

subject to recapture would thus be $\frac{7}{8} \times \$400,000$ or $\$350,000$.

This represents an equitable system for recovering capital grant amounts that are not used to the full extent of the intended purpose.

The provisions of 38 U.S.C. 2011 also provide that VA may obligate any recovered funds without fiscal year limitation. We amended the regulations to reflect this authority.

Life Safety Code

We are establishing a special mechanism for providing certain Life Safety Code capital grants. Public Law 107-95 established 38 U.S.C. 2012(c)(3) to provide grants to renovate facilities that already received a capital grant under section 3 of the Homeless Veterans Comprehensive Service Programs Act of 1992 (Public Law 102-590; 38 U.S.C. 7221 *note*). Such grants are solely for renovations to comply with the Life Safety Code of the National Fire Protection Association.

Under the interim final rule, when funds are made available for the Life Safety Code capital grants, VA would publish a Notice of Fund Availability in the **Federal Register** stating the estimated amount of funding available and the particulars for applying for a Life Safety Code capital grant, including the submission of an application package. This corresponds with the process that the interim final rule continues to provide for other capital grants.

Applicants would be rated based on criteria designed to identify cost-effectiveness and need. Life Safety Code capital grants would be allocated to the highest-ranked applicants in descending order until funds are expended. These provisions are designed to help ensure that the Life Safety Code capital grant would be awarded for needed quality projects.

The provisions of 38 U.S.C. 2011 and 2012 further require that neither a capital grant nor per diem (with delayed effective dates for grant recipients under the Homeless Veterans Comprehensive Service Program Act of 1992 seeking per diem) may be provided unless the facility for which the assistance is provided meets the fire and safety requirements applicable under the Life Safety Code of the National Fire Protection Association or other comparable requirements. Accordingly, in addition to setting forth procedures specifically to provide Life Safety Code capital grants under 38 U.S.C. 2012(c)(3), the interim final rule provides that entities receiving a capital grant under 38 U.S.C. 2011 or per diem

under 38 U.S.C. 2012 (with statutorily imposed delayed effective dates) must comply with the Life Safety Code of the National Fire Protection Association.

Per Diem Payments

Under the interim final rule, the rate of per diem payments for each veteran in supportive housing would be the lesser of:

(i) 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 State and local governments, from private entities or organizations, and from program participants), or

(ii) The current VA State Home Program per diem rate for domiciliary care.

Also, the rule provides that the per diem amount for service centers would be $\frac{1}{8}$ of the lesser of the amounts in paragraph (i) or (ii) above per hour, not to exceed 8 hours in any day.

These provisions for calculating per diem reflect requirements imposed by Pub. L. 107-95 that are set forth at 38 U.S.C. 2012.

In addition, to avoid making per diem payments when services are not being rendered while still allowing reasonable absences (such as for visiting family, job searches, or short term medical care), the rule states that VA will not pay per diem for any additional days of absence when a veteran has been already absent for consecutive full days exceeding 72 hours (scheduled or unscheduled).

Moreover, to avoid making per diem payments for services that have limited chance of success, the rule states that VA will not pay per diem payments for supportive housing for any homeless veteran who has had three or more episodes (admission and discharge for each episode) of supportive housing services paid for by VA. However, the rule provides that VA may waive the episode requirement if the services offered are different from those previously provided and may lead to a successful outcome.

Special Needs Grants

We are establishing a mechanism for providing special needs grants. Section 5 of Pub. L. 107-95, codified at 38 U.S.C. 2061 authorizes VA to provide special needs grants to capital grant and per diem recipients under this part to assist with additional operational costs that would not otherwise be incurred but for the fact that the recipient is

providing beds or services at supportive housing and service centers for the following homeless veterans:

- (1) Women, including women who have care of minor dependents;
- (2) Frail elderly;
- (3) Terminally ill; or
- (4) Chronically mentally ill.

We have defined "terminally ill" to mean a prognosis of 9 months or less to live based on a written medical diagnosis from a physician. We also have defined "chronically mentally ill" to mean a condition of schizophrenia or major affective disorder (including bipolar disorder) or post-traumatic stress disorder (PTSD), based on a diagnosis from a licensed mental health professional, with at least one documented hospitalization for this condition sometime in the last 2 years or with documentation of a formal assessment on a standardized scale of any serious symptomology or serious impairment in the areas of work, family relations, thinking, or mood. In addition, we have defined "frail elderly" to mean 65 years of age or older with one or more chronic health problems and limitations in performing one or more activities of daily living (such as bathing, toileting, transferring from bed to chair, etc.). We believe these definitions constitute a reasonable interpretation of the statutory intent. They are designed to help ensure that those most in need are benefited by the special needs grants.

Under the interim final rule, when funds are made available for special needs grants, VA would publish a Notice of Fund Availability in the **Federal Register** stating the estimated amount of funding available and the particulars for applying for a special needs grant, including the submission of a special needs grant application package. This corresponds with the process that the interim final rule continues to provide for capital grants.

The interim final rule sets forth minimum threshold criteria by limiting special needs grants to those entities that demonstrate that they are eligible for a special needs grant, and would use the funds productively. Those meeting the threshold criteria would then be rated based on criteria designed to identify those who would use the special needs grant to provide the strongest programs. Special needs grants would be allocated to the highest-ranked applicants in descending order until funds are expended. These provisions are designed to help ensure that the special needs grants would be awarded for quality projects and be of sufficient duration to be worthwhile.