be used in conjunction with improved regulatory requirements to allow grant recipients to change their activities as needed to accomplish the grant purposes and address corrective actions quickly to ensure program stability, while allowing recipients to maintain the same autonomy they have historically enjoyed under the GPD program to self-select their activities under the grant. These actions should enhance the likelihood of continued funding in option years.

Accordingly, under 44 U.S.C. 3507(d), VA will submit a copy of this rulemaking to OMB for review. At that time, VA will also publish a **Federal Register** notice describing the burden associated with these collections of information.

Comments on the collection of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or through [www.Regulations.gov](http://www.Regulations.gov). Comments should indicate that they are submitted in response to “RIN 2900–AP54 VA Homeless Providers Grant and Per Diem Program.”

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after receipt by OMB of the related PRA package. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of the related **Federal Register** Notice. This does not affect the deadline for the public to comment on the proposed rule.

VA considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of VA, including whether the information will have practical utility;

- Evaluating the accuracy of VA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The collections of information contained in §§ 61.33 and 61.80 are described immediately following this paragraph, under their respective titles.

*Title:* VA Homeless Providers Grant and Per Diem Program.

*Summary of collection of information:* The proposed rule, at §§ 61.33 and 61.80, contains compliance reporting provisions for capital grant agreements, per diem, and special needs grant agreements.

*Description of the need for information and proposed use of information:* Determine eligibility for capital grant agreements and per diem and reporting requirements to determine grant agreement compliance.

*Description of likely respondents:* Grant Applicants: Non-Profit Agencies, State and Local Governments, and Indian Tribal Governments.

*Estimated number of respondents per year:* 1,450.

*Estimated frequency of responses per year:* 1 per year.

*Estimated average burden per response:* 13.17 hours.

*Estimated total annual reporting and recordkeeping burden:* 19,090 hours.

### Regulatory Flexibility Act

The Secretary hereby certifies that this proposed 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 proposed rule directly affects only those entities that choose to apply for a grant under the GPD program. Many of these entities are state or local governments. On this basis, the Secretary certifies that the adoption of this proposed 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, under 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by 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, grant agreements, 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 proposed rule have been examined, and it has been determined to be a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. 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://www1.va.gov/orpm>, by following the link for “VA Regulations Published.”

### 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 proposed 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 number and title for the program affected by this document is 64.024, VA Homeless Providers Grant and Per Diem Program.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on October 7, 2016, for publication.

Dated: July 18, 2017.

### Michael Shores,

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

### List of Subjects in 38 CFR Part 61

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

For the reasons set forth in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 61 as follows:

### PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

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

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

■ 2. In § 61.1, amend the definition of “Supportive housing” by removing the phrase “within a period that is not less than 90 days and does not exceed” in paragraph (2)(i) and adding in its place “as soon as possible but no later than”; and removing the phrase “Provide specific medical treatment” in paragraph (2)(ii) and adding in its place

“Provide bridge housing or specific medical treatment”.

■ 3. Add new § 61.5 to read as follows:

**§ 61.5 Implementation of VA Limits on Payments due to Funding Restrictions.**

(a) *Continuing payments.* Once a grant agreement is awarded, payments will continue for the time frame specified in the federal award, subject to the availability of funds and as long as the recipient continues to provide the supportive services and housing described in its grant application, meets GPD performance goals, and meets the applicable requirements of this part.

(b) *Factors.* (1) In cases of limited availability of funding during the time frame specified in the federal award, VA may terminate the payment of per diem payments to recipients after weighing the following factors:

(i) Non-duplication of ongoing services and equitable distribution of grant agreements across geographic regions, including rural communities and tribal lands;

(ii) Receipt by recipient of any capital investment from VA or others; and

(iii) Recipient's demonstrated compliance with GPD performance goals.

(2) Notwithstanding paragraph (b)(1) of this section, when an awarded grant agreement is terminated during the time frame specified in the federal award due to no fault by the recipient, VA shall refrain from applying the recapture provisions of 38 CFR 61.67.

■ 4. Remove the authority citation at § 61.33 and revise as follows:

**§ 61.33 Payment of per diem.**

(a) *General.* VA will pay per diem to recipients that provide a bed day of care:

(1) For a homeless veteran:

(i) Who VA referred to the recipient;

or

(ii) For whom VA authorized the provision of supportive housing or supportive service; and

(2) When the referral or authorization of the homeless veteran will not result in the project exceeding:

(A) For providers of both supportive housing and services, the total number of bed days of care or total obligated funding as indicated in the grant agreement and funding action document; or

(B) For service centers, the total hours of service or total obligated funding as indicated in the grant agreement and funding action document.

(3) VA may at any time review the provision of supportive housing and services to individual veterans by the provider to ensure the care provided continues to be needed and appropriate.

(b) *Rate of payments for individual veterans.* The rate of per diem for each veteran in supportive housing shall be the lesser of:

(1) The daily cost of care estimated by the per diem recipient minus other sources of payments to the per diem recipient for furnishing services to homeless veterans that the per diem recipient certifies to be correct (other sources include payments and grants from other departments and agencies of the United States, from departments of local and State governments, from private entities or organizations, and from program participants); or

(2) The current VA state home program per diem rate for domiciliary care, as set by the Secretary under 38 U.S.C. 1741(a)(1).

(c) *Rate of payments for service centers.* The per diem amount for service centers shall be 118 of the lesser of the amount in paragraph (b)(1) or (b)(2) of this section, per hour, not to exceed 8 hours in any day.

(d) *Reimbursements.* Per diem may be paid retroactively for services provided not more than three (3) days before VA approval is given or where, through no fault of the recipient, per diem payments should have been made but were not made.

(e) *Payments for absent veterans.* VA will pay per diem up to a maximum of seventy-two (72) consecutive hours for the scheduled absence of a veteran.

(f) *Supportive housing limitation.* VA will not pay per diem for supportive housing bed days of care for any homeless veteran with three (3) or more previous episodes (*i.e.*, admission and discharge for each episode) of supportive housing services paid for under this part. VA may waive this limitation, if the services offered are different from those previously provided and may lead to a successful outcome.

(g) *Veterans receiving supportive housing and services.* For circumstances where a veteran is receiving supportive housing and supportive services from the same per diem recipient, VA will not pay a per diem for the supportive services.

(h) *Reporting other sources of income.* At the time of receipt, a per diem recipient must report to VA all other sources of income for the project for which per diem was awarded. The report provides a basis for adjustments to the per diem payment under paragraph (b)(1) of this section.

**§ 61.61 [Amended]**

■ 5. Amend § 61.61 paragraph (a) by adding the following after the first sentence: “VA makes the final decision

on applicant selection. VA may negotiate with an applicant regarding the details of the agreement and funding, as necessary.”

■ 6. Amend § 61.80 by revising paragraph (c) to read as follows:

\* \* \* \* \*

(c) VA will provide performance goals to recipients in its initial federal award and update annually thereafter:

(1) Each recipient must conduct an ongoing assessment of the supportive housing and services needed by their residents and the availability of housing and services to meet this need. Recipients are expected to make adjustments to meet resident needs.

(2) The recipient will provide to the VA GPD Liaison evidence of its ongoing assessment of the plan described in the recipient's grant application. The recipient's assessment must show how it is using the plan to meet the GPD performance goals.

(3) The VA GPD Liaison will provide the GPD performance information to recipients. VA will incorporate this assessment information into the annual inspection report.

(i) The VA GPD Liaison will review the quarterly assessment with the recipient within thirty (30) days of the end of the following quarters:

(A) Quarter 1 (October–December) assessment completed not later than January 30;

(B) Quarter 2 (January–March) assessment completed not later than April 30;

(C) Quarter 3 (April–June) assessment completed not later than July 30; and,

(D) Quarter 4 (July–September) assessment completed not later than October 30.

(ii) A valid assessment must include the following:

(A) A comparison of actual accomplishments to established GPD performance goals for the reporting period addressing quantifiable as well as non-quantifiable goals. Examples include, but are not limited to a description of grant agreement-related activities, such as: Hiring and training personnel, community orientation/awareness activities, programmatic activities, or job development; and

(B) Identification of administrative and programmatic problems which may affect performance and proposed solutions.

(iii) Recipients and VA GPD Liaisons must include a summary of the quarterly assessment in their administrative records. These quarterly assessments shall be used to provide a cumulative assessment for the entire calendar year.

(iv) The recipient shall immediately inform the VA GPD Liaison of any significant developments affecting the recipient's ability to accomplish the work. VA GPD Liaisons will provide recipients with necessary technical assistance.

(v) If after reviewing a recipient's assessment, VA determines that it falls more than five (5%) percent below any performance goal, then VA may by award revision:

(A) Withhold placements;

(B) Withhold payment;

(C) Suspend payment; and

(D) Terminate the grant agreement, as outlined in this part or other applicable federal statutes and regulations.

(vi) Corrective Action Plans (CAP): If VA determines that established GPD performance goals have not been met for any two (2) consecutive quarters as defined in 38 CFR 61.80(c)(3)(A)(i) through (iv), the recipient will submit a CAP to the VA GPD Liaison within sixty (60) calendar days.

(A) The CAP must identify the activity which falls below the measure. The CAP must describe the reason(s) why the recipient did not meet the performance measure(s) and provide specific proposed corrective action(s) and a timetable for accomplishment of the corrective action. The recipient's plan may include the recipient's intent to propose modifying the grant agreement. The recipient will submit the CAP to the VA GPD Liaison.

(B) The VA GPD Liaison will forward the CAP to the VA National GPD Program Office. The VA National GPD Program Office will review the CAP and notify the recipient in writing whether the CAP is approved or disapproved. If disapproved, the VA GPD Liaison will make suggestions to the recipient for improving the proposed CAP and the recipient may resubmit the CAP to the VA National GPD Program Office.

[FR Doc. 2017-15338 Filed 7-24-17; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Part 3160

[LLWO300000 L13100000 PP0000 17X]

RIN 1004-AE52

### Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** On March 26, 2015, the Bureau of Land Management (BLM) published in the **Federal Register** a final rule entitled, "Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands" (2015 final rule). The BLM is now proposing to rescind the 2015 final rule because we believe it is unnecessarily duplicative of state and some tribal regulations and imposes burdensome reporting requirements and other unjustified costs on the oil and gas industry. This proposed rule would return the affected sections of the Code of Federal Regulations (CFR) to the language that existed immediately before the published effective date of the 2015 final rule.

**DATES:** The BLM must receive your comments on this proposed rule or on the supporting Regulatory Impact Analysis or Environmental Assessment on or before September 25, 2017.

**ADDRESSES:** *Mail:* U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134LM, 1849 C St. NW., Washington, DC 20240, Attention: 1004-AE52.

*Personal or messenger delivery:* U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134 LM, Washington, DC 20003, Attention: Regulatory Affairs.

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions at this Web site.

**FOR FURTHER INFORMATION CONTACT:** Steven Wells, Division Chief, Fluid Minerals Division, 202-912-7143, for information regarding the substance of this proposed rule or information about the BLM's Fluid Minerals program. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339, 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

#### SUPPLEMENTARY INFORMATION:

- I. Executive Summary
- II. Public Comment Procedures
- III. Background
- IV. Discussion of Proposed Rule
- V. Procedural Matters

#### I. Executive Summary

The process known as "hydraulic fracturing" has been used by the oil and gas industry since the 1950s to stimulate production from oil and gas wells. In recent years, public awareness of the use of hydraulic fracturing practices has grown. New horizontal drilling technology has allowed increased access to oil and gas resources in tight shale formations across the country,

sometimes in areas that have not previously experienced significant oil and gas development. As hydraulic fracturing has become more common, public concern has increased about whether hydraulic fracturing contributes to or causes the contamination of underground water sources, whether the chemicals used in hydraulic fracturing should be disclosed to the public, and whether there is adequate management of well integrity and the "flowback" fluids that return to the surface during and after hydraulic fracturing operations.

In light of the public concern for and widespread use of hydraulic fracturing practices, in November 2010, the BLM prepared a rule that was intended to regulate the use of hydraulic fracturing in developing Federal and Indian oil and gas resources. Since that time, the BLM has published two proposed rules (77 FR 27691 and 78 FR 31636), held numerous meetings with the public and state officials, and conducted many tribal consultations and meetings. The final rule entitled, "Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands," was published in the **Federal Register** on March 26, 2015 (80 FR 16128). The 2015 final rule was intended to: Ensure that wells are properly constructed to protect water supplies, make certain that the fluids that flow back to the surface as a result of hydraulic fracturing operations are managed in an environmentally responsible way, and provide public disclosure of the chemicals used in hydraulic fracturing fluids.

On March 28, 2017, President Trump issued Executive Order 13783, entitled, "Promoting Energy Independence and Economic Growth" (82 FR 16093, Mar. 31, 2017), which directed the Secretary of the Interior to review four specific rules, including the 2015 final rule, for consistency with the order's objective "to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth and prevent job creation" and, as appropriate, take action to lawfully suspend, revise, or rescind those rules that are inconsistent with the policy set forth in Executive Order 13783. To implement Executive Order 13783, Secretary of the Interior Ryan K. Zinke issued Secretarial Order No. 3349 entitled, "American Energy Independence" on March 29, 2017, which, among other things, directed the BLM to proceed expeditiously in proposing to rescind the 2015 final rule. Upon further review of the 2015 final rule, as directed by Executive Order