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## Part IV

## Department of Veterans Affairs

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38 CFR Part 61

VA Homeless Providers Grant and Per Diem Program; Proposed Rule

# DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Part 61

RIN 2900-AN81

### VA Homeless Providers Grant and Per Diem Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** We propose to revise and reorganize regulations which contain the Department of Veterans Affairs' (VA) Homeless Providers Grant and Per Diem Program. This rulemaking would update our current regulations, implement and authorize new VA policies, and generally improve the clarity of part 61.

**DATES:** Comments must be received by VA on or before April 30, 2012.

**ADDRESSES:** Written comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov); by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. (This is not a toll free number).

Comments should indicate that they are submitted in response to "RIN 2900-AN81 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 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 [www.Regulations.gov](http://www.Regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Guy Liedke, VA Homeless Providers Grant and Per Diem Program Office, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (877) 332-0334. (This is a toll-free number).

**SUPPLEMENTARY INFORMATION:** Pursuant to 38 U.S.C. 501, 2001, 2011, 2012, 2061, and 2064, the VA Homeless Providers Grant and Per Diem Program, provides capital grants and per diem to public or nonprofit private entities who assist homeless veterans by helping to ensure the availability of supportive housing and service centers to furnish outreach, rehabilitative services, vocational counseling and training, and supportive housing. The regulations governing this program are located at part 61 of title 38, CFR. We are

proposing to rewrite those regulations to establish certain new policies and procedures related to the administration of this program. In addition, technical and clarifying changes are proposed. We discuss the significant and substantive changes below in a section-by-section analysis. Changes that are not described below were made for technical reasons or to improve readability and are not intended to be substantive.

We propose to revise the statutory authority for part 61 to include 38 U.S.C. 2001, because that authority establishes that the purpose of chapter 20 of title 38, U.S.C., "is to provide for the special needs of homeless veterans." We propose to eliminate the reference to 38 U.S.C. "7721 note" because section 7721 was repealed in 2006. *See* Public Law 109-233, title IV, § 402(c) (June 15, 2006).

We also propose to remove current § 61.20 because the authority to award these grants has expired. 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 § 3 of the Homeless Veterans Comprehensive Service Programs Act of 1992 (Pub. L. 102-590; 38 U.S.C. 7221 note). Such grants were solely for renovations to comply with the Life Safety Code of the National Fire Protection Association. This authority has expired.

#### Section 61.0 Purpose

We propose to make some non-substantive changes to current § 61.0.

#### Section 61.1 Definitions

We are adding or modifying several definitions in order to provide conformity and clarity in their use within part 61, and are removing others that are no longer relevant to the reorganized and clarified part 61. New definitions and significant changes are addressed below.

We would move the definition of "capital lease" to § 61.4, and make the substantive changes to that definition as discussed later in this document.

We would add a definition of "default" defined as "a determination by VA that an awardee has materially failed to comply with the terms and conditions of an award." This is a program-specific definition that is consistent with the common definition of the term "default" as it relates to contractual compliance.

We would revise the definition of "homeless" to be consistent with 38 U.S.C. 2002(1), which defines a "homeless veteran" as "a veteran who is homeless (as that term is defined in section 103(a) of the McKinney-Vento

Homeless Assistance Act (42 U.S.C. 11302(a))."

We would add a definition of "Notice of Fund Availability (NOFA)" that would refer readers to § 61.60, the substantive provision governing NOFAs. We believe this may be helpful to users who are unfamiliar with the term.

We would add a definition of "operational" and define the term to describe a program in which "all VA inspection requirements under this part have been met and an activation document has been issued by the VA National GPD Program." This clarifies that a program cannot be considered operational, i.e., in effect, under part 61 until it has complied with all applicable regulations, and VA has recognized it as such.

We would add a definition of "participant agreement," because the term would be used in §§ 61.13 and 61.82, as revised. The definition would state that a participant agreement is "any written or implied agreement between a grant recipient agency and a program participant that outlines the requirements for program compliance, participant or service delivery."

We would add a definition of "project" and define as "all activities that define the parameters of the purpose of the grant." We note that VA provides additional details for specific projects in the notices of fund availability that serve as the bases for specific grant awards.

We would add a definition of "recipient" as "the entity whose employer or taxpayer identification number is on the Application for Federal Assistance (SF 424) and is consequently responsible to comply with all terms and conditions of the award." We would also state that, "For the purpose of this part the terms 'grantee', 'recipient', and 'awardee' are synonymous and interchangeable." These terms are used in this manner throughout part 61, and it is consistent with the common definitions of these terms to use them to describe the entity that is receiving the grant and therefore should be primarily responsible for compliance with part 61.

We would revise the definition of "supportive housing." The current definition requires that supportive housing be "transitional housing" or part of a project designed to meet the needs of homeless veterans. The term "transitional" can be misleading, because in some cases supportive housing can include a detoxification facility or other facility with a medical focus. The revised definition would require that "supportive housing" provide supportive services for

homeless veterans “designed to either (1) facilitate the movement of homeless veterans to permanent housing; or (2) provide specific medical treatment such as detoxification, respite, or hospice treatments.” Finally, the revised rule would also clarify the current rule that supportive housing cannot be emergent or permanent by design, by providing examples of types of housing that are not considered supportive housing. We note that this clarification will be helpful because we have received applications for emergent care facilities and permanent housing.

We would move the definition of “supportive services” to its own section, § 61.2, for organizational purposes, but would not revise the substance of the definition.

We would add a definition of “total project cost” and define as “the sum of all costs incurred by a recipient for the acquisition, rehabilitation, and new construction of a facility, or van(s), identified in a grant application.” This definition would be consistent with the use of this term throughout part 61, as it defines the total cost in terms of the costs that would be allowable under this part. We would use the term “total project cost” in § 61.16(c)(5) where we require that the value of matching funds must be for a cost that is included in the calculation of the total project cost, thereby decreasing the total expenditures of the grantee.

We would define “VA National GPD Program” as “the VA Homeless Providers Grant and Per Diem Program.” We would use the defined term as an abbreviation in our regulations.

We propose to remove the definition of “fee” in the revised rule. Currently, we define the term as “a fixed charge for a service offered by a recipient under this part, that is in addition to the services that are outlined in the recipient’s application; and [is] not paid for by VA per diem or provided by VA, (e.g., cable television, recreational outings, professional instruction or counseling).” Rather than define the term, we would add detail in § 61.82 concerning participant fees and extracurricular fees. Under § 61.82(a), participant fees may be required under the specified circumstances, and extracurricular fees may be charged only under circumstances that are substantively the same as those specified in the current rule. Grant programs vary widely across the country, and we believe that it will be clearer to simply discuss fees in more detail in § 61.82 than to attempt to provide a single definition of the term “fee.”

#### **Section 61.2 Supportive Services—General**

We would move the definition of “supportive services” from current § 61.1 into its own section, without substantive revision. We have done this because the definition is very detailed and contains a substantive rule that recipients must design supportive services, in addition to providing extensive criteria for the design of such services.

#### **Section 61.3 Notice of Fund Availability**

We would move the current provision regarding the Notice of Fund Availability to earlier in part 61. Specifically, we propose to move the substance of current § 61.60 to new § 61.3. No substantive changes are proposed.

#### **Section 61.4 Definition of Capital Lease**

Under current § 61.1, a capital lease “means a lease that will be in effect for the full period in which VA may recover all or portions of the capital grant amount.” This definition is too narrow because this period is, at a minimum, 20 years (under proposed § 61.67(b)), and many leases will not be able to meet the requirement that the lease be in effect for the full period. Therefore, we propose to require that a “capital lease” be in effect for all of the period of recovery listed in § 61.67(b), or satisfy one of three criteria, including: (1) The lease transfers ownership to the lessee at the expiration of the lease term, (2) The lease contains a bargain purchase option, or (3) The present value of lease payments that are applied to the purchase are equal to or greater than 90 percent of the fair market value of the asset. We had used these same three criteria in a prior version of this regulation, and attempted to simplify the definition in the current rule; however, this simplification caused unexpected problems. Therefore, we are returning to this former definition because it is standard for the real estate industry but, again, will make it applicable only to leases that will not run for 20 years or more. The provisions protect VA in the event that the improved property is used for something other than the purpose of the grant. Due to the complexity and substantive nature of this proposed definition, we would reorganize it into its own section.

In addition, we would refer to a “capital lease” in the regulation as a “conditional sales contract.” The latter term is well-understood in the industry.

#### **Section 61.10 Capital Grants—General**

We propose to make some non-substantive changes to current § 61.10.

#### **Section 61.11 Capital Grants—Application Packages**

We would generally simplify the language used to describe the requirements of an application for a capital grant.

In paragraph (b)(7)(iii), we propose to require that the applicant “will insure the site to the same extent they would insure a site bought with their own funds.” We believe that this requirement will help ensure that the applicant takes measures to protect the capital securing VA’s grant investment. We would remove the reference to “vans” because we address capital grants for vans separately under proposed § 61.18, where we maintain the requirement from the current rule that vans be insured “to the same extent they would insure a van bought with their own funds.”

In paragraph (b)(7), we propose to require “[a] statement from the applicant that all of the following are true”, followed by, in paragraphs (b)(7)(i) through (vi), the items that appear in current § 61.11(b)(12). The current regulation requires “[r]easonable assurances” that the items are true. We believe that a statement to that effect is sufficient for purposes of the application. This includes, in paragraph (b)(7)(vi), a statement that no more than 25 percent of the grant-awarded beds are occupied by non-veterans. This accurately reflects the statutory requirement that “not more than 25 percent of the services provided under the project will be provided to individuals who are not veterans.” 38 U.S.C. 2011(e)(4). A provision to enforce this requirement would be added at § 61.80(r).

#### **Section 61.12 Capital Grant Application Packages—Threshold Requirements**

We would revise paragraph (a) to include several specific requirements that must be met at the “threshold” stage, or else the application will not be rated under § 61.13. These threshold requirements will help VA eliminate incomplete applications, applications by ineligible entities, and the like, prior to rating such applications. In particular, we would require that the applicant submit a signed Application for Federal Assistance (SF 424) that contains the employer or taxpayer identification number (EIN/TIN) that corresponds to the applicant’s Internal

Revenue Service 501(c)(3) or (19) determination letter, noting that for applicants that apply under a group EIN/TIN, the IRS letter must list the applicant as a sub-unit of the parent EIN/TIN. We would require that the applicant provide documentation showing that it is under the parent EIN/TIN. Such documentation could include a copy of the organization directory identifying them as a sub-unit, or other similar types of documents. Including this material will improve our ability to process the application efficiently, and will help avoid any delays related to our need to request this material at a later date.

We would delete current paragraph (c), which requires that the application propose to serve homeless veterans, because it is redundant in light of current paragraph (d) (paragraph (c) in proposed § 61.12), which requires that the activities for which assistance is requested must be eligible for funding under part 61.

We would also redesignate current § 61.12(i) as proposed paragraph (h) and add a new paragraph (i) at the end of the regulation. Proposed paragraph (h) would require that the applicant not have been “notified by VA as being in default” as opposed to the current rule, which requires that the applicant “is not in default.” By requiring that the applicant not have been notified as being in default, we can eliminate applicants who we suspect of being in default, but who are still going through the final process of determining actual default. Because VA grant funds are limited, permitting applicants suspected of being in default to remain in the applicant pool could seriously jeopardize the overall success of this grant program. Notification of default occurs after a lengthy development process, and we do not believe that we would be appropriately safeguarding the proper use of limited funds if we were to allow a grant to issue to an applicant who was under investigation for default. Proposed paragraph (i)(1) would require that the applicant, during the 5 years preceding the date of the application, not have had more than two grants in development. This will ensure that applicants are not overcommitted to the VA National GPD Program. Proposed paragraphs (i)(2) and (3) would eliminate applicants who have failed to establish up to two previous awarded grant projects or who had a previous grant or per diem project award terminated or transferred to another eligible entity for failure to comply with the terms and conditions of the award. Requiring adherence to these threshold requirements will reduce the risk to the

Government and the public, as well as help homeless veterans by increasing the likelihood that grants will be given only to organizations that demonstrate the ability to complete projects and provide quality supportive housing and services.

#### **Section 61.13 Capital Grant Application Packages—Rating Criteria**

We propose to revise the rating criteria for capital and non capital grant applications by eliminating the rating for leveraging, cost effectiveness, and innovation; modifying the requirements for need, targeting, ability, and coordination; adding criteria for a completion confidence rating; and adjusting the minimum points necessary to be fundable from 600 cumulative points to 750 cumulative points out of a possible 1000. We note that these rating criteria would also be used to rank special-needs grants. This would reduce the redundancy of current application requirements, provide an improved picture of overall applicant project viability, and emphasize cost matching requirements, thereby providing an increased likelihood of successful project completion and the delivery of quality services to homeless veterans. Rather than offer a score based on leveraged funds, we propose to require applicants to include documentation showing matching funds as part of the application package, but we would not provide any additional score based on that documentation. This would be required under § 61.11(b)(2)(ii). Currently, awardees have 30 days after conditional selection to submit this match documentation. We do not believe that requiring the documentation to be submitted with the application will be an undue burden, and we believe that it will eliminate duplication of the information at both the conditional and final selections.

The remainder of proposed § 61.13 would contain the rating criteria for capital grants, which we would revise to reflect the criteria called for under revisions that we are making to the application for a capital grant. A discussion of the new criteria follows.

In proposed paragraph (b) we would continue to award 300 points based on the project plan; however, we have expanded and revised the items that must be demonstrated in order to receive these 300 points. According to internal reviewers and grant panels, which consist primarily of VA clinicians and VA homeless specialists, the current regulation could better describe to applicants the essential elements of a capital grantee’s program, such as addressing nutritional needs of

participants, providing a clean and sober environment, etc. We believe that these revised criteria would clarify this information for grantees and would provide a better quality of service and care for our veterans.

Proposed paragraph (c) would lower from 150 to 100 the number of points awarded for outreach, which is called “targeting” in the current regulation. We have decreased the number of points because VA has outreach resources available to assist programs with this function. Moreover, programs that have historically been successful are even less likely to require outreach, as they are established and have proven their ability to reach and serve veterans. Therefore, we would take 50 points out of outreach and award them under paragraph (f), which assesses our overall confidence in the program’s likelihood of success. Completion confidence, in proposed paragraph (f), would enable us to take into account, for example, whether the applicant has previously failed to perform (e.g., had grant funds revoked), whether we believe that the applicant is overextended or has questionable inspection histories, etc. We note that the criteria under proposed paragraph (c) are identical to those in the current regulation (38 CFR 61.13(c)).

Proposed paragraph (d) would continue to award 200 points based on the applicant’s ability to develop and operate a project; however, feedback from our review panels has been that we need more extensive information concerning who will be providing the services to veterans, their qualifications, and what percentage of their time would be dedicated to this activity. The revised criteria are intended to demonstrate that the program’s staff will be effective and capable, operationally, of meeting the program’s needs. We note that we would no longer require, as required by current § 61.13(d)(9), a showing of fiscal solvency because as a practical matter our application reviewers who score the applications are for the most part clinicians who do not have the expertise to review financial statements. More importantly, we do not believe that this is an essential element to scoring the application. However, we note that under proposed § 61.16, VA would not actually award a grant, irrespective of the score assigned to an application, unless the applicant can demonstrate sufficient funding for the project.

Proposed paragraphs (e) and (g) would be identical to the current regulation at § 61.13(e) and (i).

Finally, we would not include in these proposed rules current § 61.13(f), “[i]nnovative quality of proposal.” We think that the proposed paragraph (f),

“[c]ompletion confidence,” is based on actual performance and the overall content of the proposal. In addition, whether or not a project is innovative may not indicate whether the program will actually succeed. VA is not as concerned with whether a program is similar to existing programs (i.e., whether it is innovative) as we are with whether the program is likely to provide successful outcomes to our veterans.

#### **Section 61.14 Capital Grants—Selection of Grantees**

Proposed paragraph (a) is substantively identical to current paragraph (a). We note that the references to conditional selection would refer to the selection of applicants who submitted a complete application package, which would include information about matching funding. The current regulations do not require that such information be submitted at the threshold stage. In this regard, the conditional application process would be different under these new regulations, because this information would already have been submitted during the application stage.

Proposed paragraph (b) would revise the “tiebreaker” provisions in current paragraph (b). Under the current rule, ties are broken based on the “need” score, but we propose to use the “coordination” score as the tiebreaker because our experience in managing this program has shown that programs that are able to coordinate with other programs such as other supportive housing, health care, and social services programs, have more successful outcomes. We would similarly include a tiebreaker provision for per diem applications in proposed § 61.32(b).

In proposed paragraph (c), we would reserve the right to reduce or reject applications that we believe will not be cost effective. It is substantively similar to current § 61.13(h), except that under these proposed rules it would serve as a basis to deny an application rather than as a scoring criterion because although we eliminated this criterion as a rating criterion (because cost-effectiveness should not, in our view, be a primary consideration in determining the overall quality of an application), we continue to believe that cost-effectiveness is a high priority for managing our program. If the program is highly rated but simply cannot be considered economically viable, it would be irresponsible for us to grant the application. More likely, if we believe that it is not necessary to provide the level of grant funds requested in the application, then we believe that we should be able to grant

the application but decrease the amount of funding to what we consider a reasonable amount. Thus, authorizing reducing or rejecting the application on this basis will give proper weight to cost-effectiveness.

In proposed paragraph (d), we would describe the mechanisms for the transfer of a grant award when a previously awarded recipient can no longer provide the services and/or housing. This mechanism, which is not present in the current rule, is needed in order to prevent a lapse in services to homeless veterans within a particular geographic area who were served by the prior grant recipient.

#### **Section 61.15 Capital Grants—Obtaining Additional Information and Awarding Capital Grants**

In proposed paragraph (a)(1), we restate the requirement that applicants who have been conditionally selected submit “[a]ny additional information necessary to show that the project is feasible, including a plan from an architect, contractor, or other building professional that provides estimated costs for the proposed design.” The current version requires that match documentation be submitted at this time, but under these revised regulations, detailed match documentation would be required as part of the initial application package. Therefore, we retain the mention of match documentation in this section but plan to request additional match documentation only when necessary. The rest of § 61.15 would be substantively identical to the current rule.

#### **Section 61.16 Matching Funds for Capital Grants**

Proposed paragraph (a) would restate much of current § 61.16. We would attempt to clarify, without substantive change, the percentages of funding that may be provided by VA and the matching funds that must be provided by the grantee.

In proposed paragraph (b), we would restate the last sentence of current § 61.16; however, we would add that “developer’s fees” are not allowable costs because we have found that such fees are difficult to justify in the vast majority of cases.

Proposed paragraph (c) would specify the documentation required to demonstrate the match. We believe it will be helpful to include the details of what documentation is required to demonstrate compliance with the statutory requirement in 38 U.S.C. 2011(c).

#### **Section 61.17 Site Control for Capital Grants**

We would revise paragraph (a) to add that the grantee must establish control or ownership through assignment to the entity whose employer or taxpayer identification number is on the Application for Federal Assistance (SF424). This is necessary to ensure that site control rests with the grantee, i.e., the entity whose employer or taxpayer identification number is on the SF424. Moreover, under paragraph (a)(1) we would allow for alternate assignments, which can be used by non-profit organizations to assign site control to different divisions within their same organization (e.g., a non-profit organization using non-taxable units to hold the property, thereby limiting the liability of the greater organization).

We note that this does not mean that VA will not award grants to non-profit organizations who are working with tax-credit entities. We would permit tax credit entities to use a capital lease to demonstrate site control.

In proposed paragraph (a)(1), we would set forth criteria to grant alternative assignments. The criteria attempt to reduce opportunities to profit through alternative assignments, because our grants are not designed to benefit for-profit entities.

We would also reorganize the current provisions for clarity.

Proposed paragraph (c) would restate the 1-year deadline to establish site control, which is contained in current paragraph (a). We have added that grantees who do not establish control within 1 year may request a reasonable extension, or the grant may be terminated. This reflects current VA National GPD Program practice. In addition, we would clarify that extensions will be authorized if the grantee was not at fault for being unable to exercise site control and the lack of site control does not affect the grantee’s ability to complete the project. These are the only reasons that we would deny an extension.

#### **Section 61.18 Capital Grants for Vans**

Proposed § 61.18 would set forth in a separate section all current provisions relating to capital grants for vans. Because we would no longer be considering vans as part of the rating criteria for capital grants in general, we would add scoring criteria specific to vans in paragraph (d).

#### **Section 61.19 Transfer of Capital Grants**

We propose to add § 61.19, which describes the mechanisms for the

transfer of a grant award when a previously awarded recipient can no longer provide the services and/or housing. This is needed in order to prevent a lapse in services to homeless veterans within a particular geographic area who were served by the prior grant recipient.

#### **Section 61.30 Per Diem—General**

We propose to reorganize and clarify the information in the current rule. We would also add that VA may terminate per diem only awards if the funds are not being used for supportive services within 180 days after the date on the notification of award letter.

#### **Section 61.31 Per Diem—Application Packages**

Proposed § 61.31 is substantively identical to the current rule, except that we propose not to include current § 61.31(b)(1), which requires that the application justify the need for per diem, because the requirement is unnecessary and redundant in light of the other, more specific application requirements set forth in the rule.

#### **Section 61.32 Per Diem Application Packages—Rating Criteria**

Proposed paragraph (a) is essentially the same as current § 61.32(a). In paragraph (b), we would add a tiebreaker provision, as discussed above in the discussion of proposed § 61.14.

#### **Section 61.33 Payment of Per Diem**

We propose to simplify the language throughout this section, and eliminate redundancy within the section. For example, current § 61.33(c) states that non-capital-grant recipients must enter into an agreement with VA; however, that requirement is currently reflected in §§ 61.61 and 61.32(c). Similarly, the current rule refers several times to inspection requirements, but these are already established in current § 61.65. We would eliminate these duplications because they are unnecessary and because restating them here might create confusion as to whether, and the extent to which, the other provisions also apply.

#### **Section 61.40 Special Need Grants—General**

In proposed § 61.40, we would clarify existing procedures for applying for a special need grant. We would also make the following significant change: Currently, we permit grantees to submit an application for a special need grant only after they have already been granted a capital or non-capital grant. Under the proposed rule, we would authorize awarding special need grants

to any eligible entity that can establish that they would target the special need populations identified in this section. We are making this change to increase the pool of applicants to include those entities who are not already grantees.

In accordance with the new application process described in § 61.40 for special need grants, we would cross-reference the rating and substantive requirements in the other sections that also would be applicable to this new procedure and application package. We would eliminate § 61.43, which sets forth rating criteria for special need application packages, because these applications would be scored as capital or non-capital grant applications.

#### **Section 61.41 Special Need Grants—Application Packages and Threshold Requirements**

We would combine the substance of current §§ 61.41 and 61.42 into proposed § 61.41, simplify the language of the current rules, and revise the application criteria to conform with proposed § 61.12, which sets forth threshold requirements for capital grant applications. We note that some requirements of proposed § 61.12 are not contained in current § 61.42, such as a requirement that the application be submitted on the correct form. We believe that the threshold requirements in proposed § 61.12 should apply to special need grants applications to provide an appropriate basis for the elimination of applicants who do not meet certain minimum standards, and will contribute to a more efficient application process overall.

#### **Section 61.44 Awarding Special Need Grants and Payment of Special Need Per Diem**

Proposed paragraph (a) would simply state the requirement for an executed agreement under § 61.61.

Proposed paragraph (b) would describe the nature of the special need grant—such grants differ from capital and non-capital (Per Diem Only (PDO)) grants because the per diem payment is slightly higher and is based on the program addressing the needs of the targeted populations. The authorizing statute, 38 U.S.C. 2061, does not set forth either a capital grant amount or per diem rate for the purposes of a special need grant. Increased capital grant amounts will be provided as a natural result of the increased building and project costs related to these targeted populations (such as wheelchair ramps, other Americans with Disability Act building requirements, security locks and cameras for women and children, etc.).

Special needs non-capital grants may be awarded for up to twice the amount of per diem awarded to non-special-needs grants. We also note that the proposed rule would not require a match for these grants, but would continue to require a match for special needs capital grants.

The amount of the per diem payment would be the lesser of (1) 100 percent of the daily cost of care estimated by the special need recipient for furnishing services to homeless veterans with special need that the special need recipient certifies to be correct, minus any other sources of income; or (2) Two times the current VA State Home Program per diem rate for domiciliary care. Pursuant to 38 U.S.C. 2061(a), VA “shall carry out a program to make grants to \* \* \* grant and per diem providers in order to encourage development by those \* \* \* providers of programs for homeless veterans with special needs.” Moreover, in order to adequately incentivize grantees to cater to veterans with special needs, we believe that the rate of per diem must be greater than the rate of per diem paid to a capital grantee who does not provide a program for veterans with special needs. Therefore, we believe that it is consistent with the statute to set forth special rates of per diem for these programs in order to encourage both capital and non-capital grantees to serve the targeted populations. The specific per diem calculation is based on what we believe reflects the amount of increased daily costs related to this specialty care.

#### **Section 61.50 Technical Assistance Grants—General**

We would increase the specificity in this regulation to help ensure that we select the most deserving grant recipients, which will further the needs of the overall program. The changes are consistent with current practice and with the purposes of 38 U.S.C. 2064.

The last sentence of paragraph (a) would bar current recipients of any grant under this part (other than a technical assistance grant), or their sub-recipients, from receiving technical assistance grants. Technical assistance grantees learn highly technical information and get one-on-one assistance from VA National GPD Program officials to help them provide accurate information to the potential grant applicants that they provide services to. As such, they are, as a practical matter, an extension of program office staff. Therefore, we believe that it is unfair to allow these grantees to compete against other entities for other grants under this part because there may be a bias perceived

by other applicants in favor of these technical assistance grantees, who, again, have extensive access to VA National GPD Program officials.

#### **Section 61.51 Technical Assistance Grants—Application Packages**

We do not propose any substantive changes to current § 61.51. We would delete current § 61.51(b)(1), which requires that the application justify the need for the grant, because the requirement is unnecessary and redundant in light of the other, more specific application requirements set forth in the rule.

#### **Section 61.52 Technical Assistance Grant Application Packages—Threshold Requirements**

This section is substantively identical to the current section, except that we would make it a threshold requirement that the applicant must not have been notified by VA that they were in default, whereas the current rule requires only that the applicant not be in default. We would also revise this requirement to cover those rare instances where VA discovers that an applicant may be in default during the application process, but VA has not been able to verify the default, as well as those rare instances where an applicant is technically in default but is unaware of the default and is able to quickly resolve the issue before VA institutes notification procedures. As noted above, VA grant funds are limited and permitting applicants suspected of being in default to remain in the applicant pool could seriously jeopardize the overall success of this grant program. Notification of default occurs after a lengthy development process, and we do not believe that we would be appropriately safeguarding the proper use of limited funds if we were to allow a grant to issue to an applicant who was under investigation for default.

#### **Section 61.53 Technical Assistance Grant Application Packages—Rating Criteria**

We propose to add paragraph (c)(6), which would allow VA to use historical documents of past performance both VA and non-VA, including those from other Federal, state and local agencies and audits by private or public entities in scoring applications. This will help us have a better perspective of the applicant's overall past performance, which may serve as an indicator of future performance.

#### **Section 61.54 Awarding Technical Assistance Grants**

Much of proposed § 61.54 remains the same as current § 61.54, with the exception of a few significant changes. In proposed paragraph (d), we would change the time period during which VA may make payments for technical assistance from 3 years (with permission to re-apply in response to a Notice of Fund Availability) to “the period specified in the Notice of Fund Availability.” We propose this change because we want to be able to establish periods (that will generally be longer than 3 years), based on fund availability.

We would remove current paragraph (e), which states that the amount of a technical assistance grant under this part may not exceed the cost of the estimated cost of the provision of technical assistance. Current paragraph (e) was superfluous because under current and proposed paragraph (d), the amount of the grant will be the estimated total operational cost; therefore, logically, the grant cannot be for more than that amount.

In proposed paragraph (e), which is based on current paragraph (f), we would change, “VA will not pay for sustenance or lodging under a technical assistance grant” to “VA will not pay for sustenance or lodging for the nonprofit community participants or attendees at training conferences offered by technical assistance grant recipients; however, the grantee may use grant funds to recover such expenses.” The current rule can be read to bar any such payment related to a technical assistance grant activity; however, we did not intend to bar the grantees themselves from recovering these costs. The proposed revision will make this section consistent with our original intent.

#### **Section 61.55 Technical Assistance Reports**

We propose to make some non-substantive changes to current § 61.55.

#### **Section 61.61 Agreement and Funding Actions**

We would move current § 61.61(c) to paragraph (a), because it applies only to our enforcement of executed agreements. We would also reorganize provisions that appeared in current § 61.61(f), (g) and (i) by moving them to § 61.67(a). They provide that VA may seek recovery where a capital grant recipient fails to provide supportive services and/or supportive housing for the minimum period of operation; VA may obligate any recovered funds without fiscal year limitation; and

where a recipient has no control over causes for delays in implementing a project, VA may extend the 3-year period described in current § 61.67(a), as appropriate. These provisions relate to recovery, and not to funding actions, and therefore it makes more organizational sense to locate them in § 61.67, “Recovery provisions.” Otherwise, proposed paragraphs (a) through (e) contain the substance of current § 61.61 with some changes for purposes of readability.

#### **Section 61.62 Program Changes**

In proposed paragraph (b), we propose to eliminate the \$100,000 threshold grant amount for seeking approval of cumulative transfers among direct cost categories that exceed, or are expected to exceed, 10 percent of the approved budget. This is because some of our grantees do not even receive a grant of \$100,000. In addition, we believe that by requiring greater oversight we will be able to ensure that the funds awarded are used for the purpose for which the grant was made and that we are aware of all changes between direct cost categories.

We propose to add a new paragraph (f) that would require recipients to inform VA “in writing of any key position and address changes in/of their organization within 30 days of the change, i.e., new executive director or chief financial officer, permanent change of address for corporate communications.” This requirement will help ensure that we are aware of necessary contact information.

#### **Section 61.63 Procedural Error**

We propose to eliminate the requirement that when “an application would have been selected but for a procedural error committed by VA, VA will select that application for potential funding when sufficient funds become available if there is no material change in the information that resulted in its selection.” Instead, we propose to reconsider such an application in the next funding round, if there has not been any material change in the information that resulted in its selection. Notwithstanding that this provision addresses VA's own procedural errors, we do not believe it is appropriate to require VA to select the overlooked applicant at the expense of another, better qualified applicant who may apply in the next funding round. Such a requirement could be to the detriment of the homeless veterans serviced by the project.

**Section 61.64 Religious Organizations**

We propose to make some non-substantive changes to current § 61.64.

**Section 61.65 Inspections**

This section is substantively identical to current § 61.65, except that we would clarify that inspections necessary to determine compliance with this part include compliance with the terms of the grant agreement. This clarification reflects our original intent in promulgating this proposed rule. It is important to verify compliance with the terms of the agreement, which may contain specifics verifiable upon inspection.

**Section 61.66 Financial Management**

We propose to revise this section to specifically reference the CFR provisions which codify the requirement for use of accounting procedures set forth by the Office of Management and Budget. Given that these procedures are codified in regulation VA grantees have already been subject to them, but placing them in this Part highlights their applicability to GPD grantees.

**Section 61.67 Recovery Provisions**

In proposed paragraph (b), we have revised the chart showing the grant amount/years in operation calculation necessary to apply the formula described in paragraph (b). We would revise the chart by extending the period of operation from 7 to 20 to 20 to 40 years, and by changing the grant amount relating to periods of years within that proposed 20 to 40-year period. We did this to better reflect industry standards for both accounting and real estate methodologies for calculating depreciation and asset worth.

Proposed paragraph (c) clarifies that capital grantees are subject to real property disposition as required by 38 CFR 49.32 when the grantee no longer is providing services through a grant awarded under this part. This is a separate legal requirement that has always applied to grants under this part; we add it only to provide notice to grantees.

**Section 61.80 General Operation Requirements for Supportive Housing and Service Centers**

In proposed paragraph (a), we would require a sprinkler system unless a facility is specifically exempted under the Life Safety Code. This provision is to help ensure the safety of our veterans. We also removed language that appears in the current rule concerning the timing of compliance with the Life Safety Code because the deadline for

compliance was in 2006. Thus, that language is outdated.

We have added an explanation of the requirements for a clean and sober environment. These requirements are intended to ensure that illegal drug use and/or alcohol use do not prevent participants from peacefully enjoying the supportive housing or services provided by the grantee. These requirements are consistent with the clean and sober policies established in the regulations governing Housing and Urban Development at 24 CFR 5.855 *et seq.*

We propose to revise paragraph (c) to require a quarterly technical performance report that must include information that will help VA assess whether the recipient is performing adequately. We specify that such report “must be filed once during each quarter and no later than January 30, April 30, July 30, and October 30.”

We would also add provisions reflecting performance measures set forth in the grant application. These are found in paragraphs (m) through (q).

**Section 61.81 Outreach Activities**

We propose to make some non-substantive changes to current § 61.81.

**Section 61.82 Participant Fees for Supportive Housing**

We propose to revise the section header from “Resident rent for supportive housing” to “Participant fees for supportive housing.” We also propose to specifically describe the requirements regarding the charge and use of such fees. We propose not to discuss rent, as we do in the current rule, because of the significant variation in the definitions of rents between localities. We believe that the proposed language will allow VA to operate the program in a more flexible, locally appropriate manner.

**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” requiring review by the Office of Management and Budget (OMB) 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 the Executive Order.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this proposed rule and has determined that it is not a significant regulatory action under Executive Order 12866.

**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 expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on state, local, or tribal governments, or on the private sector.

**Paperwork Reduction Act**

OMB assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), 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 proposed rule at §§ 61.11, 61.12, 61.15, 61.17, 61.31, 61.41, 61.51, 61.55, 61.62 and 61.80 contains collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). Accordingly, under § 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information.

Collections at §§ 61.11, 61.12, 61.15, 61.17, 61.31, 61.41, 61.51, and 61.55 have been previously approved under OMB 2900–0554 (Homeless Providers Grant and Per Diem Program). Collections at §§ 61.62 and 61.80 are



new. We are seeking an approval of the information collection on a non-emergency basis. Accordingly, we are also requesting comments on the collection of information provisions contained in §§ 61.62 and 61.80 on a non-emergency basis. Comments must be submitted by April 30, 2012.

Comments on the collections of information 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 mailed or hand-delivered to: Director, Office of Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1063B, Washington, DC 20420. Comments should indicate that they are submitted in response to “RIN 2900–AN81.”

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

*Summary of collection of information:* The proposed rule at §§ 61.11, 61.12, 61.15, 61.17, 61.31, 61.41, 61.51, 61.55, 61.62 and 61.80 contains application provisions for capital grants, per diem, special need payment, program changes, and program performance. Collections at §§ 61.11, 61.12, 61.15, 61.31, 61.41, and 61.55 have been previously approved under OMB 2900–0554. Collections at §§ 61.62 and 61.80 are new. However, they may be in any acceptable business format and should not be a burden upon grant recipients as they already collect this information.

Application provisions for capital grants and per diem and special need payment.

*Description of the need for information and proposed use of information:* This information is needed to determine eligibility for capital grants and per diem and special need payment.

*Description of likely respondents:* Public or nonprofit private entities requesting a capital grant.

*Estimated number of respondents per year:* 200.

*Estimated frequency of responses per year:* 1.

*Estimated total annual reporting and recordkeeping burden:* 7,000 hours.

*Estimated annual burden per collection:* 35 hours.

Application provisions for per diem for non-capital grant recipients.

*Description of the need for information and proposed use of information:* This information is needed to determine eligibility for per diem.

*Description of likely respondents:* Public or nonprofit private entities requesting per diem.

*Estimated number of respondents per year:* 250.

*Estimated frequency of responses per year:* 1.

*Estimated total annual reporting and recordkeeping burden:* 35 hours.

*Estimated annual burden per collection:* 8,750 hours.

The Department considers comments by the public on collections of information in—

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the 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 responses 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.

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

### Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This proposed rule would only impact those entities that choose to participate in the VA Homeless Providers Grant and Per Diem Program. Small entity applicants would 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 proposed rule would have any impact on small entities, it would not have an impact on a substantial number of small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

### 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; 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. John R. Gingrich approved this document on February 23, 2012, for publication.

### 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.

Dated: February 24, 2012.

**William F. Russo,**

*Deputy Director, Office of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.*

For the reasons set forth in the preamble, we propose 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 is revised to read as follows:

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

2. Part 61 is revised to read as follows: Sec.

#### General Provisions

- 61.0 Purpose.
- 61.1 Definitions.
- 61.2 Supportive services—general.
- 61.3 Notice of Fund Availability.
- 61.4 Definition of capital lease.

#### Capital Grants

- 61.10 Capital grants—general.
- 61.11 Capital grants—application packages.
- 61.12 Capital grant application packages—threshold requirements.
- 61.13 Capital grant application packages—rating criteria.
- 61.14 Capital grants—selection of grantees.
- 61.15 Capital grants—obtaining additional information and awarding capital grants.
- 61.16 Matching funds for capital grants.
- 61.17 Site control for capital grants.
- 61.18 Capital grants for vans.

61.19 Transfer of capital grants.

#### Per Diem Payments

61.30 Per diem—general.

61.31 Per diem—application packages.

61.32 Per diem application packages—rating criteria.

61.33 Payment of per diem.

#### Special Need Grants

61.40 Special need grants—general.

61.41 Special need grants—application packages and threshold requirements.

61.44 Awarding special need grants and payment of special need per diem.

#### Technical Assistance Grants

61.50 Technical assistance grants—general.

61.51 Technical assistance grants—application packages.

61.52 Technical assistance grant application packages—threshold requirements.

61.53 Technical assistance grant application packages—rating criteria.

61.54 Awarding technical assistance grants.

61.55 Technical assistance reports.

#### Awards, Monitoring, and Enforcement of Agreements

61.61 Agreement and funding actions.

61.62 Program changes.

61.63 Procedural error.

61.64 Religious organizations.

61.65 Inspections.

61.66 Financial management.

61.67 Recovery provisions.

61.80 General operation requirements for supportive housing and service centers.

61.81 Outreach activities.

61.82 Participant fees for supportive housing.

#### General Provisions

##### § 61.0 Purpose.

This part implements the VA Homeless Providers Grant and Per Diem Program which consists of the following components: capital grants, per diem, special need capital and non-capital grants, and technical assistance grants.

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

##### § 61.1 Definitions.

For purposes of this part:

*Area or community* means a political subdivision or contiguous political subdivisions (such as a precinct, ward, borough, city, county, State, Congressional district, etc.) with a separately identifiable population of homeless veterans.

*Capital grant* means a grant for construction, renovation, or acquisition of a facility, or a grant for acquisition of a van.

*Capital lease* is defined by § 61.4.

*Chronically mentally ill* means 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 symptomatology or serious impairment in the areas of work, family relations, thinking, or mood.

*Default* means a determination by VA that an awardee has materially failed to comply with the terms and conditions of an award.

*Fixed site* means a physical structure that under normal conditions is not capable of readily being moved from one location to another location.

*Frail elderly* means 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.).

*Homeless* has the meaning given that term in section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a)).

*New construction* means building a structure where none existed, or building an addition to an existing structure that increases the floor area by more than 100 percent.

*Nonprofit organization* means a private organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must be recognized as a section 501(c)(3) or 501(c)(19) nonprofit organization by the United States Internal Revenue Service, and meet all of the following criteria:

(1) Have a voluntary board;

(2) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or designate an entity to maintain such a functioning accounting system; and

(3) Practice nondiscrimination in the provision of supportive housing and supportive services assistance.

*Notice of Fund Availability (NOFA)* means a notice published in the **Federal Register** in accordance with § 61.60.

*Operating costs* means expenses incurred in operating supportive housing, supportive services or service centers with respect to:

(1) Administration (including staff salaries; costs associated with accounting for the use of grant funds, preparing reports for submission to VA, obtaining program audits, and securing accreditation; and similar costs related to administering the grant after the award), maintenance, repair and security for the supportive housing;

(2) Van costs or building rent (except under capital leases), e.g., fuel, insurance, utilities, furnishings, and equipment;

(3) Conducting on-going assessments of supportive services provided for and needed by participants and the availability of such services; and

(4) Other costs associated with operating the supportive housing.

*Operational* means a program for which all VA inspection requirements under this part have been met and an activation document has been issued by the VA National GPD Program.

*Outpatient health services* means outpatient health care, outpatient mental health services, outpatient alcohol and/or substance abuse services, and case management.

*Participant* means a person receiving services based on a grant or per diem provided under this part.

*Participant agreement* means any written or implied agreement between a grant recipient agency and a program participant that outlines the requirements for program compliance, participant or service delivery.

*Project* means all activities that define the parameters of the purpose of the grant.

*Public entity* means any of the following:

(1) A county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government; or

(2) The governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in § 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by the Bureau of Indian Affairs.

*Recipient* means the entity whose employer or taxpayer identification number is on the Application for Federal Assistance (SF 424) and is consequently responsible to comply with all terms and conditions of the award. For the purpose of this part the terms “grantee”, “recipient”, and “awardee” are synonymous and interchangeable.

*Rehabilitation* means the improvement or repair of an existing

structure. Rehabilitation does not include minor or routine repairs.

*State* means any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a state exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

*Supportive housing* means housing with supportive services provided for homeless veterans that:

(1) Is not shelter care, other emergent housing, or housing designed to be permanent or long term (more than 24 months), with no requirement to move; and

(2) Is designed to either:

(i) Facilitate the movement of homeless veterans to permanent housing within a period that is not less than 90 days and does not exceed 24 months, subject to § 61.80; or

(ii) Provide specific medical treatment such as detoxification, respite, or hospice treatments that are used as step-up or step-down programs within that specific project's continuum.

*Supportive services* has the meaning assigned to it under § 61.2.

*Terminally ill* means a prognosis of 9 months or less to live, based on a written medical diagnosis from a physician.

*Total project cost* means the sum of all costs incurred by a recipient for the acquisition, rehabilitation, and new construction of a facility, or van(s), identified in a grant application.

*VA* means the Department of Veterans Affairs.

*VA National GPD Program* refers to the VA Homeless Providers Grant and Per Diem Program.

*Veteran* means a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064)

#### **§ 61.2 Supportive services—general.**

(a) Recipients must design supportive services. Such services must provide appropriate assistance, or aid participants in obtaining appropriate assistance, to address the needs of homeless veterans. The following are examples of supportive services:

(1) Outreach activities;

(2) Providing food, nutritional advice, counseling, health care, mental health treatment, alcohol and other substance abuse services, case management services;

(3) Establishing and operating child care services for dependents of homeless veterans;

(4) Providing supervision and security arrangements necessary for the protection of residents of supportive housing and for homeless veterans using supportive housing or services;

(5) Assistance in obtaining permanent housing;

(6) Education, employment counseling and assistance, and job training;

(7) Assistance in obtaining other Federal, State and local assistance available for such residents including mental health benefits, employment counseling and assistance, veterans' benefits, medical assistance, and income support assistance; and

(8) Providing housing assistance, legal assistance, advocacy, transportation, and other services essential for achieving and maintaining independent living.

(b) Supportive services do not include inpatient acute hospital care.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061)

#### **§ 61.3 Notice of Fund Availability.**

When funds are made available for a grant or per diem award under this part, VA will publish a Notice of Fund Availability in the **Federal Register**. The notice will:

(a) Give the location for obtaining application packages;

(b) Specify the date, time, and place for submitting completed applications;

(c) State the estimated amount and type of funding available; and

(d) State any priorities for or exclusions from funding to meet the statutory mandate of 38 U.S.C. 2011, to ensure that awards do not result in the duplication of ongoing services and to reflect the maximum extent practicable appropriate geographic dispersion and an appropriate balance between urban and nonurban locations.

(e) Provide other information necessary for the application process, such as the grant period, where applicable.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061, 2064)

#### **§ 61.4 Definition of capital lease.**

A capital lease, for purposes of this part, means a conditional sales contract that either:

(a) Will be in effect for all of the period of recovery listed in § 61.67(b); or

(b) That satisfies one of the following criteria:

(1) The lease transfers ownership to the lessee at the expiration of the lease term.

(2) The lease contains a bargain purchase option.

(3) The present value of lease payments that are applied to the purchase are equal to or greater than 90 percent of the fair market value of the asset.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061, 2064)

#### **Capital Grants**

##### **§ 61.10 Capital grants—general.**

(a) Subject to the availability of appropriations provided for such purpose, VA will provide capital grants to public or nonprofit private entities so they can assist homeless veterans by helping to ensure the availability of supportive housing and service centers to furnish outreach, rehabilitative services, and vocational counseling and training. Specifically, VA provides capital grants for up to 65 percent of the cost to:

(1) Construct structures and purchase the underlying land to establish new supportive housing facilities or service centers, or to expand existing supportive housing facilities or service centers;

(2) Acquire structures to establish new supportive housing facilities or service centers, or to expand existing supportive housing facilities or service centers; and

(3) Renovate existing structures to establish new supportive housing facilities or service centers, or to expand existing supportive housing facilities or service centers.

(4) Procure a van in accordance with § 61.18 Capital grants for vans.

(b) Capital grants may not be used for acquiring buildings located on VA-owned property. However, capital grants may be awarded for construction, expansion, or renovation of buildings located on VA-owned property.

(Authority: 38 U.S.C. 501, 2011)

##### **§ 61.11 Capital grants—application packages.**

(a) *General.* To apply for a capital grant, an applicant must obtain from, complete, and submit to VA a capital grant application package within the time period established in the Notice of Fund Availability.

(b) *Content of application.* The capital grant application package will require the following:

(1) Site description, site design, and site cost estimates.

(2) Documentation supporting:

(i) Eligibility to receive a capital grant under this part;

(ii) Matching funds committed to the project;

(iii) A proposed operating budget and cost sharing;

(iv) Supportive services committed to the project;

(v) The applicant's authority to control the site and meet appropriate zoning laws; and

(vi) The boundaries of the area or community that would be served.

(3) If capital grant funds would be used for acquisition or rehabilitation, documentation demonstrating that the costs associated with new construction or rehabilitation are less than the costs associated with new construction.

(4) If capital grant funds would be used for new construction, documentation demonstrating that the costs associated with new construction are less than the costs associated with rehabilitation of an existing building, that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction, and that new construction is less costly than acquisition of an existing building (for purposes of this cost comparison, costs associated with rehabilitation or new construction may include the cost of real property acquisition).

(5) If proposed construction includes demolition:

(i) A demolition plan that describes the extent and cost of existing site features to be removed, stored, or relocated; and

(ii) Information establishing that the proposed construction is either in the same location as the building to be demolished or that the demolition is inextricably linked to the design of the construction project. Without such information, the cost of demolition cannot be included in the cost of construction.

(6) If the applicant is a state, comments or recommendations by appropriate state (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197).

(7) A statement from the applicant that all of the following are true:

(i) The project will furnish to veterans the level of care for which such application is made, and services provided will meet the requirements of this part.

(ii) The applicant will continue to operate the project until the expiration of the period during which VA could seek full recovery under § 61.67.

(iii) Title to the site will vest solely in the applicant and the applicant will insure the site to the same extent they would insure a site bought with their own funds.

(iv) Adequate financial support will be available for the completion of the project.

(v) The applicant will keep records and submit reports as VA may reasonably require, within the time frames required, and, upon demand, allow VA access to the records upon which such information is based.

(vi) The applicant will state that no more than 25 percent of the grant-awarded beds are occupied by non-veterans.

(c) *Multiple capital grant applications.* Subject to § 61.12(i), applicants may apply for more than one capital grant.

(Authority: 38 U.S.C. 501, 2011)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554)

#### **§ 61.12 Capital grant application packages—threshold requirements.**

The following threshold requirements for a capital grant application must be met, or the application will be rejected before being rated under § 61.13:

(a) The application package must meet all of the following criteria:

(1) Be on the correct application form.

(2) Be completed in all parts, including all information requested in the Notice of Fund Availability and application package.

(3) Include a signed Application for Federal Assistance (SF 424) that contains the Employer Identification Number or Taxpayer Identification Number (EIN/TIN) that corresponds to the applicant's Internal Revenue Service (IRS) 501(c)(3) or (19) determination letter. All applicants must provide such an IRS determination letter, which includes their EIN/TIN. Applicants that apply under a group EIN/TIN, must be identified by the parent EIN/TIN as a member or sub-unit of the parent EIN/TIN, and provide supporting documentation.

(4) Be submitted before the deadline established in the Notice of Fund Availability.

(b) The applicant must be a public or nonprofit private entity at the time of application.

(c) The activities for which assistance is requested must be eligible for funding under this part.

(d) The applicant must demonstrate that adequate financial support will be available to carry out the project for which the capital grant is sought, consistent with the plans, specifications, and schedule submitted by the applicant.

(e) The application must demonstrate compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655).

(f) The applicant must agree to comply with the requirements of this part and demonstrate the capacity to do so.

(g) The applicant must not have an outstanding obligation to VA that is in arrears, or have an overdue or unsatisfactory response to an audit.

(h) The applicant must not have been notified by VA as being in default.

(i) The applicant, during the 5 years preceding the date of the application, must not have done any of the following:

(1) Had more than two grants awarded under this part that remain in development;

(2) Failed to establish two previous awarded grant projects under this part; or

(3) Had a previous grant or per diem project awarded under this part terminated or transferred to another eligible entity for failure to comply with the terms and conditions of the award.

(Authority: 38 U.S.C. 501, 2011)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554)

#### **§ 61.13 Capital grant application packages—rating criteria.**

(a) *General.* Applicants that meet the threshold requirements in § 61.12 will be rated using the selection criteria listed in this section. To be eligible for a capital grant, an applicant must receive at least 750 points (out of a possible 1000) and must receive points under each of the following paragraphs (b), (c), (d), (e) (f) and (g) of this section.

(b) *Project Plan.* VA will award up to 300 points based on the demonstration and quality of the following:

(1) The selection of the proposed housing in light of the population to be served.

(2) The process used for deciding which veterans are appropriate for admission.

(3) How, when, and by whom the progress of participants toward meeting their individual goals will be monitored, evaluated, and documented.

(4) The role program participants will have in operating and maintaining the housing.

(5) The responsibilities the applicant, sponsors, or contractors will have in operating and maintaining the housing.

(6) The supportive services that will be provided and by whom to help participants achieve residential stability, increase skill level and/or income, and become involved in making life decisions that will increase self-determination.

(7) The measureable objectives that will be used to determine success of the supportive services.

(8) How the success of the program will be evaluated on an ongoing basis.

(9) How the nutritional needs of veterans will be met.

(10) How the agency will ensure a clean and sober environment.

(11) How participants will be assisted in assimilating into the community through access to neighborhood facilities, activities, and services.

(12) How the proposed project will be implemented in a timely fashion.

(13) How permanent affordable housing will be identified and made known to participants upon leaving the supportive housing.

(14) How participants will be provided necessary follow-up services.

(15) The description of program policies regarding participant agreements, rent, and fees.

(c) *Outreach to persons on streets and in shelters.* VA will award up to 100 points based on:

(1) The agency's outreach plan to serve homeless veterans living in places not ordinarily meant for human habitation (e.g., streets, parks, abandoned buildings, automobiles, under bridges, in transportation facilities) and those who reside in emergency shelters; and

(2) The likelihood that proposed plans for outreach and selection of participants will result in these populations being served.

(d) *Ability of applicant to develop and operate a project.* VA will award up to 200 points based on the extent to which the application demonstrates the necessary staff and organizational experience to complete and operate the proposed project, based on the following:

(1) Staffing plan for the project that reflects the appropriate professional staff, both administrative and clinical;

(2) Experience of staff, if staff not yet hired, position descriptions and expectations of time to hire;

(3) Amount of time each staff position is dedicated to the project, and in what capacity;

(4) Applicant's previous experience assessing and providing for the housing needs of homeless veterans;

(5) Applicant's previous experience assessing and providing supportive services for homeless veterans;

(6) Applicant's previous experience assessing supportive service resources and entitlement benefits;

(7) Applicant's previous experience with evaluating the progress of both individual participants and overall program effectiveness using quality and performance data to make changes;

(8) Applicant's previous experience operating housing for homeless individuals;

(9) Overall agency organizational overview (org. chart); and

(10) Historical documentation of past performance both with VA and non-VA projects, including those from other Federal, state and local agencies and audits by private or public entities.

(e) *Need.* VA will award up to 150 points based on the extent to which the applicant demonstrates:

(1) Substantial unmet needs, particularly among the target population living in places not ordinarily meant for human habitation such as the streets, emergency shelters, based on reliable data from surveys of homeless populations or other reports or data gathering mechanisms that directly support claims made; and

(2) An understanding of the homeless population to be served and its unmet housing and supportive service needs.

(f) *Completion confidence.* VA will award up to 50 points based on the review panel's confidence that the applicant has effectively demonstrated the supportive housing or service center project will be completed as described in the application. VA may use historical program documents of past performance both VA and non-VA, including those from other Federal, state and local agencies as well as audits by private or public entities in determining confidence scores.

(g) *Coordination with other programs.* VA will award up to 200 points based on the extent to which applicants demonstrate that they have coordinated with Federal, state, local, private and other entities serving homeless persons in the planning and operation of the project. Such entities may include shelter transitional housing, health care, or social service providers; providers funded through Federal initiatives; local planning coalitions or provider associations; or other program providers relevant to the needs of homeless veterans in the local community. Applicants are required to demonstrate that they have coordinated with the VA medical care facility of jurisdiction and/or VA Regional Office of jurisdiction in their area. VA will award up to 50 points of the 200 points based on the extent to which commitments to provide supportive services are documented at the time of application. Up to 150 points of the 200 points will be given to the extent applicants demonstrate that:

(1) They are part of an ongoing community-wide planning process within the framework described above which is designed to share information

on available resources and reduce duplication among programs that serve homeless veterans;

(2) They have consulted directly with the closest VA Medical Center and other providers within the framework described above regarding coordination of services for project participants; and

(3) They have coordinated with the closest VA Medical Center their plan to assure access to health care, case management, and other care services.

(Authority: 38 U.S.C. 501, 2011)

#### **§ 61.14 Capital grants—selection of grantees.**

(a) Applicants will first be grouped in categories according to the funding priorities set forth in the NOFA, if any. Applicants will then be ranked, within their respective funding category if applicable. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be conditionally selected to receive a capital grant in accordance with their ranked order, as determined under § 61.13. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding.

(b) In the event of a tie between applicants, VA will use the score from § 61.13(g) to determine the ranking. If the score from § 61.13(g) is also tied, VA will use the score from § 61.13(d) to determine the ranking.

(c) VA may reject an application where the project is not cost effective based on the cost and number of new supportive housing beds made available—or based on the cost, amount, and types of supportive services made available—when compared to other supportive housing or services projects, and when adjusted for high cost areas. For those applications that VA believes not to be cost-effective VA will:

(1) Reduce the award; or

(2) Not select the application for funding.

(d) In the case of a previously awarded project that can no longer provide services and/or housing and the recipient agency has decided to withdraw or the project has been terminated for failure to comply with the terms and conditions of the award; VA may transfer a capital grant or non-capital grant to another eligible entity in the same geographical area without competition, in order to prevent a loss of capacity of services and housing to

homeless veterans. The new entity must meet all of the requirements to which the original grantee was subject. In the case of a capital grant transfer the new grantee will only be entitled to the funding that remains from the original capital obligation and remains responsible for all commitments made by the original grantee.

(Authority: 38 U.S.C. 501, 2011)

**§ 61.15 Capital grants—obtaining additional information and awarding capital grants.**

(a) Each applicant who has been conditionally selected for a capital grant will be requested by VA to submit additional documentation or information as necessary, including:

(1) Any additional information necessary to show that the project is feasible, including a plan from an architect, contractor, or other building professional that provides estimated costs for the proposed design;

(2) Documentation showing the sources of funding for the project and firm financing commitments for the matching requirements described in § 61.16;

(3) Documentation establishing site control described in § 61.17;

(4) Documentation establishing compliance with the National Historic Preservation Act (16 U.S.C. 470);

(5) Information necessary for VA to ensure compliance both with Uniform Federal Accessibility Standards (UFAS) and the Americans with Disabilities Act Accessibility Guidelines;

(6) Documentation establishing compliance with local and state zoning codes;

(7) Documentation in the form of one set of design development (35 percent completion) drawings demonstrating compliance with local codes, state codes, and the current Life Safety Code of the National Fire Protection Association;

(8) Information necessary for VA to ensure compliance with the provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*);

(9) A site survey performed by a licensed land surveyor; and

(10) Such other documentation as specified by VA in writing or verbally to the applicant to confirm or clarify information provided in the application.

(b) Items requested under paragraph (a) of this section must be received by VA in acceptable form within the time frame established in accordance with the Notice of Fund Availability.

(c) Following receipt of the additional information in acceptable form, VA will execute an agreement and make payments to the grant recipient in

accordance with § 61.61 and other applicable provisions of this part.

(Authority: 38 U.S.C. 501, 2011)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554)

**§ 61.16 Matching funds for capital grants.**

(a) VA cannot award a capital grant for more than 65 percent of the total allowable costs of the project. The grantee must provide funding (“matching funding”) for the remaining 35 percent of the total cost, using non-federal funds. VA requires that applicants provide documentation of all costs related to the project including those that are not allowable under OMB Circular A–122 as codified at 2 CFR part 230. Allowable costs means those related to the portion (percentage) of the property that would be used to provide supportive housing and services under this part.

(b) Capital grants may include application costs, including site surveys, architectural, and engineering fees, but may not include relocation costs or developer’s fees.

(c) *Documentation of matching funds.* The matching funds described in paragraph (a) of this section must be documented as follows; no other format will be accepted as evidence of a firm commitment of matching funds:

(1) Donations must be on the donor’s letterhead, signed and dated.

(2) The applicant’s own cash must be committed on the applicant’s letterhead, signed, and dated.

(3) No conditions may be placed on the matching funds other than the organization’s receipt of the capital grant.

(4) Funds must be committed to the same activity as the capital grant application (i.e., acquisition, renovation, new construction, or a van), and must not relate to operating costs or services.

(5) The value of matching funds must be for a cost that is included in the calculation of the total project cost, thereby decreasing the total expenditures of the grantee.

(d) *Van applications.* The requirements of this section also apply to applications for a capital grant for a van under § 61.18.

(Authority: 38 U.S.C. 501, 2011)

**§ 61.17 Site control for capital grants.**

(a) In order to receive a capital grant for supportive housing or a fixed site service center, an applicant must demonstrate site control. Site control must be demonstrated through a deed or an executed contract of sale, or a capital lease, which assigns control or

ownership to the entity whose Federal employer or taxpayer identification number is on the Application for Federal Assistance (SF424), unless one of the following apply:

(1) VA gives written permission for an alternate assignment. VA will permit alternate assignments except when:

(i) The alternate assignment is to a for-profit entity which is neither controlled by the applicant or by the applicant’s parent organization or the entity is controlled by the applicant’s parent organization which is a for-profit entity; or

(ii) VA has a reasonable concern that the assignment may provide an economic or monetary benefit to the assignee other than the benefit that would have inured to the applicant had the applicant not made the alternate assignment.

(2) The site is in a building or on land owned by VA, and the applicant has an agreement with VA for site control.

(b) A capital grant recipient may change the site to a new site meeting the requirements of this part subject to VA approval under § 61.62. However, the recipient is responsible for and must demonstrate ability to provide for any additional costs resulting from the change in site.

(c) If site control is not demonstrated within 1 year after execution of an agreement under § 61.61, the grantee may request a reasonable extension from the VA national GPD office, or the grant may be terminated. VA will authorize an extension request if the grantee was not at fault for being unable to exercise site control and the lack of site control does not affect the grantee’s ability to complete the project.

(Authority: 38 U.S.C. 501, 2011)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554)

**§ 61.18 Capital grants for vans.**

(a) *General.* A capital grant may be used to procure one or more vans, as stated in a NOFA, to provide transportation or outreach for the purpose of providing supportive services. The grant may cover the purchase price, sales taxes, and title and licensing fees. Title to the van must vest solely in the applicant, and the applicant must insure the van to the same extent they would insure a van bought with their own funds.

(b) *Who can apply for a van.* VA will only award vans to applicants who currently have an operational grant under this part, or in conjunction with a new application.

(c) *Application packages for van(s).* In order to receive a van, the application must demonstrate the following:

- (1) Clear need for the van(s);
- (2) Specific use of the van(s);
- (3) Frequency of use of the van(s);
- (4) Qualifications of the van driver(s);
- (5) Training of the van driver(s);
- (6) Type of van(s) to be obtained; and
- (7) Adequate financial support will be

available for the completion of the project or for the purchase and maintenance, repair, and operation of the van(s).

(d) *Rating criteria.* Applications will be scored using the selection criteria listed in this section. To be eligible for a van grant, an applicant must receive at least 80 points (out of a possible 100) of this section.

(1) *Need.* VA will award up to 60 points based on the extent to which the applicant demonstrates a substantial unmet need for transportation due to:

- (i) Lack of alternative public transportation,
- (ii) Project location,
- (iii) Expired life use of current van, or
- (iv) Special disabled individual transportation.

(2) *Activity.* VA will award up to 20 points based on the extent to which the applicant demonstrates:

- (i) Frequency of use,
- (ii) Type of use, and
- (iii) Type of van, e.g., whether there is a justification for a van with a wheelchair lift or other modifications.

(3) *Operator Qualification.* VA will award up to 20 points based on the extent to which the applicant demonstrates a job description for the van operator that details:

- (i) Requirements of the position, and
- (ii) Training that will be provided to the driver.

(Authority: 38 U.S.C. 501, 2011)

#### **§ 61.19 Transfer of capital grants.**

In the case of a previously awarded project that can no longer provide services and or housing and the recipient agency has decided to withdraw or the project has been terminated for failure to comply with the terms and conditions of the award; VA may transfer a capital grant or non-capital grant to another eligible entity in the same geographical area without competition, in order to prevent a loss of capacity of services and housing to homeless veterans. The new entity must meet all of the requirements to which the original grantee was subject. In the case of a capital grant transfer the new grantee will only be entitled to the funding that remains from the original capital obligation and remains responsible for all commitments made by the original grantee.

(Authority: 38 U.S.C. 501, 2011)

#### **Per Diem Payments**

##### **§ 61.30 Per diem—general.**

(a) *General.* VA may provide per diem funds to offset operating costs for a program of supportive housing or services. VA may provide:

- (1) Per diem funds to capital grant recipients; or
- (2) Per diem only (PDO) funds to entities eligible to receive a capital grant, if the entity established a program of supportive housing or services after November 10, 1992.

(b) *Capital grant recipients.* Capital grant recipients may request per diem funds after completion of a project funded by a capital grant and a site inspection under § 61.80 to ensure that the grantee is capable of providing supportive services.

(c) *Per diem only applicants.* PDO awards to entities eligible to receive a capital grant must provide supportive housing or services to the homeless veteran population within 180 days after the date on the notification of award letter, or VA will terminate the PDO payments.

(Authority: 38 U.S.C. 501, 2012)

##### **§ 61.31 Per diem—application packages.**

(a) *Capital grant recipient.* To apply for per diem, a capital grant recipient need only indicate the intent to receive per diem on the capital grant application or may separately request per diem by submitting to VA a written statement requesting per diem.

(b) *Non-capital-grant recipient (per diem only).* To apply for per diem only, a non-capital grant applicant must obtain from VA a non-capital grant application package and submit to VA the information called for in the application package within the time period established in the Notice of Fund Availability. The application package includes exhibits to be prepared and submitted as part of the application process, including:

- (1) Documentation on eligibility to receive per diem under this part;
- (2) Documentation on operating budget and cost sharing;
- (3) Documentation on supportive services committed to the project;
- (4) Comments or recommendations by appropriate state (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197), if the applicant is a state; and
- (5) Reasonable assurances with respect to receipt of per diem under this part that:
  - (i) The project will be used principally to furnish to veterans the

level of care for which such application is made; that not more than 25 percent of participants at any one time will be non-veterans; and that such services will meet the requirements of this part;

(ii) Adequate financial support will be available for the per diem program; and

(iii) The recipient will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based.

(Authority: 38 U.S.C. 501, 2012)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554)

##### **§ 61.32 Per diem application packages—rating criteria.**

(a) *Conditional selection.* Application packages for per diem only (i.e., from non-capital grant applicants) in response to a Notice of Fund Availability (NOFA) will be reviewed and grouped in categories according to the funding priorities set forth in the NOFA, if any. Such applications will then be ranked within their respective funding category according to scores achieved only if the applicant scores at least 750 cumulative points out of a possible 1000 from each of the following paragraphs: (b), (c), (d), (e), (f), and (g) of § 61.13. The highest-ranked applications for which funding is available, within highest funding priority category if applicable, will be conditionally selected for eligibility to receive per diem payments or special need payment in accordance with their ranked order. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding. Conditionally selectees will be subsequently awarded per diem, if they otherwise meet the requirements of this part, including passing the inspection required by § 61.80.

(b) *Ranking applications.* In the event of a tie between applicants, VA will use the score from § 61.13(g) to determine the ranking. Note: Capital grant recipients are not required to be ranked; however, continuation of per diem payments to capital grant recipients will be subject to limitations set forth in § 61.33.

(c) *Executing per diem agreements.* VA will execute per diem agreements with an applicant whose per diem application was conditionally selected



under this section using the same procedures applicable to a capital grant under § 61.15.

(Authority: 38 U.S.C. 501, 2012)

**§ 61.33 Payment of per diem.**

(a) *General.* VA will pay per diem to the recipient for those homeless veterans:

(1) Who VA referred to the recipient; or

(2) For whom VA authorized the provision of supportive housing or supportive service.

(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 title 38 U.S.C. 1741(a)(1).

(c) *Rate of payments for service centers.* The per diem amount for service centers shall be  $\frac{1}{3}$  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) *Continuing payments.* Recipients may continue to receive per diem only so long as funding is available, they continue to provide the supportive services described in their application, and they continue to meet the applicable ongoing requirements of this part. For non-capital grant recipients of per diem only, funds will be paid to the highest-ranked applicants, within the highest-funding priority category if applicable, in descending order until funds are expended. Generally, payments will continue for the time frame specified in the Notice of Fund Availability. When necessary due to funding limitations, VA will reduce the rate of per diem.

(e) *Retroactive payments.* Per diem may be paid retroactively for services provided not more than 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.

(f) *Payments for absent veterans.* VA will pay per diem for up to, and not more than, 72 consecutive hours (scheduled or unscheduled) of absence.

(g) *Supportive housing limitation.* VA will not pay per diem 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 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.

(h) *Veterans receiving supportive housing and services.* VA will not pay per diem for both supportive housing and supportive services provided to the same veteran by the same per diem recipient.

(i) 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.

(Authority: 38 U.S.C. 501, 2012)

**Special Need Grants**

**§ 61.40 Special need grants—general.**

(a) VA provides special need grants to public or nonprofit private entities that will create or provide supportive housing and services, which they would not otherwise create or provide, for the following special need homeless veteran populations:

(1) Women, including women who have care of minor dependents;

(2) Frail elderly;

(3) Terminally ill; or

(4) Chronically mentally ill.

(b) Applicants must submit an application package for a capital or non-capital grant, which will be processed by the VA National GPD Program in accordance with this part; however, to be eligible for a capital special need grant, an applicant must receive at least 800 points (out of a possible 1000) and must receive points under in each of the following paragraphs: (b), (c), (d), (e), (f), and (g) of § 61.13. Non-capital special need grants are rated in the same manner as non-capital grant applications under § 61.32.

(c) The following sections apply to special need grants: §§ 61.61 through 61.67, § 61.80, and § 61.82.

(Authority: 38 U.S.C. 501, 2061)

**§ 61.41 Special need grants—application packages and threshold requirements.**

(a) *Applications.* To apply for a special need grant, an applicant must obtain, complete, and submit to VA a special need capital grant or special need per diem only application package within the time period established in the Notice of Fund Availability. A

special need grant application must meet the same threshold requirements applicable to a capital grant under § 61.12.

(b) In addition to the requirements of § 61.11, applicants must describe how they will address the needs of one or more of the homeless veteran populations identified in paragraphs (c) through (f) of this section.

(c) *Women, including women who have care of minor dependents.*

Applications must show how the program design will:

(1) Ensure transportation for women and their children, especially for health care and educational needs;

(2) Provide directly or offer referrals for adequate and safe child care;

(3) Ensure children's health care needs are met, especially age-appropriate wellness visits and immunizations; and

(4) Address safety and security issues including segregation from other program participants if deemed appropriate.

(d) *Frail elderly.* Applications must show how the program design will:

(1) Ensure the safety of the residents in the facility to include preventing harm and exploitation;

(2) Ensure opportunities to keep residents mentally and physically agile to the fullest extent through the incorporation of structured activities, physical activity, and plans for social engagement within the program and in the community;

(3) Provide opportunities for participants to address life transitional issues and separation and/or loss issues;

(4) Provide access to walkers, grippers, or other assistance devices necessary for optimal functioning;

(5) Ensure adequate supervision, including supervision of medication and monitoring of medication compliance; and

(6) Provide opportunities for participants either directly or through referral for other services particularly relevant for the frail elderly, including services or programs addressing emotional, social, spiritual, and generative needs.

(e) *Terminally ill.* Applications must show how the program design will:

(1) Help participants address life-transition and life-end issues;

(2) Ensure that participants are afforded timely access to hospice services;

(3) Provide opportunities for participants to engage in "tasks of dying," or activities of "getting things in order" or other therapeutic actions that help resolve end of life issues and enable transition and closure;



(4) Ensure adequate supervision including supervision of medication and monitoring of medication compliance; and

(5) Provide opportunities for participants either directly or through referral for other services particularly relevant for terminally ill such as legal counsel and pain management.

(f) *Chronically mentally ill.*

Applications must show how the program design will:

(1) Help participants join in and engage with the community;

(2) Facilitate reintegration with the community and provide services that may optimize reintegration such as life-skills education, recreational activities, and follow up case management;

(3) Ensure that participants have opportunities and services for re-establishing relationships with family;

(4) Ensure adequate supervision, including supervision of medication and monitoring of medication compliance; and

(5) Provide opportunities for participants, either directly or through referral, to obtain other services particularly relevant for a chronically mentally ill population, such as vocational development, benefits management, fiduciary or money management services, medication compliance, and medication education.

(Authority: 38 U.S.C. 501, 2061)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554)

**§ 61.44 Awarding special need grants and payment of special need per diem.**

(a) For those applicants selected for a special need grant, VA will execute an agreement and make payments to the grantee under § 61.61.

(b) Capital grantee selectees who successfully complete the capital portion of their grant, or non-capital grantee selectees who successfully pass VA inspection, will be eligible for a special need per diem payment to defray the operational cost of the project. Special need per diem payment will be the lesser of:

(1) 100 percent of the daily cost of care estimated by the special need recipient for furnishing services to homeless veterans with special need that the special need recipient certifies to be correct, minus any other sources of income; or

(2) Two times the current VA State Home Program per diem rate for domiciliary care.

(c) Special need awards are subject to funds availability, the recipient meeting the performance goals as stated in the

grant application, statutory and regulatory requirements, and annual inspections.

(d) Special need capital grantees are not eligible for per diem payment under § 61.33, as the special need per diem payment covers the cost of care.

(Authority: 38 U.S.C. 501, 2061)

**Technical Assistance Grants**

**§ 61.50 Technical assistance grants—general.**

(a) *General.* VA provides technical assistance grants to entities or organizations with expertise in preparing grant applications relating to the provision of assistance for homeless veterans. The recipients must use the grants to provide technical assistance to nonprofit organizations with experience in providing assistance to homeless veterans in order to help such groups apply for grants under this part, or from any other source, for addressing the needs of homeless veterans. Current recipients of any grant under this part (other than a technical assistance grant), or their sub-recipients, are ineligible for technical assistance grants.

(b) *Allowable activities.* Technical assistance grant recipients may use grant funds for the following activities:

(1) Group or individual “how-to” grant writing seminars, providing instructions on applying for a grant.

Topics must include:

(i) Determining eligibility;

(ii) Matching the awarding agency’s grant mission to the applicant agency’s strengths;

(iii) Meeting the specific grant outcome requirements;

(iv) Creating measurable goals and objectives for grants;

(v) Relating clear and concise grant project planning;

(vi) Ensuring appropriate grant project staffing; and

(vii) Demonstrating the applicant’s abilities.

(2) Creation and dissemination of “how-to” grant writing materials, i.e., compact disks, booklets, web pages or other media specifically designed to facilitate and instruct applicants in the completion of grant applications.

(3) Group or individual seminars, providing instructions on the legal obligations associated with grant applications. Topics must include:

(i) Office of Management and Budget (OMB) grant management circulars and forms, 2 CFR parts 215, 225, 230;

(ii) Federal funding match and fund separation requirements; and

(iii) Property and equipment disposition.

(4) Telephone, video conferencing or email with potential grant applicants

that specifically address grant application questions.

(c) *Unallowable activities.* Technical assistance grant recipients may not use grant funds for the following activities:

(1) Meetings, consortia, or any similar activity that does not assist community agencies in seeking grants to aid homeless veterans.

(2) Referral of individual veterans to agencies for benefits, housing, medical assistance, or social services.

(3) Lobbying.

(Authority: 38 U.S.C. 501 and 2064)

**§ 61.51 Technical assistance grants—application packages.**

(a) To apply for a technical assistance grant, an applicant must obtain from, complete, and submit to VA a technical assistance grant application package within the time period established in the Notice of Fund Availability.

(b) The technical assistance grant application package will require the following:

(1) Documentation on eligibility to receive a technical assistance grant under this part;

(2) A description of technical assistance that would be provided (see § 61.50);

(3) Documentation concerning the estimated operating costs and operating budget for the technical assistance program for which the grant is sought;

(4) Documentation concerning expertise in preparing grant applications;

(5) Documentation of resources committed to the provision of technical expertise;

(6) Comments or recommendations by appropriate state (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197), if the applicant is a state; and

(7) Reasonable assurances that:

(i) The recipient will provide adequate financial and administrative support for providing the services set forth in the technical assistance grant application, and will actually provide such services; and

(ii) The recipient will keep records and timely submit reports as required by VA, and will give VA, on demand, access to the records upon which such reports are based.

(Authority: 38 U.S.C. 501, 2064)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554)

**§ 61.52 Technical assistance grant application packages—threshold requirements.**

The following threshold requirements for a technical assistance grant must be

met, or the application will be rejected before being rated under § 61.53:

(a) The application must be complete and submitted on the correct form and in the time period established in the Notice of Fund Availability;

(b) The applicant must establish expertise in preparing grant applications;

(c) The activities for which assistance is requested must be eligible for funding under this part;

(d) The applicant must demonstrate that adequate financial support will be available to carry out the project for which the grant is sought, consistent with the plans, specifications and schedule submitted by the applicant;

(e) The applicant must not have an outstanding obligation to VA that is in arrears, or have an overdue or unsatisfactory response to an audit; and

(f) The applicant must not have been notified by VA as being in default.

(Authority: 38 U.S.C. 501, 2064)

**§ 61.53 Technical assistance grant application packages—rating criteria.**

(a) *General.* Applicants that meet the threshold requirements in § 61.52 will then be rated using the selection criteria listed in paragraphs (b) and (c) of this section. To be eligible for a technical assistance grant, an applicant must receive at least 600 points (out of a possible 800).

(b) *Quality of the technical assistance.* VA will award up to 400 points based on the following:

(1) How the recipients of technical training will increase their skill level regarding the completion of applications;

(2) How the recipients of technical training will learn to find grant opportunities in a timely manner;

(3) How the technical assistance provided will be monitored and evaluated and changes made, if needed; and

(4) How the proposed technical assistance programs will be implemented in a timely fashion.

(c) *Ability of applicant to demonstrate expertise in preparing grant applications develop and operate a technical assistance program.* VA will award up to 400 points based on the extent to which the application demonstrates all of the following:

(1) Ability to find grants available for addressing the needs of homeless veterans.

(2) Ability to find and offer technical assistance to entities eligible for such assistance.

(3) Ability to administer a technical assistance program.

(4) Ability to provide grant technical assistance.

(5) Ability to evaluate the overall effectiveness of the technical assistance program and to make adjustments, if necessary, based on those evaluations.

(6) Past performance. VA may use historical documents of past performance both VA and non-VA, including those from other Federal, state and local agencies and audits by private or public entities in scoring technical assistance applications.

(Authority: 38 U.S.C. 501, 2064)

**§ 61.54 Awarding technical assistance grants.**

(a) Applicants will first be grouped in categories according to the funding priorities set forth in the NOFA, if any. Applicants will then be ranked within their respective funding category, if applicable. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be selected to receive a technical assistance grant in accordance with their ranked order, as determined under § 61.53. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding.

(b) In the event of a tie between applicants, VA will use the score from § 61.53(c) to determine the ranking.

(c) For those applicants selected to receive a technical assistance grant, VA will execute an agreement and make payments to the grant recipient in accordance with § 61.61.

(d) The amount of the technical assistance grant will be the estimated total operational cost of the technical assistance over the life of the technical assistance grant award as specified in the technical assistance grant agreement. Payments may be made for no more than the period specified in the Notice of Fund Availability.

(e) VA will not pay for sustenance or lodging for the nonprofit community participants or attendees at training conferences offered by technical assistance grant recipients; however, the grantee may use grant funds to recover such expenses.

(Authority: 38 U.S.C. 501, 2064)

**§ 61.55 Technical assistance reports.**

Each technical assistance grantee must submit to VA a quarterly report describing the activities for which the technical assistance grant funds were used, including the type and amount of technical assistance provided and the

number of nonprofit community-based groups served.

(Authority: 38 U.S.C. 501, 2064)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554)

**Awards, Monitoring, and Enforcement of Agreements**

**§ 61.61 Agreement and funding actions.**

(a) *Agreement.* When VA selects an applicant for grant or per diem award under this part, VA will incorporate the requirements of this part into an agreement to be executed by VA and the applicant. VA will enforce the agreement through such action as may be appropriate, including temporarily withholding cash payments pending correction of a deficiency. Appropriate actions include actions in accordance with the VA common grant rules at 38 CFR parts 43 and 49 and the OMB Circulars, including those cited in § 61.66.

(b) *Obligating funds.* Upon execution of the agreement, VA will obligate funds to cover the amount of the approved grant/per diem, subject to the availability of funding. Payments will be for services rendered, contingent on submission of documentation in the form of invoices or purchase agreements and inspections, as VA deems necessary. VA will make payments on its own schedule to reimburse for amounts expended. Except for increases in the rate of per diem, VA will not increase the amount obligated for assistance under this part after the initial obligation of funds.

(c) *Deobligating funds.* VA may deobligate all or parts of funds obligated under this part:

(1) If the actual total cost for assistance is less than the total cost stated in the application; or

(2) If the recipient fails to comply with the requirements of this part.

(d) *Deobligation procedure.* Before deobligating funds under this section, VA will issue a notice of intent to terminate payments. The recipient will have 30 days to submit documentation demonstrating why payments should not be terminated. After review of any such documentation, VA will issue a final decision concerning termination of payment.

(e) *Other government funds.* No funds provided under this part may be used to replace Federal, state or local funds previously used, or designated for use, to assist homeless veterans.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061, 2064)

**§ 61.62 Program changes.**

(a) Except as provided in paragraphs (b) through (d) of this section, a recipient may not make any significant changes to a project for which a grant has been awarded without prior written approval from the VA National Grant and Per Diem Program Office.

Significant changes include, but are not limited to, a change in the recipient, a change in the project site (including relocating, adding an annex, a branch, or other expansion), additions or deletions of activities, shifts of funds from one approved type of activity to another, and a change in the category of participants to be served.

(b) Recipients of grants involving both construction and non-construction projects must receive prior written approval from the VA National Grant and Per Diem Program Office for cumulative transfers among direct cost categories which exceed or are expected to exceed 10 percent of the current total approved budget.

(c) Recipients of grants for projects involving both construction and non-construction who are state or local governments must receive prior written approval from the VA National Grant and Per Diem Program Office for any budget revision which would transfer funds between non-construction and construction categories.

(d) Approval for changes is contingent upon the application ranking remaining high enough after the approved change to have been competitively selected for funding in the year the application was selected.

(e) Any changes to an approved program must be fully documented in the recipient's records.

(f) Recipients must inform the VA National Grant and Per Diem Program Office in writing of any key position and address changes in/of their organization within 30 days of the change, i.e., new executive director or chief financial officer, permanent change of address for corporate communications.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061, 2064)

**§ 61.63 Procedural error.**

If an application would have been selected but for a procedural error committed by VA, VA may reconsider that application in the next funding round. A new application will not be required for this purpose so long as there is no material change in the information.

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

**§ 61.64 Religious organizations.**

(a) Organizations that are religious or faith-based are eligible, on the same

basis as any other organization, to participate in VA programs under this part. In the selection of service providers, neither the Federal Government nor a state or local government receiving funds under this part shall discriminate for or against an organization on the basis of the organization's religious character or affiliation.

(b)(1) No organization may use direct financial assistance from VA under this part to pay for any of the following:

(i) Inherently religious activities such as, religious worship, instruction, or proselytization; or

(ii) Equipment or supplies to be used for any of those activities.

(2) For purposes of this section, "indirect financial assistance" means Federal assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the independent and private choices of individual beneficiaries. "Direct financial assistance," means Federal aid in the form of a grant, contract, or cooperative agreement where the independent choices of individual beneficiaries do not determine which organizations receive program funds.

(c) Organizations that engage in inherently religious activities, such as worship, religious instruction, or proselytization, must offer those services separately in time or location from any programs or services funded with direct financial assistance from VA, and participation in any of the organization's inherently religious activities must be voluntary for the beneficiaries of a program or service funded by direct financial assistance from VA.

(d) A religious organization that participates in VA programs under this part will retain its independence from Federal, state, or local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct financial assistance from VA under this part to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide VA-funded services under this part, without removing religious art, icons, scripture, or other religious symbols. In addition, a VA-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on

a religious basis, and include religious reference in its organization's mission statements and other governing documents.

(e) An organization that participates in a VA program under this part shall not, in providing direct program assistance, discriminate against a program beneficiary or prospective program beneficiary regarding housing, supportive services, or technical assistance, on the basis of religion or religious belief.

(f) If a state or local government voluntarily contributes its own funds to supplement Federally funded activities, the state or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this provision applies to all of the commingled funds.

(g) To the extent otherwise permitted by Federal law, the restrictions on inherently religious activities set forth in this section do not apply where VA funds are provided to religious organizations through indirect assistance as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the requirements of this part. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

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

**§ 61.65 Inspections.**

VA may inspect the facility and records of any applicant or recipient when necessary to determine compliance with this part or an agreement under § 61.61. The authority to inspect does not authorize VA to manage or control the applicant or recipient.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061, 2064)

**§ 61.66 Financial management.**

(a) All recipients must comply with applicable requirements of the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133 and codified at 38 CFR part 41.

(b) All entities receiving assistance under this part must use a financial management system that follows generally accepted accounting principals and meets the requirements set forth under OMB Circular A-102, Subpart C. § 20, codified at 38 CFR

43.20, for state and local government recipients, or under OMB Circular A–110, Subpart C–§ 21, codified at 38 CFR 49.21 for nonprofit recipients. All recipients must implement the requirements of the appropriate OMB Circular for Cost-Principles (A–87 or A–122 codified at 2 CFR parts 225 and part 230, respectively) for determining costs reimbursable under all awards issued under these regulations.

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

#### **§ 61.67 Recovery provisions.**

(a) *Full recovery of capital grants.* VA may recover from the grant recipient all of the grant amounts provided for the project if, after 3 years after the date of an award of a capital grant, the grant recipient has withdrawn from the VA Homeless Providers Grant and Per Diem Program (Program), does not establish the project for which the grant was made, or has established the project for which the grant was made but has not passed final inspection. Where a recipient has no control over causes for delays in implementing a project, VA may extend the three-year period, as appropriate. VA may obligate any recovered funds without fiscal year limitation.

(b) *Prorated (partial) recovery of capital grants.* If a capital grant recipient is not subject to recovery under paragraph (a) of this section, VA will seek recovery of the grant amount on a prorated basis where the grant recipient ceases to provide services for which the grant was made or withdraws from the Program prior to the expiration of the applicable period of operation, which period shall begin on the date shown on the activation document produced by the VA National GPD Program. In cases where capital grant recipients have chosen not to receive per diem payments, the applicable period of operation shall begin on the date the VA Medical Center Director approved placement at the project site as shown on the inspection documents. The amount to be recaptured equals the total amount of the grant, multiplied by the fraction resulting from using the number of years the recipient was not operational as the numerator, and using the number of years of operation required under the following chart as the denominator.

Grant amount (dollars in thousands)	Years of operation
0–1,000 .....	20
1,001–2,000 .....	25
2,001–3,000 .....	30
Over 3,000 .....	40

(c) *Disposition of real property for capital grantees.* In addition to being subject to recovery under paragraphs (a) and (b) of this section, capital grantees are subject to real property disposition as required by 38 CFR 49.32 when the grantee no longer is providing services through a grant awarded under this part.

(d) *Recovery of per diem and non-capital grants.* VA will seek to recover from the recipient of per diem, a special need non-capital grant, or a technical assistance grant any funds that are not used in accordance with the requirements of this part.

(e) *Notice.* Before VA takes action to recover funds, VA will issue to the recipient a notice of intent to recover funds. The recipient will then have 30 days to submit documentation demonstrating why funds should not be recovered. After review of any such documentation, VA will issue a decision regarding whether action will be taken to recover funds.

(f) *Vans.* All recovery provisions will apply to vans with the exception of the period of time for recovery. The period of time for recovery will be 7 years. Disposition provisions of 38 CFR 49.34 apply to vans. Grantees are required to notify the VA National Grant and Per Diem Program Office for disposition of any van funded under this part.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061, 2064)

#### **§ 61.80 General operation requirements for supportive housing and service centers.**

(a) Supportive housing and service centers for which assistance is provided under this part must comply with the requirements of the current edition of the Life Safety Code of the National Fire Protection Association and all applicable state and local housing codes, licensing requirements, fire and safety requirements, and any other requirements in the jurisdiction in which the project is located regarding the condition of the structure and the operation of the supportive housing or service centers. **Note:** All facilities are to be protected throughout by an approved automatic sprinkler system unless a facility is specifically exempted under the Life Safety Code.

(b) Except for such variations as are proposed by the recipient that would not affect compliance with paragraph (a) of this section and are approved by VA, supportive housing must meet the following requirements:

(1) The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from the elements;

(2) Entry and exit locations to the structure must be capable of being utilized without unauthorized use of other private properties, and must provide alternate means of egress in case of fire;

(3) Buildings constructed or altered with Federal assistance must also be accessible to the disabled, as required by § 502 of the Americans with Disabilities Act, referred to as the Architectural Barriers Act;

(4) Each resident must be afforded appropriate space and security for themselves and their belongings, including an acceptable place to sleep that is in compliance with all applicable local, state, and federal requirements;

(5) Every room or space must be provided with natural or mechanical ventilation and the structures must be free of pollutants in the air at levels that threaten the health of residents;

(6) The water supply must be free from contamination;

(7) Residents must have access to sufficient sanitary facilities that are in proper operating condition, that may be used in privacy, and that are adequate for personal cleanliness and the disposal of human waste;

(8) The housing must have adequate heating and/or cooling facilities in proper operating condition;

(9) The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents and sufficient electrical sources must be provided to permit use of essential electrical appliances while assuring safety from fire;

(10) All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner;

(11) The housing and any equipment must be maintained in a sanitary manner;

(12) The residents with disabilities must be provided meals or meal preparation facilities must be available;

(13) Residential supervision from a paid staff member, volunteer, or senior resident participant must be provided 24 hours per day, 7 days per week and for those times that a volunteer or senior resident participant is providing residential supervision a paid staff member must be on call for emergencies 24 hours a day 7 days a week (all supervision must be provided by individuals with sufficient knowledge for the position); and

(14) Residents must be provided a clean and sober environment that is free from illicit drug use or from alcohol use that: could threaten the health and/or safety of the residents or staff; hinders

the peaceful enjoyment of the premises; or jeopardizes completion of the grantee's project goals and objectives. Those supportive housing or service centers that provide medical or social detox at the same site as the supportive housing or service must ensure that those residents in detox are clearly separated from the general residential population.

(c) Each recipient of assistance under this part must conduct an ongoing assessment of the supportive services needed by the residents of the project and the availability of such services, and make adjustments as appropriate. The recipient will provide evidence of this ongoing assessment to VA regarding the plan described in their grant application to include meeting their performance goals. This information will be incorporated into the annual inspection. Grantees must submit during the grant agreement period to VA, a quarterly technical performance report. A quarterly report must be filed once during each quarter and no later than January 30, April 30, July 30, and October 30. The report may be in any acceptable business format and must include the following information:

(1) A comparison of actual accomplishments to established goals for the reporting period and response to any findings related to monitoring efforts. This comparison will be on the same level of detail as specified in the program approved in the grant document. It will address quantifiable as well as non-quantifiable goals.

(2) If established goals have not been met, provide a detailed narrative explanation and an explanation of the corrective action(s) which will be taken, as well as a timetable for accomplishment of the corrective action(s).

(3) Other pertinent information, including a description of grant-related activities occurring during the report period. This may include personnel activity (hiring-training), community orientation/awareness activity, programmatic activity (job development). Also identify administrative and programmatic problems, which may affect performance and proposed solutions.

(4) The quarterly technical performance report will be submitted to the VA National GPD Program Liaison assigned to the project, with each quarterly report being a cumulative report for the entire calendar year. All pages of the reporting documents should have the appropriate grant number and signature, where appropriate. VA National GPD Program Liaisons will file the report and

corrective actions in the administrative file for the grant.

(5) Between scheduled reporting dates, the recipient will also immediately inform the VA National GPD Program Liaison of any significant developments affecting the recipient's ability to accomplish the work. VA National GPD Program Liaisons will provide grantees with necessary technical assistance, when and where appropriate as problems arise.

(6) For each goal or objective listed in the grant application grantees will be allowed a 15 percent deviation of each goal or objective. If the deviation is greater than 15 percent in any one goal or objective a corrective action plan must be submitted to the VA National GPD Program Liaison. Failure to meet goals and objectives may result in withholding of placement, withholding of payment, suspension of payment and termination as outlined in this part or other applicable Federal statutes if the goal or objective would impact the program's ability to provide a successful outcome for veterans.

(7) Corrective Action(s): When necessary, the grantee will automatically initiate a Corrective Action Plan (CAP). A CAP will be required if, on a quarterly basis, actual grant accomplishments vary by a margin of  $\pm 15$  percent or more from the planned goals and objectives. Please note that this is a general rule of thumb, in some cases  $\pm 15$  percent deviations are beneficial to the program such as more placements into employment or training than planned, less cost per placement than planned, higher average wage at placement than planned, etc.

(8) All  $\pm 15$  percent deviations from the planned goals that have a negative impact on the grantee's ability to accomplish planned goals, must be fully explained in the grantee's quarterly technical report and a CAP is to be initiated, developed, and submitted by the grantee to the VA Liaison for approval.

(9) The CAP must identify the activity or expenditure source which has the  $\pm 15$  percent deviation, describe the reason(s) for the variance, provide specific proposed corrective action(s), and a timetable for accomplishment of the corrective action. The plan may include an intent to modify the grant when appropriate.

(10) The CAP will be submitted as an addendum to the quarterly technical report. After receipt of the CAP, the VA National GPD Program Liaison will send a letter to the grantee indicating that the CAP is approved or disapproved. If disapproved, VA Liaison will make beneficial suggestions to improve the

proposed CAP and request resubmission until CAP is satisfactory to both parties.

(d) A homeless veteran may remain in supportive housing for which assistance is provided under this part for a period no longer than 24 months, except that a veteran may stay longer, if permanent housing for the veteran has not been located or if the veteran requires additional time to prepare for independent living. However, at any given time, no more than one-half of the veterans at such supportive housing facility may have resided at the facility for periods longer than 24 months.

(e) Each recipient of assistance under this part must provide for the consultation and participation of not less than one homeless veteran or formerly homeless veteran on the board of directors or an equivalent policymaking entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any project provided under this part. This requirement may be waived if an applicant, despite a good faith effort to comply, is unable to meet it and presents a plan, subject to VA approval, to otherwise consult with homeless or formerly homeless veterans in considering and making such policies and decisions.

(f) Each recipient of assistance under this part must, to the maximum extent practicable, involve homeless veterans and families, through employment, volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating the project and in providing supportive services for the project.

(g) Each recipient of assistance under this part shall establish procedures for fiscal control and fund accounting to ensure proper disbursement and accounting of assistance received under this part.

(h) The recipient of assistance under this part that provides family violence prevention or treatment services must establish and implement procedures to ensure:

(1) The confidentiality of records pertaining to any individual provided services, and

(2) The confidentiality of the address or location where the services are provided.

(i) Each recipient of assistance under this part must maintain the confidentiality of records kept on homeless veterans receiving services.

(j) VA may disapprove use of outpatient health services provided through the recipient if VA determines that such services are of unacceptable quality. Further, VA will not pay per diem where the Department concludes

that services furnished by the recipient are unacceptable.

(k) A service center for homeless veterans shall provide services to homeless veterans for a minimum of 40 hours per week over a minimum of 5 days per week, as well as provide services on an as-needed, unscheduled basis. The calculation of average hours shall include travel time for mobile service centers. In addition:

(1) Space in a service center shall be made available as mutually agreeable for use by VA staff and other appropriate agencies and organizations to assist homeless veterans;

(2) A service center shall be equipped to provide, or assist in providing, health care, mental health services, hygiene facilities, benefits and employment counseling, meals, and transportation assistance;

(3) A service center shall provide other services as VA determines necessary based on the need for services otherwise not available in the geographic area; and

(4) A service center may be equipped and staffed to provide, or to assist in providing, job training and job placement services (including job readiness, job counseling, and literacy and skills training), as well as any outreach and case management services that may be necessary to meet the requirements of this paragraph.

(l) Fixed site service centers will prominently post at or near the entrance to the service center their hours of operation and contacts in case of emergencies. Mobile service centers must take some action reasonably calculated to provide in advance a tentative schedule of visits, (e.g., newspapers, fliers, public service announcements on television or radio). The schedule should include but is not limited to:

(1) The region of operation;

(2) Times of operation;

(3) Expected services to be provided; and

(4) Contacts for specific information and changes.

(m) Each recipient that provides housing and services must have a written disaster plan that has been coordinated with the emergency management entity responsible for the locality in which the project exists. The plan must encompass natural and man-made disasters.

(n) The recipient will inform within 24 hours, its VA liaison of any sentinel events occurring within the program (i.e., drug overdose, death, injury).

(o) The grantee, or sub-grantee, will provide appropriate orientation and training to staff to enable them to

provide quality services that are appropriate to homeless veteran or homeless special need veteran population.

(p) The grantee will maintain systematic participant enrollment information and participant tracking records designed to facilitate the uniform compilation and analysis of programmatic data necessary for verification of veteran status and case management, reporting, monitoring, and evaluation purposes.

(q) The grantee will also document in each participant record at a minimum:

(1) Family status.

(2) Verification of veteran status (DD214, Department of Veterans Affairs confirmation report and/or identification card).

(3) Education, employment history, and marketable skills/licenses/credentials.

(4) An Individual Service Plan (ISP) for each individual participant will be maintained in the participant case management record which contains the following:

(i) An assessment of barriers, service needs, as well as strengths; and

(ii) Specific services and referrals planned and benefits to be achieved as a result of program participation.

(5) Duration and outcome of supportive service.

(6) The grantee must verify service outcomes each calendar year quarter through the participant and provide documentation of this verification in the participant case management files.

(r) The grantee will ensure that no more than 25 percent of the grant awarded beds are occupied by non-veterans, or VA may take actions as appropriate to decrease the beds, grant amounts, or terminate the grant and seek recapture in the case of capital funding. To calculate the occupancy rate, divide the actual number of bed days of care for veterans eligible to reside in the project, by the total number of possible bed days of care (the previous 180 days from the most current 6 month period).

(Authority: 38 U.S.C. 501, 2011, 2012, 2061)

#### **§ 61.81 Outreach activities.**

Recipients of capital grants and per diem relating to supportive housing or service centers must use their best efforts to ensure that eligible hard-to-reach veterans are found, engaged, and provided assistance. To achieve this goal, recipients may search for homeless veterans at places such as shelters, soup kitchens, parks, bus or train stations, and the streets. Outreach particularly should be directed toward veterans who have a nighttime residence that is an

emergency shelter or a public or private place not ordinarily used as a regular sleeping accommodation for human beings (e.g., cars, streets, or parks).

(Authority: 38 U.S.C. 501, 2011, 2012, 2061)

#### **§ 61.82 Participant fees for supportive housing.**

(a) Each participant of supportive housing may be required to pay a participant fee in an amount determined by the recipient, except that such participant fee may not exceed 30 percent of the participant's monthly income after deducting medical expenses, child care expenses, court ordered child support payments, or other court ordered payments; nor may it exceed the program's set maximum rate or the HUD Fair Market Rent for that type of housing and its location, whichever is less. The participant fee determination and collection process/procedures should be documented in the grant recipient's operating procedures to ensure consistency, fairness, and accuracy of fees collected. The participant's monthly income includes all income earned by or paid to the participant.

(b) Retroactive benefit payments from any source to program participants, for the purpose of this part, may be considered income in the month received and therefore may be used in calculating the participant fee for that month.

(c) Participant fees may be used for costs of operating the supportive housing or to assist supportive housing residents move to permanent housing, and must have a therapeutic benefit.

(d) In addition to a participant fee, recipients may charge residents reasonable fees for extracurricular services and activities (extracurricular fee) that participants are not required to receive under the terms of the grant award, are not paid for by VA per diem, or provided by VA. Extracurricular fees must be voluntary on the part of the participant.

(e) In projects funded under this part where participants sign agreements, VA treat the costs associated with participant eviction to be as unallowable.

(f) Use of participant agreements.

(1) Participant agreements must be between the grant recipient of record and the program participant.

(2) Participant agreements must be part of a therapeutic plan to increase self-determination and responsibility.

(3) Participant agreements must include a clause that allows program participants the ability to break the lease or program agreement without penalty for medical or clinical necessity.

(4) Participant agreements may not be used to exclude homeless veterans with little or no income from the program.

(5) Participant agreements and conditions must be fully disclosed to

potential participants and acknowledged in writing by both parties.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061)

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