

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Parts 17 and 61**

**RIN 2900-AL30**

**VA Homeless Providers Grant and Per Diem Program**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** We are revising the regulations concerning the VA Homeless Providers Grant and Per Diem Program in large part to implement the provisions of the Homeless Veterans Comprehensive Assistance Act of 2001 (HVCAA).

We also are establishing provisions in the form of funding priorities to meet a statutory mandate. In addition, to help ensure that program objectives are met by those receiving assistance we are adding provisions to state that to receive assistance under the interim final rule, an entity must not be in default by failing to meet requirements under any previously awarded grant.

Further, we are making changes to provide that each resident of supportive housing may be required to pay rent in an amount determined by the recipient, except that such rent may not exceed 30 percent of the resident's monthly income not including amounts equal to medical expenses, child care expenses, or court ordered payments. This is intended to provide a system that is administratively feasible, that allows for significant help for covering operating expenses, and that would allow veterans to retain sufficient funds to help prepare for a successful transition to independent living.

**DATES:** Effective Date: This interim final rule is effective on March 19, 2003; except for 38 CFR 61.11, 61.14, 61.17, 61.31, 61.41 and, 61.51, which are effective April 3, 2003.

**Comment Dates:** Comments on the rule, including comments on the information collection provisions, must be received on or before May 19, 2003; except that comments on the request for emergency approval of the collection of information provisions must be received on or before April 3, 2003.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulatory Law (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to [OGCRegulations@mail.va.gov](mailto:OGCRegulations@mail.va.gov). Comments should indicate that they are submitted in response to "RIN 2900-

AL30." All comments received will be available for public inspection in the Office of Regulatory Law, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Roger Casey, VA Homeless Providers Grant and Per Diem Program, Mental Health Strategic Health Care Group (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (877) 332-0334. (This is a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The regulations previously established for the VA Homeless Providers Grant and Per Diem Program (38 CFR 17.700 through 17.731) contained a mechanism for providing grants and per diem to public or nonprofit private entities to 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 transitional housing. As discussed below, we are revising the regulations in this interim final rule to implement the provisions of Public Law 107-95, the Homeless Veterans Comprehensive Assistance Act of 2001.

**Organization and Clarity**

We are transferring the revised regulations to a new part 61 in 38 CFR and are making other changes to provide better organization and clarity.

**Use of the Term "capital grants"**

In the previous regulations the term "grant" concerned construction, renovation, and acquisition of facilities; and also concerned acquisition of vans. In the interim final rule, we have referred to this type of grant as a "capital grant" to distinguish it from the new "special needs grant" and the new "technical assistance grant," both discussed below.

**Capital Grants to Expand Existing Structures**

Public Law 106-117 added authority to allow VA to award capital grants to expand existing programs which was codified by the HVCCA at 38 U.S.C. 2011(a). We made changes to reflect this authority.

**Recovery Provisions for Capital Grants**

The provisions of 38 U.S.C. 2011 authorize recovery of capital grant funds if not used for the intended purpose within 3 years after the grant was awarded. The interim final rule provides that if, after 3 years from the date of award of a capital grant, the

grant recipient does not establish the project for which the grant was made or has withdrawn from the VA Homeless Providers Grant and Per Diem Program, the United States would be entitled to recover from the grant recipient all of the grant amounts provided for the project. If thereafter, but prior to the period of time specified in the following chart, the capital grant recipient ceases to provide the services for which the grant was made or withdraws from the VA Homeless Providers Grant and Per Diem Program, the rule provides that the United States would be entitled to recover grant amounts from the grant recipient on a prorated basis. The amount to be recaptured equals the 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
0-250 .....	7
251-500 .....	8
501-750 .....	9
751-1,000 .....	10
1,001-1,250 .....	11
1,251-1,500 .....	12
1,501-1,750 .....	13
1,751-2,000 .....	14
2,001-2,250 .....	15
2,251-2,500 .....	16
2,501-2,750 .....	17
2,751-3,000 .....	18
Over-3,000 .....	20

*Example A:* Grantee A is awarded a grant and does not bring the project to operational status within 3 years from the time of award. Grantee A may be subject to full recapture of the grant award.

*Example B:* Grantee B is awarded a grant in the amount of \$300,000 and brings the project to operational status within 3 years from the time of award. Grantee B then provides services to homeless veterans for a period of 6 years from the date the program was operationalized, but now decides to close the program. As the original award was \$300,000 and as a condition of receiving the grant funds Grantee B agreed to provide services for 8 years. Therefore, Grantee B would be subject to the prorated recapture of the grant award for the 2-year period not served or in this case 1/4 of the original grant would be subject to recapture.

*Example C:* Grantee C is awarded a grant in the amount of \$400,000, becomes operational within 1 year of the date of the grant award and ceases operation 1 year later, 2 years after the date of the grant award. After the expiration of the 3-year period beginning on the date of the grant award, Grantee C would be subject to prorated recapture for the 7 years it did not provide service of the required 8 years of operation. The amount

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

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

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

### Life Safety Code

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

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

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

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

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

### Per Diem Payments

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

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

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

Also, the rule provides that the per diem amount for service centers would be  $\frac{1}{3}$  of the lesser of the amounts in paragraph (i) or (ii) above per hour, not to exceed 8 hours in any day.

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

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

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

### Special Needs Grants

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

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

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

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

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

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

### Technical Assistance Grants

We also are establishing a mechanism for providing technical assistance grants. Section 5 of Pub. L. 107-95, codified at 38 U.S.C. 2064 authorizes VA to provide grants to entities or organizations with expertise in preparing grant applications relating to the provision of assistance for homeless veterans. The recipients are to use the grants to provide technical assistance to those nonprofit community-based groups with experience in providing assistance to homeless veterans in order to help such groups apply for grants under 38 CFR part 61 or apply for other grants from any source for addressing the problems of homeless veterans. To meet this mandate VA would provide grants for:

- (a) Group or individual seminars providing general instructions concerning grant applications;
- (b) Group or individual seminars providing instructions for applying for a specific grant; or
- (c) Group or individual instruction for preparing analyses to be included in a grant application.

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

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

### Nonprofit Entities

The provisions of 38 U.S.C. 2011 also state that only public and nonprofit entities are eligible for assistance under the VA Homeless Providers Grant and Per Diem Program. We are amending the definition of "nonprofit organization" to

include the requirement that the organization must be recognized as a nonprofit organization by the United States Internal Revenue Service. This will help ensure that only nonprofit organizations will be recognized as such and should eliminate disputes regarding such status.

### Funding Priorities

The provisions of 38 U.S.C. 2011 state that awards shall not result in the duplication of ongoing services and to the maximum extent practicable shall reflect appropriate geographic dispersion and an appropriate balance between urban and nonurban locations. We are establishing provisions in the form of funding priorities to meet the statutory mandate.

### Service Centers

The regulations retain provisions requiring service centers for which assistance is awarded under the VA Homeless Providers Grant and Per Diem Program to 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. However, we are changing the regulations to specifically provide that the calculation of minimum hours would include travel time for mobile service centers. This is necessary because a substantial portion of work time for mobile service centers consists of travel time.

We also are requiring fixed site service centers to prominently post at or near the entrance to the service center their hours of operation and contacts in case of emergencies. Further, we are requiring mobile service centers to take some action reasonably calculated to provide in advance a tentative schedule of visits. This will help ensure that homeless veterans know when and where they can obtain assistance.

### Default Under Previously Awarded Grant

We are adding provisions to state that to receive assistance under the interim final rule, an entity must not be in default by failing to meet requirements under any previously awarded grant. This is intended to help ensure that program objectives are met by those receiving assistance.

### Resident Rent

The regulations previously provided that each resident of supportive housing may be required to pay as rent an amount determined by the recipient, which could not exceed the highest of:

- (1) 30 percent of the resident's monthly adjusted income (adjustment

factors include the number of relatives in the family residing with the veteran, medical expenses, and child care expenses);

- (2) 10 percent of his or her family's monthly income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

We have changed the regulations to provide instead that each resident of supportive housing may be required to pay as rent an amount determined by the recipient, except that such rent may not exceed 30 percent of the resident's monthly income after deducting medical expenses, child care expenses, court ordered child support payments, or other court ordered payments. This is intended to provide a system that is administratively feasible, that allows for significant help for covering operating expenses, and that would allow veterans to retain sufficient funds to help prepare for a successful transition to independent living.

### Summaries of Certain Requirements

We are deleting summaries of certain non-VA federal requirements since the source material should be used to determine those requirements.

### 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 interim final rule at §§ 61.11, 61.15, 61.17, 61.20, 61.31, 61.41, 61.51, 61.55 and 61.70 contains collections of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information. We have requested OMB to approve the collection of information on an emergency basis by April 3, 2003. If OMB does not approve the collections of information as requested, we will immediately remove §§ 61.11, 61.15, 61.17, 61.20, 61.31, 61.41, 61.51, 61.55 and 61.70 or take such other action as is directed by OMB.

We are also 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 §§ 61.11, 61.15, 61.17, 61.20, 61.31, 61.41, 61.51, 61.55 and 61.70 on a non-emergency basis. Comments must be submitted by May 19, 2003.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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 Regulatory Law (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AL30."

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

*Summary of collection of information:* The interim final rule at §§ 61.11, 61.15, 61.17, 61.20, 61.31, 61.41, and 61.51, contains application provisions for capital grants, per diem, special needs grants, and technical assistance grants. The interim rule at §§ 61.55 and 61.70 contain requirements for compliance reports.

#### *Application Provisions for Capital Grants and Per Diem*

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

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

*Estimated number of respondents per year:* 100.

*Estimated frequency of responses per year:* 1.

*Estimated total annual reporting and recordkeeping burden:* 3,500 hours.

*Estimated annual burden per collection:* 35 hours.

#### *Application Provisions for the Life Safety Code Capital Grants*

*Description of the need for information and proposed use of information:* This information is needed to determine eligibility for Life Safety Code capital grants.

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

*Estimated number of respondents per year:* 200.

*Estimated frequency of responses per year:* 1.

*Estimated total annual reporting and recordkeeping burden:* 2,000 hours.

*Estimated annual burden per collection:* 10 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:* 150.

*Estimated frequency of responses per year:* 1.

*Estimated total annual reporting and recordkeeping burden:* 3,000 hours.

*Estimated annual burden per collection:* 20 hours.

*Application provisions for special needs grants.*

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

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

*Estimated number of respondents per year:* 200.

*Estimated frequency of responses per year:* 1.

*Estimated total annual reporting and recordkeeping burden:* 4,000 hours.

*Estimated annual burden per collection:* 20 hours.

*Application provisions for technical assistance grants.*

*Description of the need for information and proposed use of information:* This information is needed to determine eligibility for technical assistance grants.

*Description of likely respondents:* Entities or organizations with expertise in preparing grant applications requesting a technical assistance grant.

*Estimated number of respondents per year:* 25.

*Estimated frequency of responses per year:* 1.

*Estimated total annual reporting and recordkeeping burden:* 250 hours.

*Estimated annual burden per collection:* 10 hours.

*Compliance reports for technical assistance grants.*

*Description of the need for information and proposed use of information:* This information is needed

to determine compliance with the requirements for a technical assistance grant.

*Description of likely respondents:* Entities receiving technical assistance grants.

*Estimated number of respondents per year:* 10.

*Estimated frequency of responses per year:* 4.

*Estimated total annual reporting and recordkeeping burden:* 90 hours.

*Estimated annual burden per collection:* 2.25 hours.

*Compliance reports for per diem and special needs grants.*

*Description of the need for information and proposed use of information:* This information is needed to determine compliance with the requirements for per diem and a special needs grant.

*Description of likely respondents:* Entities receiving per diem or special needs grants.

*Estimated number of respondents per year:* 300.

*Estimated frequency of responses per year:* 1.

*Estimated total annual reporting and recordkeeping burden:* 1500 hours.

*Estimated annual burden per collection:* 5 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 interim final rule.

**Administrative Procedure Act**

Pursuant to 5 U.S.C. 553, we have found for this rule that notice and public procedure are impracticable, unnecessary, and contrary to the public interest and that we have good cause to dispense with notice and comment on this rule and to dispense with a 30-day delay of its effective date. The Homeless Veterans Comprehensive Assistance Act of 2001 (Pub. L. 107-95) authorizes increases in both the services (3 new grant programs) and the per diem available to homeless veteran providers. These increased services and per diem are critical to properly provide services to the homeless veterans population and meet the Congressional mandates of ending chronic homelessness. Also, a delay in some cases may even lead to the closing of some of our collaborative partners' homeless veteran programs. Therefore, the need to take emergency action is particularly great for those homeless veterans who will benefit from the increased services (grants) and per diem.

**Executive Order 12866**

This document has been reviewed by the office of Management and Budget under Executive Order 12866.

**Regulatory Flexibility Act**

The Secretary hereby certifies that the interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-602. In all likelihood, only similar entities that are small entities will participate in the Homeless Providers Grant and Per Diem Program. Therefore, pursuant to 5 U.S.C. 605(b), this interim final rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

**Unfunded Mandates**

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

**Catalog of Federal Domestic Assistance Program**

The Catalog of Federal Domestic Assistance program number is 64.024.

**List of Subjects***38 CFR Part 17*

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

*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, Per-diem program; Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Approved: December 17, 2002.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, we are amending 38 CFR chapter I as follows:

**PART 17—MEDICAL**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, 1721, unless otherwise noted.

**§§ 17.700 through 17.731 [Removed]**

2. Remove §§ 17.700 through 17.731 and the undesignated center heading, VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM, immediately preceding those sections.

3. A new part 61 is added to read as follows:

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

Sec.

- 61.0 Purpose.
- 61.1 Definitions.
- 61.10 Capital grants—general.
- 61.11 Applications for capital grants.
- 61.12 Threshold requirements for capital grant applications.
- 61.13 Rating criteria for capital grant applications.
- 61.14 Selecting applications for capital grants.
- 61.15 Obtaining additional information and awarding capital grants.

- 61.16 Matching funds for capital grants.
  - 61.17 Site control for capital grants.
  - 61.20 Life Safety Code capital grants.
  - 61.30 Per diem—general.
  - 61.31 Application for per diem.
  - 61.32 Ranking non-capital grant recipients for per diem.
  - 61.33 Payment of per diem.
  - 61.40 Special needs grants—general.
  - 61.41 Special needs grants application.
  - 61.42 Threshold requirements for special needs grant applications.
  - 61.43 Rating criteria for special needs grant applications.
  - 61.44 Awarding special needs grants.
  - 61.50 Technical assistance grants—general.
  - 61.51 Applications for technical assistance grants.
  - 61.52 Threshold requirements for technical assistance grant applications.
  - 61.53 Rating criteria for technical assistance grant applications.
  - 61.54 Awarding technical assistance grants.
  - 61.55 Technical assistance reports.
  - 61.60 Notice of Fund Availability.
  - 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 Resident rent for supportive housing.
- (Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

**§ 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 needs grants, and technical assistance grants.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

**§ 61.1 Definitions.**

For purposes of this part:

*Area or community* means a political subdivision or contiguous political subdivisions (such as 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 for acquisition of a van.

*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 under this part.

*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 symptomology or serious impairment in the areas of work, family relations, thinking, or mood.

*Fee* means 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 are not paid for by VA per diem or provided by VA, (e.g., cable television, recreational outings, professional instruction or counseling).

*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 means:* (1)(i) Lacking a fixed, regular and adequate nighttime residence; or

(ii) Having a primary nighttime residence that is—

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for persons intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) The term homeless does not include imprisonment or other detention pursuant to Federal or State law. Imprisonment or other detention does not include probation, parole or electronic custody.

*New construction* means the building of a structure where none existed or 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 501(c)(3) or 501(c)(19) nonprofit organization by the United States Internal Revenue Service, and:

(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 that will maintain a functioning accounting

system for the organization in accordance with generally accepted accounting principles; and

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

*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;

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

*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.

*Public entity* includes:

(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, and

(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 section 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.

*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 and is:

(1) Transitional housing, or

(2) A part of, a particularly innovative project for, or alternative method of, meeting the immediate and long-term needs of homeless veterans.

*Supportive services* means services, which may be designed by the recipient or program participants, that provide appropriate services or assist such persons in obtaining appropriate services to address the needs of homeless veterans to be served by the project. Supportive services does not include inpatient acute hospital care, but does include:

(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) Providing assistance in obtaining permanent housing;

(6) Providing education, employment counseling and assistance, and job training;

(7) Providing 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.

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

*VA* means the Department of Veterans Affairs.

*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, 7721 note)

**§ 61.10 Capital grants—general.**

(a) VA provides 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, vocational counseling and training, and transitional housing. 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;

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

(4) Procure vans (purchase price, sales taxes, and title and licensing fees) to provide transportation or outreach for the purpose of providing supportive services.

(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, 2002, 2011, 2012, 2061, 2064, 7721 note)

**§ 61.11 Applications for capital grants.**

(a) To apply for a capital grant, an applicant must obtain from VA a 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 under § 61.60 of this part.

(b) The capital grant application package includes exhibits to be prepared and submitted as part of the application process, including:

(1) Justification for the capital grant;

(2) Site description, site design, and site cost estimates;

(3) Documentation on eligibility to receive a capital grant under this part;

(4) Documentation on matching funds committed to the project;

(5) Documentation on operating budget and cost sharing;

(6) Documentation on supportive services committed to the project;

(7) Documentation on site control and appropriate zoning, and on the boundaries of the area or community proposed to be served;

(8) If capital grant funds are proposed to be used for acquisition or rehabilitation, documentation demonstrating that the costs associated with acquisition or rehabilitation are less than the costs associated with new construction;

(9) If grant funds are proposed to 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);

(10) If the proposed construction includes demolition, a demolition plan, including the extent and cost of existing site features to be removed, stored, or relocated and information establishing that the proposed construction is in the same location as the building to be demolished or that the demolition is inextricably linked to the design of the construction project (the cost of demolition of a building cannot be included in the cost of construction unless the proposed construction is in the same location as the building to be demolished or unless the demolition is inextricably linked to the design of the construction project);

(11) 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

(12) Reasonable assurances with respect to receipt of a capital grant 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 nonveterans; and that such services will meet the requirements of this part;

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

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

(iv) Adequate financial support will be available for the completion of the project or for the purchase and maintenance, repair, and operation of the van; and

(v) 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.

(c) Applicants may apply for more than one capital grant.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

**§ 61.12 Threshold requirements for capital grant applications.**

To be eligible for a capital grant, an applicant must meet the following threshold requirements:

(a) The application was completed in all parts and included the information called for in the application package and was filed within the time period established in the Notice of Fund Availability;

(b) The applicant is a public or nonprofit private entity;

(c) The population proposed to be served is homeless veterans;

(d) The activities for which assistance is requested are eligible for funding under this part;

(e) The applicant has demonstrated 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;

(f) The application has demonstrated compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655);

(g) The applicant has agreed to comply with the requirements of this part and has demonstrated the capacity to do so;

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

(i) The applicant is not in default, by failing to meet requirements for any previous assistance from VA under this part.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

**§ 61.13 Rating criteria for capital grant applications.**

(a) Applicants that meet the threshold requirements in § 61.12 of this part, will then be rated using the selection criteria listed in this section. To be eligible for a capital grant, an applicant must receive at least 600 points (out of a possible 1,200) and must receive points under criteria in paragraphs (b), (c), (d), (e), and (i) of this section.

(b) Quality of the project. VA will award up to 300 points based on the following:

(1) How program participants will achieve residential stability, including how available supportive services will help participants reach this goal;

(2) How program participants will increase their skill level and/or income, including how available supportive services will help participants reach this goal;

(3) How program participants will be involved in making project decisions that affect their lives so that they achieve greater self-determination, including how they will be involved in selecting supportive services, establishing individual goals and developing plans to achieve these goals;

(4) How permanent affordable housing will be identified and made known to participants upon leaving the transitional housing, and how participants will be provided necessary follow-up services to help them achieve stability in the permanent housing;

(5) How the service needs of participants will be assessed on an ongoing basis;

(6) How the proposed housing, if any, will be managed and operated;

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

(8) How and when the progress of participants toward meeting their individual goals will be monitored, evaluated, and documented;

(9) How and when the effectiveness of the overall project in achieving its goals will be evaluated and documented; and how any needed program modifications will be made based on those evaluations; and how program modifications will be reported to VA; and

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

(c) Targeting to persons on streets and in shelters. VA will award up to 150 points based on:

(1) The extent to which the project is designed 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 experience in the following areas:

(1) Engaging the participation of homeless veterans living in places not ordinarily meant for human habitation and in emergency shelters;

(2) Assessing the housing and relevant supportive service needs of homeless veterans;

(3) Accessing housing and relevant supportive service resources;

(4) If applicable, contracting for and/or overseeing the rehabilitation or construction of housing;

(5) If applicable, administering a rental assistance program;

(6) Providing supportive services or supportive housing for homeless veterans;

(7) Monitoring and evaluating the progress of persons toward meeting their individual goals;

(8) Evaluating the overall effectiveness of a program and using evaluation results to make program improvements, as needed; and

(9) Maintaining fiscal solvency as evidenced by providing their last complete yearly financial statements.

(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) Innovative quality of the proposal. VA will award up to 50 points based on the innovative quality of the proposal, in terms of:

(1) Helping homeless veterans or homeless veterans with disabilities to reach residential stability, to increase their skill level and/or income, and to increase the influence they have over decisions that affect their lives;

(2) Establishing a clear link between the innovation(s) and its proposed effect(s); and

(3) Establishing usefulness as a model for other projects.

(g) Leveraging. VA will award up to 50 points based on the extent to which the applicant documents resources from other public and private sources, including cash and the value of third party contributions, have been committed to support the project at the time of application.

(h) Cost-effectiveness. VA will award up to 100 points for cost-effectiveness.

Projects will be rated based on the cost and number of new supportive housing beds made available or the cost, amount, and types of supportive services made available, when compared to other transitional housing and supportive services projects, and when adjusted for high-cost areas. Cost-effectiveness may include using excess government properties (local, State, Federal), as well as demonstrating site control at the time of application.

(i) 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 VA Regional Offices 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, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

#### **§ 61.14 Selecting applications for capital 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

conditionally selected to receive a capital grant in accordance with their ranked order, as determined under § 61.13 of this part. 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(e) of this part to determine the ranking.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

**§ 61.15 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 information, including:

(1) Documentation 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 of this part;

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

(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 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 to the applicant to confirm or clarify information provided in the application.

(b) The required additional information must be received by VA in acceptable form within the time frame established by VA in a Notice of Fund

Availability published in the **Federal Register**.

(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 of this part and other applicable provisions of this part.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

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

The amount of a capital grant may not exceed 65 percent of the total cost of the project for which the capital grant was awarded. The recipient must, from sources other than grant funds received under this part, match the funds provided by VA to cover the percentage of the total cost of the project not funded by the capital grant. This matching share shall constitute at least 35 percent of the total cost. If the project is for supportive housing, or a service center that would be used for purposes under this part and for other purposes, a capital grant may be awarded only in proportion to the use under this part. Capital grants may include application costs, including site surveys, architectural, and engineering fees, but may not include relocation costs.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

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

(a) As a condition for obtaining a capital grant for supportive housing or a fixed site service center, an applicant must demonstrate site control through a deed, a capital lease, or an executed contract of sale, unless the site is in a building or on land owned by VA. Such site control must be demonstrated within 1 year after execution of an agreement under § 61.61 of this part.

(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 of this part. However, the recipient is responsible for and must demonstrate ability to provide for any additional costs resulting from the change in site.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

**§ 61.20 Life Safety Code capital grants.**

(a) This section sets forth provisions for obtaining a Life Safety Code capital grant under 38 U.S.C. 2012(c)(3). To be eligible to receive such a capital grant, an applicant already must have received a grant under section 3 of the Homeless Veterans Comprehensive Service Programs Act of 1992 (Public Law 102-590; 38 U.S.C. 7721 note) for construction, renovation, or acquisition of a facility and must obtain the Life

Safety Code capital grant solely for renovations to such facility to comply with the Life Safety Code of the National Fire Protection Association. The following sections of this part apply to the Life Safety Code grants §§ 61.60 through 61.66; and § 61.80 and § 61.82.

(b) To apply for a Life Safety Code capital grant under this section, an applicant must obtain from VA a Life Safety Code 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 Life Safety Code capital grant application package includes exhibits to be prepared and submitted as part of the application process, including:

(1) Justification for the modifications needed to meet the Life Safety Code or such other comparable fire and safety requirements;

(2) Site description, site design, and site cost estimates;

(3) Reasonable assurances with respect to receipt of a Life Safety Code capital grant under this part that:

(i) The project being renovated is being, and will continue to be, used principally to furnish veterans the level of care for which VA awarded the applicant a grant under the Homeless Veterans Comprehensive Service Program Act of 1992; that not more than 25 percent of participants at any one time will be nonveterans; and that such services will meet the requirements of this part;

(ii) 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;

(iii) The applicant has agreed to comply with the applicable requirements of this part and has demonstrated the capacity to do so;

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

(v) The applicant is not in default, by failing to meet requirements for any previous assistance from VA.

(c)(1) Cost-effectiveness. VA will award up to 300 points for cost-effectiveness with adjustments for high-cost areas. Applicants should address the following:

(i) Estimated cost of the renovation and the type of work to be done;

(ii) Estimated cost of any displacement of program participants or services due to the renovation; and

(iii) Cost-benefit analysis addressing the benefit of renovation to the structure compared to moving program to another site.

(2) Coordination. VA will award up to 200 points for a summary countersigned by the local VAMC Facilities Management of the discussions concerning renovation plans. The summaries should detail the following:

- (i) Urgency of the renovation;
- (ii) Adequacy of the renovation; and
- (iii) Opinion of feasibility and cost benefit.

(d) The highest-ranked applications for the Life Safety Code capital grants for which funding is available will be selected to receive grants in accordance with their ranked order. The amount awarded will be 100 percent of the estimated total cost of the renovation as stated in the Life Safety Code application (this may include application costs, architectural fees, and engineering fees). VA will execute an agreement and make payments to the Life Safety Code capital grant recipient in accordance with § 61.61 of this part and other applicable provisions of this part. In the event of a tie between applicants, VA will use the score from § 61.20(c)(2) of this part to determine the ranking.

(e) Applicants may apply for more than one Life Safety Code capital grant.

(f) The authority to provide Life Safety Code grants expires on December 21, 2006.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### § 61.30 Per diem-general.

VA provides per diem funds to capital grant recipients or to entities eligible to receive a capital grant, which established a program of supportive housing or services after November 10, 1992 so they can assist homeless veterans by helping to offset operating costs to ensure the availability of supportive housing and service centers tasked with furnishing outreach, rehabilitative services, vocational counseling and training, and transitional housing assistance.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### § 61.31 Application for per diem.

(a) 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) To apply for per diem, a non-capital grant recipient 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 non-capital grant application package includes exhibits to be prepared and submitted as part of the application process, including:

- (1) Justification for per diem;
  - (2) Documentation on eligibility to receive per diem under this part;
  - (3) Documentation on operating budget and cost sharing;
  - (4) Documentation on supportive services committed to the project;
  - (5) 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
- (6) Reasonable assurances with respect to receipt of per diem under this part that:

- (i) The project will be used principally to furnish the level of care for which such application is made; that not more than 25 percent of participants at any one time will be nonveterans; 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, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### § 61.32 Ranking non-capital grant recipients for per diem.

(a) Applications from non-capital grant recipients in response to a Notice of Fund Availability 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 500 cumulative points from paragraphs (b), (c), (d), (e), and (i) of § 61.13 of this part. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be conditionally selected for eligibility to receive per diem payments 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.

(b) In the event of a tie between applicants, VA will use the score from § 61.13(e) of this part to determine the ranking.

(c) All applicants responding to a NOFA for "Per Diem Only" will be subject to the ranking method in paragraph (a) of this section.

**Note to § 61.32:** 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 of this part.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### § 61.33 Payment of per diem.

(a) A capital grant recipient meeting the application requirements as outlined in § 61.31(a) of this part is eligible for per diem subject to a site inspection establishing that the applicant continues to meet the requirements for a capital grant as outlined in the following sections, §§ 61.62, 61.64, 61.65, 61.66, 61.80, 61.81, and 61.82.

(b) For non-capital grant recipients who apply for per diem under this part, funds will be allocated to the highest-ranked applicants in descending order until funds are expended. Payments will be contingent upon verification of application information based on an initial site inspection and other inspections pursuant to § 61.66 of this part and will be made for 3 years or as otherwise specified in the Notice of Fund Availability. Non-capital grant recipients may apply again thereafter only in response to a Notice of Fund Availability.

(c) For those applicants selected to receive per diem, VA will execute an agreement in accordance with § 61.61 of this part and make payments to the grant recipient or non-grant recipient for those homeless veterans—

(1) Who VA referred to the grant recipient or non-grant recipient; or

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

(d)(1) The rate of per diem payments for each veteran in supportive housing shall be the lesser of—

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

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

(2) The per diem amount for service centers shall be 1/8 of the lesser of the amounts in paragraphs (f)(1)(i) and (f)(1)(ii) of this section per hour, not to exceed 8 hours in any day.

(e) Per diem payments 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. VA will not pay per diem for any additional days of absence when a veteran has already been absent for more than 72 hours consecutively (scheduled or unscheduled). In addition, VA will not pay per diem payments for supportive housing for any homeless veteran who has had three or more episodes (admission and discharge for each episode) of supportive housing services paid for under this part. VA may waive the episode requirement if the services offered are different from those previously provided and may lead to a successful outcome.

(f) Payment of per diem is subject to availability of funds. When necessary due to funding limitations, VA will reduce the rate of per diem as necessary.

(g) Capital grant recipients and non-capital grant recipients may continue to receive per diem assistance only so long as they continue to meet the minimum eligibility requirements for obtaining a grant. For grant recipients this is the minimum 600 points as provided for in § 61.13(a) of this part. For non-grant recipients this is the minimum 500 points provided for in § 61.32(a) of this part.

(h) Per diem payments will not be paid for both supportive housing and supportive services provided to the same veteran by the same per diem recipient.

(i) For non-capital grant recipients, only those portions of the service center or supportive housing described in the application will be considered for per diem assistance.

(j) 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 information in this paragraph provides a basis for adjustments to the per diem payment.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### § 61.40 Special needs grants—general.

(a) VA provides special needs grants to capital grant and per diem recipients under this part to assist with additional operational costs that would not

otherwise be incurred but for the fact that the recipient is providing beds or services in supportive housing and at service centers for the following homeless veterans:

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

(2) Frail elderly;

(3) Terminally ill; or

(4) Chronically mentally ill.

(b) No part of a special needs grant may be used for any purpose that would change significantly the scope of the project for which a capital grant or per diem was awarded.

(c) The following sections of this part apply to special needs grants: §§ 61.60 through 61.66; and § 61.80; § 61.82.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### § 61.41 Special needs grants application.

(a) To apply for a special needs grant, an applicant must obtain from VA a special needs 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.

(b) The special needs grant application package includes exhibits to be prepared and submitted as part of the application process, including:

(1) Justification for the special needs grant;

(2) Documentation on eligibility to receive a special needs grant under this part;

(3) Documentation concerning the estimated operating costs for the needs of the specific population for which the special needs grant is requested;

(4) Documentation concerning supportive services committed to the project;

(5) 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

(6) Reasonable assurances with respect to receipt of a special needs grant under this part that:

(i) The funds will be used to furnish to veterans the level of care for which such application is made; and that the special needs program will comply with applicable requirements of this part;

(ii) 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; and

(iii) Adequate financial support will be available for the special needs program.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### § 61.42 Threshold requirements for special needs grant applications.

To be eligible for a special needs grant, an applicant must meet the following threshold requirements:

(a) The application included the information called for in the application package and was filed within the time period established in the Notice of Fund Availability;

(b) The applicant still meets the requirements for receipt of per diem;

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

(d) The applicant has demonstrated 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 does not have an outstanding obligation to VA that is in arrears, and does not have an overdue or unsatisfactory response to an audit;

(f) The applicant is not in default, by failing to meet requirements for any previous assistance from VA under this part; and

(g) The applicant has agreed to comply with applicable requirements of this part, to maintain eligibility for special need payments and has demonstrated the capacity to do so.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### § 61.43 Rating criteria for special needs grant applications.

(a) Applicants that meet the threshold requirements in § 61.42 of this part, will then be rated using the selection criteria listed in paragraphs (b) and (c) of this section. To be eligible for a special needs grant, an applicant must receive at least 300 points (out of a possible 500) and must score points in all areas (paragraphs (b)(1) through (c)(3)).

(b) VA will award up to 200 points based on the extent to which the applicant demonstrates why the service, operation, or personnel for which the special needs grant:

(1) Is needed for the project;

(2) Is integral to the project;

(3) Is appropriate to the population and overall project design; and

(4) Meets the special needs

population provided per diem in the previous year.

(c) VA will award up to 300 points based on the extent the applicant's goals, objectives, and measures for the population to be served are:

(1) Appropriate;

(2) Reasonable; and

(3) Measurable.

(d) The information provided under paragraphs (b) and (c) of this section for

women, including women who have care of minor dependents, should demonstrate 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 procedures from other program participants if deemed appropriate.

(e) The information provided under paragraphs (b) and (c) of this section for the frail elderly should demonstrate 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 assistance devices such as walkers, grippers, or other 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.

(f) The information provided under paragraphs (b) and (c) of this section for the terminally ill should demonstrate 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.

(g) The information provided under paragraphs (b) and (c) of this section for the chronically mentally ill should demonstrate 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, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### **§ 61.44 Awarding special needs 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 conditionally selected to receive a special needs grant in accordance with their ranked order, as determined under § 61.43 of this part. 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 § 61.43(b) of this part to determine the ranking.

(c) For those applicants selected for a special needs grant, VA will execute an agreement and make payments to the grant recipient in accordance with § 61.61 of this part.

(d) The amount of the special needs grant will be the estimated total operational cost of the special need over the life of the special needs grant award

as specified in the special needs grant agreement. Payments may be made for no more than 3 years. Recipients may apply again thereafter only in response to a Notice of Fund Availability.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### **§ 61.50 Technical assistance grants-general.**

VA provides grants to entities or organizations with expertise in preparing grant applications relating to the provision of assistance for homeless veterans. The recipients are to use the grants to provide technical assistance to those nonprofit community-based groups with experience in providing assistance to homeless veterans in order to help such groups apply for grants under 38 CFR part 61 or apply for other grants from any source for addressing the problems of homeless veterans. This includes:

(a) Group or individual seminars providing general instructions concerning grant applications;

(b) Group or individual seminars providing instructions for applying for a specific grant; or

(c) Group or individual instruction for preparing analyses to be included in a grant application.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### **§ 61.51 Applications for technical assistance grants.**

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

(b) The technical assistance grant application package includes exhibits to be prepared and submitted as part of the application process, including

(1) Justification for the technical assistance grant;

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

(3) Description of type of technical assistance that would be provided (see § 61.50);

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

(5) Documentation concerning expertise in preparing grant applications;

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

(7) 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

(8) Reasonable assurances with respect to receipt of a technical assistance grant under this part 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 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, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

**§ 61.52 Threshold requirements for technical assistance grant applications.**

To be eligible for a technical assistance grant, an applicant must meet the following threshold requirements:

(a) The application included the information called for in the application package and was filed within the time period established in the Notice of Fund Availability;

(b) The applicant established expertise in preparing grant applications;

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

(d) The applicant has demonstrated 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 does not have an outstanding obligation to VA that is in arrears, and does not have an overdue or unsatisfactory response to an audit; and

(f) The applicant is not in default, by failing to meet requirements for any previous assistance from VA under this part.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

**§ 61.53 Rating criteria for technical assistance grant applications.**

(a) Applicants that meet the threshold requirements in § 61.52 of this part, 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) and must score points under paragraphs (b) and (c) of this section.

(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:

(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; and

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

**§ 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 conditionally selected to receive a technical assistance grant in accordance with their ranked order, as determined under § 61.53 of this part. 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) of this part 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 of this part.

(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 3 years. Recipients may apply again thereafter only in response to a Notice of Fund Availability.

(e) 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.

(f) VA will not pay for sustenance or lodging under a technical assistance grant.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

**§ 61.55 Technical assistance reports.**

Each recipient of a technical assistance grant must submit to VA, quarterly, a report describing the activities for which the technical assistance grant funds were awarded, including the type and amount of technical assistance provided and the number of nonprofit community-based groups served.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

**§ 61.60 Notice of Fund Availability.**

When funds are made available for capital grants, per diem for non-capital grant recipients, special needs grants, or technical assistance grants, 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.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

**§ 61.61 Agreement and funding actions.**

(a) When an applicant for a capital grant, per diem, a special needs grant, or a technical assistance grant meets all of the requirements under this part for the type of assistance requested and VA has funding for such assistance, VA will incorporate requirements under this part into an agreement to be executed by

VA and the applicant. Upon execution of the agreement, grant funds are obligated to cover the amount of the approved assistance subject to the availability of funding. Payments will be for services rendered and are contingent upon submission of documentation in the form of invoices or purchase agreements and contingent on inspections, as VA deems necessary. VA will make payments on its own schedule to reimburse for amounts expended.

(b) Except for increases in the rate of per diem, VA will not make revisions to increase the amount obligated for assistance under this part after the initial obligation of funds.

(c) VA will enforce the obligations under this part through such action as may be appropriate, including temporarily withholding cash payments pending correction of a deficiency.

(d) VA may deobligate all or parts of assistance awarded under this part:

(1) If the actual total costs 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.

(e) However, before determining whether to deobligate under paragraph (d)(2) of this section, VA will issue a notice of intent to terminate payments. The recipient will then 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.

(f) VA may also seek recovery under § 61.67 of this part where a capital grant recipient fails to provide supportive services and/or supportive housing for the minimum period of operation under § 61.67.

(g) Where a recipient has no control over causes for delays in implementing a project, VA may change the due date, as appropriate.

(h) Grant recipients that concurrently receive per diem and special needs payments shall not be paid more than 100 percent of the cost of the bed per day, product, operation, personnel, or service provided.

(i) 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.

(j) VA may obligate any recovered funds without fiscal year limitation.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### § 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 VA approval. 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 exceeding \$100,000 for nonconstruction projects must receive prior VA approval 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 nonconstruction who are State or local governments must receive prior VA approval for any budget revision which would transfer funds between nonconstruction 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.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### § 61.63 Procedural error.

If 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. A new application will not be required for this purpose.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### § 61.64 Religious organizations.

(a) As a condition for receiving assistance under this part, an organization that is primarily a religious organization must agree to conduct activities for which the assistance is provided in a manner that is free from religious influences and must comply with the following:

(1) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in

employment to persons on the basis of religion;

(2) It will not discriminate against any person applying for housing or supportive services on the basis of religion and will not limit such housing or services or give preference to persons on the basis of religion; and

(3) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence as a condition of the provision of housing and supportive services.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### § 61.65 Inspections.

VA may inspect the facility and any records of an entity applying for or receiving assistance under this part at such times as are deemed necessary to determine compliance with the provisions of this part. The authority to inspect carries with it no authority over the management or control of any entity applying for or receiving assistance under this part.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### § 61.66 Financial management.

(a) All recipients shall comply with applicable requirements of the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133.

(b) All entities receiving assistance under this part must use a financial management system that follows generally accepted accounting principals and provides accounting records, including cost accounting records that are supported by documentation. Such cost accounting must be reflected in the entity's fiscal cycle financial statements to the extent that the actual costs can be determined for the program for which assistance is provided. All entities receiving per diem under this part must monitor the accuracy of the costs used to determine payment amounts per veteran. Entities receiving assistance must meet the applicable requirements of the appropriate OMB Circular for Cost-Principles (A-122 or A-87).

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### § 61.67 Recovery provisions.

(a) If after 3 years from the date of 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

had final inspection, VA would be entitled to recover from the grant recipient all of the grant amounts provided for the project.

(b) Where the 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 of final inspection for which the grant was made. 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
0-250 .....	7
251-500 .....	8
501-750 .....	9
751-1,000 .....	10
1,001-1,250 .....	11
1,251-1,500 .....	12
1,501-1,750 .....	13
1,751-2,000 .....	14
2,001-2,250 .....	15
2,251-2,500 .....	16
2,501-2,750 .....	17
2,751-3,000 .....	18
Over 3,000 .....	20

*Example A:* Grantee A is awarded a grant and does not bring the project to operational status within 3 years from the time of award. Grantee A may be subject to full recapture of the grant award.

*Example B:* Grantee B is awarded a grant in the amount of \$300,000 and brings the project to operational status within 3 years from the time of award. Grantee B then provides services to homeless veterans for a period of 6 years from the date the program was operationalized, but now decides to close the program. As the original award was \$300,000 and as a condition of receiving the grant funds Grantee B agreed to provide services for 8 years. Therefore, Grantee B would be subject to the prorated recapture of the grant award for the 2-year period not served or in this case 1/4 of the original grant would be subject to recapture.

*Example C:* Grantee C is awarded a grant in the amount of \$400,000, becomes operational within 1 year of the date of the grant award and ceases operation 1 year later, 2 years after the date of the grant award. After the expiration of the 3-year period beginning on the date of the grant award, Grantee C would be subject to prorated recapture for the 7 years it did not provide service of the required 8 years of operation. The amount subject to recapture would thus be  $7/8 \times \$400,000$  or \$350,000.

(c) VA will seek to recover from the recipient of per diem, a special needs

grant, or a technical assistance grant any funds that are not used in accordance with the requirements of this part.

(d) Before VA would take 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.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

**§ 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:

(1) Comply with 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.

(2) Notwithstanding the provisions of paragraph(a)(1) of this section, recipients of grants prior to December 21, 2001, are required to comply with the Life Safety Code of the National Fire Protection Association by December 21, 2006. Such recipients are not excused from meeting the other requirements of paragraph (a)(1) of this section, including State and local fire and safety requirements.

(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 section 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 (free from illicit drugs) environment and 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 at such times as are deemed necessary, but as a minimum, once annually in the form of a report that addresses the recipient's

ability to meet the goals, objectives, measures, and special needs as set forth in the recipient's grant proposal.

(d) A homeless veteran may remain in transitional 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 transitional 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.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### **§ 61.81 Outreach activities.**

Recipients of capital grants and per diem under this part 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. Accordingly, a recipient should 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, 2002, 2011, 2012, 2061, 2064, 7721 note)

#### **§ 61.82 Resident rent for supportive housing.**

(a) Each resident of supportive housing may be required to pay rent in an amount determined by the recipient, except that such rent may not exceed 30 percent of the resident's monthly income after deducting medical expenses, child care expenses, court ordered child support payments, or other court ordered payments.

(b) Resident rent may be used for costs of operating the supportive housing or to assist supportive housing residents move to permanent housing.

(c) In addition to resident rent, recipients may charge residents reasonable fees for services not covered by VA per diem funds and not otherwise provided by VA.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

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