

## PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

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### Subpart A—General

#### § 574.3 Definitions.

The terms *Grantee* and *Secretary* are defined in 24 CFR part 5.

*Acquired immunodeficiency syndrome (AIDS) or related diseases* means the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV).

*Administrative costs* mean costs for general management, oversight, coordination, evaluation, and reporting on eligible activities. Such costs do not include costs directly related to carrying out eligible activities, since those costs are eligible as part of the activity delivery costs of such activities.

*Applicant* means a State or city applying for a formula allocation as described under § 574.100 or a State, unit of general local government, or a non-profit organization applying for a competitive grant as described under § 574.210.

*City* has the meaning given it in section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

*Eligible Metropolitan Statistical Area (EMSA)* means a metropolitan statistical area that has a population of more than 500,000 and has more than 1,500 cumulative cases of AIDS.

*Eligible person* means a person with acquired immunodeficiency syndrome

or related diseases who is a low-income individual, as defined in this section, and the person's family. A person with AIDS or related diseases or a family member regardless of income is eligible to receive housing information services, as described in § 574.300(b)(1). Any person living in proximity to a community residence is eligible to participate in that residence's community outreach and educational activities regarding AIDS or related diseases, as provided in § 574.300(b)(9).

*Eligible State* means a State that has:

(1) More than 1,500 cumulative cases of AIDS in those areas of the State outside of eligible metropolitan statistical areas that are eligible to be funded through a qualifying city; and

(2) A consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part. (A State may carry out activities anywhere in the State, including within an EMSA.)

*Family* is defined in 24 CFR 5.403 and includes one or more eligible persons living with another person or persons, regardless of actual or perceived sexual orientation, gender identity, or marital status, who are determined to be important to the eligible person or person's care or well-being, and the surviving member or members of any family described in this definition who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death.

*Low-income individual* has the meaning given it in section 853(3) of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

*Metropolitan statistical area* has the meaning given it in section 853(5) of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

*Nonprofit organization* means any nonprofit organization (including a State or locally chartered, nonprofit organization) that:

(1) Is organized under State or local laws;

(2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(3) Has a functioning accounting system that is operated in accordance with generally accepted accounting

principles, or has designated an entity that will maintain such an accounting system; and

(4) Has among its purposes significant activities related to providing services or housing to persons with acquired immunodeficiency syndrome or related diseases.

*Non-substantial rehabilitation* means rehabilitation that involves costs that are less than or equal to 75 percent of the value of the building after rehabilitation.

*Population* means total resident population based on data compiled by the U.S. Census and referable to the same point in time.

*Project sponsor* means any nonprofit organization or governmental housing agency that receives funds under a contract with the grantee to carry out eligible activities under this part. The selection of project sponsors is not subject to the procurement requirements of 2 CFR part 200, subpart D.

*Qualifying city* means a city that is the most populous unit of general local government in an eligible metropolitan statistical area (EMSA) and that has a consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part.

*Rehabilitation* means the improvement or repair of an existing structure, or an addition to an existing structure that does not increase the floor area by more than 100 percent.

*State* has the meaning given it in section 853(9) of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

*Substantial rehabilitation* means rehabilitation that involves costs in excess of 75 percent of the value of the building after rehabilitation.

*Unit of general local government* means any city, town, township, parish, county, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction

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with regard to provisions of the National Affordable Housing Act.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17199, Apr. 11, 1994; 60 FR 1917, Jan. 5, 1995; 61 FR 5209, Feb. 9, 1996; 61 FR 7963, Feb. 29, 1996; 77 FR 5675, Feb. 3, 2012; 80 FR 75938, Dec. 7, 2015]

### Subpart B—Formula Entitlements

#### § 574.100 Eligible applicants.

(a) Eligible States and qualifying cities, as defined in § 574.3, qualify for formula allocations under HOPWA.

(b) HUD will notify eligible States and qualifying cities of their formula eligibility and allocation amounts and EMSA service areas annually.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17199, Apr. 11, 1994; 60 FR 1917, Jan. 5, 1995]

#### § 574.110 Overview of formula allocations.

The formula grants are awarded upon submission and approval of a consolidated plan, pursuant to 24 CFR part 91, that covers the assistance to be provided under this part. Certain states and cities that are the most populous unit of general local government in eligible metropolitan statistical areas will receive formula allocations based on their State or metropolitan population and proportionate number of cases of persons with AIDS. They will receive funds under this part (providing they comply with 24 CFR part 91) for eligible activities that address the housing needs of persons with AIDS or related diseases and their families (see § 574.130(b)).

[61 FR 7963, Feb. 29, 1996]

#### § 574.120 Responsibility of applicant to serve EMSA.

The EMSA's applicant shall serve eligible persons who live anywhere within the EMSA, except that housing assistance shall be provided only in localities within the EMSA that have a consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part. In allocating grant amounts among eligible activities, the EMSA's applicant shall address needs of eligible persons who re-

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side within the metropolitan statistical area, including those not within the jurisdiction of the applicant.

[60 FR 1917, Jan. 5, 1995]

#### § 574.130 Formula allocations.

(a) *Data sources.* HUD will allocate funds based on the number of cases of acquired immunodeficiency syndrome reported to and confirmed by the Director of the Centers for Disease Control, and on population data provided by the U.S. Census. The number of cases of acquired immunodeficiency syndrome used for this purpose shall be the number reported as of March 31 of the fiscal year immediately preceding the fiscal year for which the amounts are appropriated and allocated.

(b) *Distribution of appropriated funds for entitlement awards.* (1) Seventy-five percent of the funds allocated under the formula is distributed to qualifying cities and eligible States, as described in § 574.100, based on each metropolitan statistical area's or State's proportionate share of the cumulative number of AIDS cases in all eligible metropolitan statistical areas and eligible States.

(2) The remaining twenty-five percent is allocated among qualifying cities, but not States, where the per capita incidence of AIDS for the year, April 1 through March 31, preceding the fiscal year of the appropriation is higher than the average for all metropolitan statistical areas with more than 500,000 population. Each qualifying city's allocation reflects its EMSA's proportionate share of the high incidence factor among EMSA's with higher than average per capita incidence of AIDS. The high incidence factor is computed by multiplying the population of the metropolitan statistical area by the difference between its twelve-month-per-capita-incidence rate and the average rate for all metropolitan statistical areas with more than 500,000 population. The EMSA's proportionate share is determined by dividing its high incidence factor by the sum of the high incidence factors for all EMSA's with higher than average per capita incidence of AIDS.

(c) *Minimum grant.* No grant awarded under paragraph (b) of this section shall be less than \$200,000. Therefore, if

the calculations under paragraph (b) of this section would result in any eligible metropolitan statistical area or eligible State receiving less than \$200,000, the amount allocated to that entity is increased to \$200,000 and allocations to entities in excess of \$200,000 are proportionately reduced by the amount of the increase.

#### **§ 574.190 Reallocation of grant amounts.**

If an eligible State or qualifying city does not submit a consolidated plan in a timely fashion, in accordance with 24 CFR part 91, that provides for use of its allocation of funding under this part, the funds allocated to that jurisdiction will be added to the funds available for formula allocations to other jurisdictions in the current fiscal year. Any formula funds that become available as a result of deobligations or the imposition of sanctions as provided for in § 574.540 will be added to the funds available for formula allocations in the next fiscal year.

[57 FR 61740, Dec. 28, 1992, as amended at 60 FR 1918, Jan. 5, 1995]

### **Subpart C—Competitive Grants**

#### **§ 574.200 Amounts available for competitive grants.**

(a) The Department will set aside 10 percent of the amounts appropriated under this program to fund on a competitive basis:

(1) Special projects of national significance; and

(2) Other projects submitted by States and localities that do not qualify for formula grants.

(b) Any competitively awarded funds that become available as a result of deobligations or the imposition of sanctions, as provided in § 574.540, will be added to the funds available for competitive grants in the next fiscal year.

(c) The competitive grants are awarded based on applications, as described in subpart C of this part, submitted in response to a Notice of Funding Availability published in the FEDERAL REGISTER. All States and units of general local government and nonprofit organizations are eligible to apply for competitive grants to fund projects of na-

tional significance. Only those States and units of general local government that do not qualify for formula allocations are eligible to apply for competitive grants to fund other projects.

(d) If HUD makes a procedural error in a funding competition that, when corrected, would warrant funding of an otherwise eligible application, HUD will select that application for potential funding when sufficient funds become available.

[57 FR 61740, Dec. 28, 1992, as amended at 61 FR 7963, Feb. 29, 1996]

#### **§ 574.210 Eligible applicants.**

(a) All States, units of general local government, and nonprofit organizations, may apply for grants for projects of national significance.

(b) Only those States and units of general local government that do not qualify for formula grants, as described in § 574.100; may apply for grants for other projects as described in § 574.200(a)(2).

(c) Except for grants for projects of national significance, nonprofit organizations are not eligible to apply directly to HUD for a grant but may receive funding as a project sponsor under contract with a grantee.

#### **§ 574.240 Application requirements.**

Applications must comply with the provisions of the Department's Notice of Funding Availability (NOFA) for the fiscal year published in the FEDERAL REGISTER in accordance with 24 CFR part 12. The rating criteria, including the point value for each, are described in the NOFA, including criteria determined by the Secretary.

[61 FR 7963, Feb. 29, 1996]

#### **§ 574.260 Amendments.**

(a) After an application has been selected for funding, any change that will significantly alter the scope, location, service area, or objectives of an activity or the number of eligible persons served must be justified to HUD and approved by HUD. Whenever any other amendment to the application is made, the grantee must provide a copy to HUD.

(b) Each amendment request must contain a description of the revised

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proposed use of funds. Funds may not be expended for the revised proposed use of funds until:

(1) HUD accepts the revised proposed use; and

(2) For amendments to acquire, rehabilitate, convert, lease, repair or construct properties to provide housing, an environmental review of the revised proposed use of funds has been completed in accordance with § 574.510.

(Approved by the Office of Management and Budget under control number 2506–0133)

### Subpart D—Uses of Grant Funds

#### § 574.300 Eligible activities.

(a) *General.* Subject to applicable requirements described in §§ 574.310, 574.320, 574.330, and 574.340, HOPWA funds may be used to assist all forms of housing designed to prevent homelessness including emergency housing, shared housing arrangements, apartments, single room occupancy (SRO) dwellings, and community residences. Appropriate supportive services, as required by § 574.310(a), must be provided as part of any HOPWA assisted housing, but HOPWA funds may also be used to provide services independently of any housing activity.

(b) *Activities.* The following activities may be carried out with HOPWA funds:

(1) Housing information services including, but not limited to, counseling, information, and referral services to assist an eligible person to locate, acquire, finance, and maintain housing. This may also include fair housing guidance for eligible persons who may encounter discrimination on the basis of race, color, religion, sex, age, national origin, familial status, or handicap. Housing counseling, as defined in § 5.100, that is funded with or provided in connection with HOPWA funds must be carried out in accordance with § 5.111. When grantees provide housing services to eligible persons (including persons undergoing relocation) that are incidental to a larger set of holistic case management services, these services do not meet the definition of Housing counseling, as defined in § 5.100, and therefore are not required to be carried out in accordance with the certification requirements of § 5.111;

(2) Resource identification to establish, coordinate and develop housing assistance resources for eligible persons (including conducting preliminary research and making expenditures necessary to determine the feasibility of specific housing-related initiatives);

(3) Acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing and services;

(4) New construction (for single room occupancy (SRO) dwellings and community residences only).

(5) Project- or tenant-based rental assistance, including assistance for shared housing arrangements;

(6) Short-term rent, mortgage, and utility payments to prevent the homelessness of the tenant or mortgagor of a dwelling;

(7) Supportive services including, but not limited to, health, mental health, assessment, permanent housing placement, drug and alcohol abuse treatment and counseling, day care, personal assistance, nutritional services, intensive care when required, and assistance in gaining access to local, State, and Federal government benefits and services, except that health services may only be provided to individuals with acquired immunodeficiency syndrome or related diseases and not to family members of these individuals;

(8) Operating costs for housing including maintenance, security, operation, insurance, utilities, furnishings, equipment, supplies, and other incidental costs;

(9) Technical assistance in establishing and operating a community residence, including planning and other pre-development or pre-construction expenses and including, but not limited to, costs relating to community outreach and educational activities regarding AIDS or related diseases for persons residing in proximity to the community residence;

(10) Administrative expenses:

(i) Each grantee may use not more than 3 percent of the grant amount for its own administrative costs relating to administering grant amounts and allocating such amounts to project sponsors; and

(ii) Each project sponsor receiving amounts from grants made under this

program may use not more than 7 percent of the amounts received for administrative costs.

(11) For competitive grants only, any other activity proposed by the applicant and approved by HUD.

(c) *Equal participation of faith-based organizations.* The HUD program requirements in §5.109 of this title apply to the HOPWA program, including the requirements regarding disposition and change in use of real property by a faith-based organization.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17200, Apr. 11, 1994; 68 FR 56405, Sept. 30, 2003; 80 FR 75938, Dec. 7, 2015; 81 FR 19418, Apr. 4, 2016; 81 FR 90659, Dec. 14, 2016]

**§574.310 General standards for eligible housing activities.**

All grantees using grant funds to provide housing must adhere to the following standards:

(a)(1) *General.* The grantee shall ensure that qualified service providers in the area make available appropriate supportive services to the individuals assisted with housing under this subpart. Supportive services are described in §574.300(b)(7). For any individual with acquired immunodeficiency syndrome or a related disease who requires more intensive care than can be provided in housing assisted under this subpart, the grantee shall provide for locating a care provider who can appropriately care for the individual and for referring the individual to the care provider.

(2) *Payments.* The grantee shall ensure that grant funds will not be used to make payments for health services for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service:

(i) Under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(ii) By an entity that provides health services on a prepaid basis.

(b) *Housing quality standards.* All housing assisted under §574.300(b) (3), (4), (5), and (8) must meet the applicable housing quality standards outlined below.

(1) *State and local requirements.* Each recipient of assistance under this part

must provide safe and sanitary housing that is in compliance with all applicable State and local housing codes, licensing requirements, and any other requirements in the jurisdiction in which the housing is located regarding the condition of the structure and the operation of the housing.

(2) *Habitability standards.* Except for such variations as are proposed by the locality and approved by HUD, recipients must meet the following requirements:

(i) *Structure and materials.* 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 hazards.

(ii) *Access.* The housing must be accessible and capable of being utilized without unauthorized use of other private properties. Structures must provide alternate means of egress in case of fire.

(iii) *Space and security.* Each resident must be afforded adequate space and security for themselves and their belongings. An acceptable place to sleep must be provided for each resident.

(iv) *Interior air quality.* Every room or space must be provided with natural or mechanical ventilation. Structures must be free of pollutants in the air at levels that threaten the health of residents.

(v) *Water supply.* The water supply must be free from contamination at levels that threaten the health of individuals.

(vi) *Thermal environment.* The housing must have adequate heating and/or cooling facilities in proper operating condition.

(vii) *Illumination and electricity.* The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliance while assuring safety from fire.

(viii) *Food preparation and refuse disposal.* All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(ix) *Sanitary condition.* The housing and any equipment must be maintained in sanitary condition.

(c) *Minimum use period for structures.*

(1) Any building or structure assisted with amounts under this part must be maintained as a facility to provide housing or assistance for individuals with acquired immunodeficiency syndrome or related diseases:

(i) For a period of not less than 10 years, in the case of assistance provided under an activity eligible under § 574.300(b) (3) and (4) involving new construction, substantial rehabilitation or acquisition of a building or structure; or

(ii) For a period of not less than 3 years in the cases involving non-substantial rehabilitation or repair of a building or structure.

(2) Waiver of minimum use period. HUD may waive the minimum use period of a building or structure as stipulated in paragraph (c)(1) of this section if the grantee can demonstrate, to the satisfaction of HUD, that:

(i) The assisted structure is no longer needed to provide supported housing or assistance, or the continued operation of the structure for such purposes is no longer feasible; and

(ii) The structure will be used to benefit individuals or families whose incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, if the Secretary finds that such variations are necessary because of construction costs or unusually high or low family incomes.

(d) *Resident rent payment.* Except for persons in short-term supported housing, each person receiving rental assistance under this program or residing in any rental housing assisted under this program must pay as rent, including utilities, an amount which is the higher of:

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the age of the individual, medical expenses, size of family and child care expenses and are described in detail in 24 CFR 5.609). The calculation of the family's monthly adjusted income must include the expense deductions provided in 24 CFR 5.611(a), and for eli-

gible persons, the calculation of monthly adjusted income also must include the disallowance of earned income as provided in 24 CFR 5.617, if applicable;

(2) 10 percent of the family's monthly gross 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 payment that is designated for housing costs.

(e) *Termination of assistance—*(1) *Surviving family members.* With respect to the surviving member or members of a family who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death, housing assistance and supportive services under the HOPWA program shall continue for a grace period following the death of the person with AIDS. The grantee or project sponsor shall establish a reasonable grace period for continued participation by a surviving family member, but that period may not exceed one year from the death of the family member with AIDS. The grantee or project sponsor shall notify the family of the duration of their grace period and may assist the family with information on other available housing programs and with moving expenses.

(2) *Violation of requirements—*(i) *Basis.* Assistance to participants who reside in housing programs assisted under this part may be terminated if the participant violates program requirements or conditions of occupancy, subject to the VAWA protections in 24 CFR 5.2005(b) and 24 CFR 5.2005(c). Grantees must ensure that supportive services are provided, so that a participant's assistance is terminated only in the most severe cases.

(ii) *Procedure.* In terminating assistance to any program participant for violation of requirements, grantees must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law. This process at minimum, must consist of:

(A) Serving the participant with a written notice containing a clear statement of the reasons for termination;

(B) Permitting the participant to have a review of the decision, in which the participant is given the opportunity to confront opposing witnesses, present written objections, and be represented by their own counsel, before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(C) Providing prompt written notification of the final decision to the participant.

(Paragraph (c) approved by the Office of Management and Budget under control number 2506-0133)

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17200, Apr. 11, 1994; 61 FR 7963, Feb. 29, 1996; 66 FR 6225, Jan. 19, 2001; 81 FR 80806, Nov. 16, 2016]

EFFECTIVE DATE NOTE: At 88 FR 9665, Feb. 14, 2023, §547.310 was amended by revising paragraphs (d)(1) and (2), redesignating paragraph (e) as paragraph (g), and adding new paragraphs (e), (f), and (h), effective Jan. 1, 2024. For the convenience of the user, the revised and added text is set forth as follows:

**§574.310 General Standards for eligible housing activities.**

\* \* \* \* \*

(d) \* \* \*

(1) 30 percent of the family's monthly adjusted income;

(2) Ten percent of the family's monthly income; or

\* \* \* \* \*

(e) *Calculating income to determine resident rent payment*—(1) *In general.* When determining resident rent payments, the family's monthly income and monthly adjusted income must be calculated as provided by §§5.609 and 5.611 of this title, respectively, except that:

(i) As with the references to "grantee" and "grantees" in paragraphs (e), (f), and (h) of this section, the references to "PHA" and "responsible entity" in §§5.609 and 5.611 of this title refer to the "grantee" or "project sponsor" that is determining income;

(ii) References in §5.609(c) of this title to an interim reexamination of family income under §§5.657(c), 960.257(b), or 982.516(c) of this title refer to an interim reexamination provided under paragraph (e)(4) of this section;

(iii) References in §5.609(c) of this title to a streamlined income determination under

§§5.657(d), 960.257(c), or 982.516(b) of this title refer to a streamlined income determination provided under paragraph (e)(5) of this section;

(iv) Section 5.611(b) of this title does not apply;

(v) The grantee may choose to grant financial hardship exemptions in accordance with the process described in §§5.611(c) through (e);

(vi) During the period that §5.617 of this title remains in effect, the calculation of monthly adjusted income must also include the disallowance of earned income as provided by §5.617 of this title.

(2) *Annual reexaminations.* For purposes of determining resident rent payments, grantees will conduct a reexamination and redetermination of family income and family composition every year.

(3) *Third-party verification.* (i) Except as provided in paragraph (e)(3)(ii) of this section, the grantee must obtain and document in the tenant file third-party verification of the following factors, or must document in the tenant file why third-party verification was not available:

(A) Reported family annual income;

(B) The value of assets;

(C) Expenses related to deductions from annual income; and

(D) Other factors that affect the determination of adjusted income.

(ii) For a family with net family assets (as the term is defined in paragraph (f) of this section) equal to or less than \$50,000, which amount will be adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Worker, the grantee may accept, for purposes of recertification of income, a family's declaration under §5.618(b) of this title, except that the grantee must obtain third-party verification of all family assets every 3 years.

(iii) The grantee must establish procedures that are appropriate and necessary to require that income data provided by applicant or participant families is complete and accurate.

(4) *Interim reexaminations*—(i) *Generally.* A family may request an interim reexamination of family income or composition because of any changes since the last determination. The grantee must make any interim reexamination within a reasonable period of time after the family's request or when the grantee becomes aware of an increase in family adjusted income under paragraph (e)(4)(iii) of this section. What qualifies as a "reasonable time" may vary based on the amount of time it takes to verify information, but generally should not exceed 30 days from the date a family reports changes in income to a grantee.

(ii) *Decreases in the family's annual adjusted income.* Grantees may decline to conduct an

interim reexamination of family income if the grantee estimates that the family's adjusted income will decrease by an amount that is less than ten percent of the family's annual adjusted income (or a lower amount established by HUD through notice), or a lower threshold established by the grantee.

(iii) *Increases in the family's annual adjusted income.* Grantees must conduct the interim reexamination of family income when the grantee becomes aware that the family's adjusted income has changed by an amount that the grantee estimates will result in an increase of ten percent or more in annual adjusted income or such other amount established by HUD through notice, except:

(A) The grantee may not consider any increase in the earned income of the family when estimating or calculating whether the family's adjusted income has increased unless the family has previously received an interim reduction under paragraph (e)(4)(i) of this section during the certification period; and

(B) The grantee may choose not to conduct an interim reexamination in the last three months of a certification period.

(iv) *Policies on reporting changes in family income or composition.* The grantee must adopt policies consistent with this section prescribing when and under what conditions the family must report a change in family income or composition.

(v) *Effective date of rent changes.* (A) If the family has reported a change in family income or composition in a timely manner according to the grantee's policies, the grantee must provide the family with 30 days advance notice of any rent increase, and such rent increase will be effective the first day of the month beginning after the end of that 30-day period. Rent decreases will be effective on the first day of the first month after the date of the actual change leading to the interim reexamination of family income.

(B) If the family has failed to report a change in family income or composition in a timely manner according to the grantee's policies, grantees must implement any resulting rent increases retroactively to the first of the month following the date of the change leading to the interim reexamination of family income. Any resulting rent decrease must be implemented no later than the first rent period following completion of the reexamination. However, rent decreases may be applied retroactively at the discretion of the grantee, in accordance with the grantee's conditions as established in written policy, and subject to paragraph (e)(4)(v)(C) of this section.

(C) A retroactive rent decrease may not be applied by the grantee prior to the later of the first of the month following:

(i) The date of the change leading to the interim reexamination of family income; or

(2) The effective date of the family's most recent previous interim or annual reexamination (or initial examination if that was the family's last examination).

(5) *Streamlined income determinations*—(i) *Generally.* A grantee may elect to apply a streamlined income determination to families receiving fixed income as described in paragraph (e)(5)(iii) of this section.

(ii) *Definition of fixed income.* For purposes of this section, "fixed income" means periodic payments at reasonably predictable levels from one or more of the following sources:

(A) Social Security, Supplemental Security Income, Supplemental Disability Insurance.

(B) Federal, state, local, or private pension plans.

(C) Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts.

(D) Any other source of income subject to adjustment by a verifiable Cost-of-Living Adjustment (COLA) or current rate of interest.

(iii) *Method of streamlined income determination.* Grantees using the streamlined income determination must adjust a family's income according to the percentage of a family's unadjusted income that is from fixed income.

(A) When 90 percent or more of a family's unadjusted income consists of fixed income, grantees using streamlined income determinations must apply a COLA or COLAs to the family's fixed-income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year. For non-fixed income, grantees may choose, but are not required, to make appropriate adjustments pursuant to paragraph (e)(2) of this section.

(B) When less than 90 percent of a family's unadjusted income consists of fixed income, grantees using streamlined income determinations must apply a COLA to each of the family's sources of fixed income. Grantees must determine all other income pursuant to paragraph (e)(2) of this section.

(iv) *COLA rate applied by grantees.* Grantees using streamlined income determinations must adjust a family's fixed income using a COLA or current interest rate that applies to each specific source of fixed income and is available from a public source or through tenant-provided, third-party-generated documentation. If no public verification or tenant-provided documentation is available, then the grantee must obtain third-party verification of the income amounts in order to calculate the change in income for the source.

(v) *Triennial verification.* For any income determined pursuant to a streamlined income determination, a grantee must obtain third-party verification of all income amounts every 3 years.

(f) *Net family assets and restriction on assistance to families based on assets.* The “net family assets” definition in § 5.603 of this section applies for purposes of calculating resident rent payments under this section and applying the asset-based restrictions in §§ 5.618(a) through (d) this title. The “net family assets” definition in § 5.603 of this section may also apply where a grantee elects to apply § 5.609 of this title alone or in combination with § 5.611(a) of this title for other purposes under this part; however, the value of real property a family owns and occupies as its primary residence must be excluded from the calculation of “net family assets” for purposes of assistance for which homeowners are eligible under this part. The asset-based restrictions in §§ 5.618(a) through (d) of this title apply only to housing activities subject to the resident rent payment requirements in this section. References to “PHA” in §§ 5.618(a) through (d) of this title refer to the grantee or project sponsor that is determining the asset-based restrictions.

\* \* \* \* \*

(h) *De minimis errors.* The grantee will not be considered out of compliance with the requirements in paragraphs (e)(2), (e)(4), or (e)(5) of this section due solely to de minimis errors in calculating family income but is still obligated to correct errors once the grantee becomes aware of the errors. A de minimis error is an error where the grantee’s determination of family income varies from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income) per family.

(1) The grantee must take any corrective action necessary to credit or repay a family if the family has been overcharged for their resident rent payment as a result of the de minimis error in the income determination. Families will not be required to repay the grantee in instances where the grantee has miscalculated income resulting in a family being undercharged for their resident rent payment.

(2) HUD may revise the amount of de minimis error in this paragraph (h) through a rulemaking published in the FEDERAL REGISTER for public comment.

#### **§ 574.320 Additional standards for rental assistance.**

(a) If grant funds are used to provide rental assistance, the following additional standards apply:

(1) *Maximum subsidy.* The amount of grant funds used to pay monthly assistance for an eligible person may not exceed the difference between:

(i) The lower of the rent standard or reasonable rent for the unit; and

(ii) The resident’s rent payment calculated under § 574.310(d).

(2) *Rent standard.* The rent standard shall be established by the grantee and shall be no more than the published section 8 fair market rent (FMR) or the HUD-approved community-wide exception rent for the unit size. However, on a unit by unit basis, the grantee may increase that amount by up to 10 percent for up to 20 percent of the units assisted.

(3) *Rent reasonableness.* The rent charged for a unit must be reasonable in relation to rents currently being charged for comparable units in the private unassisted market and must not be in excess of rents currently being charged by the owner for comparable unassisted units.

(b) With respect to shared housing arrangements, the rent charged for an assisted family or individual shall be in relation to the size of the private space for that assisted family or individual in comparison to other private space in the shared unit, excluding common space. An assisted family or individual may be assigned a pro rata portion based on the ratio derived by dividing the number of bedrooms in their private space by the number of bedrooms in the unit. Participation in shared housing arrangements shall be voluntary.

[57 FR 61740, Dec. 28, 1992, as amended at 61 FR 7963, Feb. 29, 1996]

#### **§ 574.330 Additional standards for short-term supported housing.**

Short-term supported housing includes facilities to provide temporary shelter to eligible individuals as well as rent, mortgage, and utilities payments to enable eligible individuals to remain in their own dwellings. If grant funds are used to provide such short-term supported housing assistance, the following additional standards apply:

(a) *Time limits.* (1) A short-term supported housing facility may not provide residence to any individual for more than 60 days during any six

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month period. Rent, mortgage, and utilities payments to prevent the homelessness of the tenant or mortgagor of a dwelling may not be provided to such an individual for these costs accruing over a period of more than 21 weeks in any 52 week period. These limitations do not apply to rental assistance provided under § 574.300(b)(5).

(2) *Waiver of time limitations.* HUD may waive, as it determines appropriate, the limitations of paragraph (a)(1) and will favorably consider a waiver based on the good faith effort of a project sponsor to provide permanent housing under subsection (c).

(b) *Residency limitations*—(1) *Residency.* A short-term supported facility may not provide shelter or housing at any single time for more than 50 families or individuals;

(2) *Waiver of residency limitations.* HUD may waive, as it determines appropriate, the limitations of paragraph (b)(1) of this section.

(c) *Placement.* A short-term supported housing facility assisted under this part must, to the maximum extent practicable, provide each individual living in such housing the opportunity for placement in permanent housing or in a living environment appropriate to his or her health and social needs.

(d) *Assistance to continue independent living.* In addition to the supportive services provided when an individual is relocated to a short-term supported housing facility, supportive services may be provided to individuals when they remain in their residence because the residence is appropriate to the needs of the individual. In the latter case, a rent, mortgage and utilities payments program assisted under this part shall provide, when reasonable, supportive services specifically designed to maintain the individual in such residence.

(e) *Case management services.* A program assisted under this section shall provide each assisted individual with an opportunity, if eligible, to receive

case management services from the appropriate social service agencies.

(Paragraph (b) approved by the Office of Management and Budget under control number 2506-0133)

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17200, Apr. 11, 1994]

### § 574.340 Additional standards for community residences.

(a) A community residence is a multiunit residence designed for eligible persons to provide a lower cost residential alternative to institutional care; to prevent or delay the need for such care; to provide a permanent or transitional residential setting with appropriate services to enhance the quality of life for those who are unable to live independently; and to enable such persons to participate as fully as possible in community life.

(b) If grant funds are used to provide a community residence, except for planning and other expenses preliminary to construction or other physical improvement for a community residence, the grantee must, prior to the expenditure of such funds, obtain and keep on file the following certifications:

(1) *A services agreement.* (i) A certification that the grantee will itself provide services as required by § 574.310(a) to eligible persons assisted by the community residence; or

(ii) A certification that the grantee has entered into a written agreement with a project sponsor or contracted service provider to provide services as required by § 574.310(a) to eligible persons assisted by the community residence;

(2) *The adequacy of funding.* (i) A certification that the grantee has acquired sufficient funding for these services; or

(ii) A certification that the grantee has on file an analysis of the service level needed for each community residence, a statement of which grantee agency, project sponsor, or service provider will provide the needed services, and a statement of how the services will be funded; and

(3) *Capability.* (i) A certification that the grantee is qualified to provide the services; or

(ii) A certification that the project sponsor or the service provider is qualified to provide the services.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17200, Apr. 11, 1994]

**§ 574.350 Additional standards for broadband infrastructure.**

Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 CFR 574.3, of a building with more than 4 rental units, for which HOPWA funds are first obligated by the grantee or project sponsor on or after January 19, 2017 must include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the grantee or project sponsor determines and, in accordance with § 574.530, documents the determination that:

(a) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(b) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(c) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

[81 FR 92637, Dec. 20, 2016]

**Subpart E—Special Responsibilities of Grantees and Project Sponsors**

**§ 574.400 Prohibition of substitution of funds.**

Amounts received from grants under this part may not be used to replace other amounts made available or designated by State or local governments through appropriations for use for the purposes of this part.

**§ 574.410 Capacity.**

The grantee shall ensure that any project sponsor with which the grantee contracts to carry out an activity under this part has the capacity and capability to effectively administer the activity.

**§ 574.420 Cooperation.**

(a) The grantee shall agree, and shall ensure that each project sponsor agrees, to cooperate and coordinate in providing assistance under this part with the agencies of the relevant State and local governments responsible for services in the area served by the grantee for eligible persons and other public and private organizations and agencies providing services for such eligible persons.

(b) A grantee that is a State shall obtain the approval of the unit of general local government in which a project is to be located before entering into a contract with a project sponsor to carry out an activity authorized under this part.

(c) A grantee that is a city receiving a formula allocation for an EMSA shall coordinate with other units of general local government located within the metropolitan statistical area to address needs within that area.

**§ 574.430 Fee prohibitions.**

The grantee shall agree, and shall ensure that each project sponsor agrees, that no fee, except rent, will be charged of any eligible person for any housing or services provided with amounts from a grant under this part.

**§ 574.440 Confidentiality.**

The grantee shall agree, and shall ensure that each project sponsor agrees, to ensure the confidentiality of the name of any individual assisted under this part and any other information regarding individuals receiving assistance.

**§ 574.450 Financial records.**

The grantee shall agree, and shall ensure that each project sponsor agrees, to maintain and make available to HUD for inspection financial records sufficient, in HUD's determination, to ensure proper accounting and disbursing of amounts received from a grant under this part.

**§ 574.460 Remaining participants following bifurcation of a lease or eviction as a result of domestic violence, dating violence, sexual assault, or stalking.**

When a covered housing provider exercises the option to bifurcate a lease, as provided in 24 CFR 5.2009(a), in order to evict, remove, terminate occupancy rights, or terminate assistance to a person with AIDS or related diseases that receives rental assistance or resides in rental housing assisted under the HOPWA program for engaging in criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking, the covered housing provider shall provide the remaining persons residing in the unit a reasonable grace period to establish eligibility to receive HOPWA assistance or find alternative housing. The grantee or project sponsor shall set the reasonable grace period, which shall be no less than 90 calendar days, and not more than one year, from the date of the bifurcation of the lease. Housing assistance and supportive services under the HOPWA program shall continue for the remaining persons residing in the unit during the grace period. The grantee or project sponsor shall notify the remaining persons residing in the unit of the duration of the reasonable grace period and may assist them with information on other available housing programs and with moving expenses.

[81 FR 80806, Nov. 16, 2016]

**Subpart F—Grant Administration**

**§ 574.500 Responsibility for grant administration.**

(a) *General.* Grantees are responsible for ensuring that grants are administered in accordance with the requirements of this part and other applicable laws. Grantees are responsible for ensuring that their respective project sponsors carry out activities in compliance with all applicable requirements.

(b) *Grant agreement.* The grant agreement will provide that the grantee agrees, and will ensure that each project sponsor agrees, to:

(1) Operate the program in accordance with the provisions of these regu-

lations and other applicable HUD regulations;

(2) Conduct an ongoing assessment of the housing assistance and supportive services required by the participants in the program;

(3) Assure the adequate provision of supportive services to the participants in the program; and

(4) Comply with such other terms and conditions, including recordkeeping and reports (which must include racial and ethnic data on participants) for program monitoring and evaluation purposes, as HUD may establish for purposes of carrying out the program in an effective and efficient manner.

(c) *Enforcement.* HUD will enforce the obligations in the grant agreement in accordance with the provisions of 2 CFR part 200, subpart D. A grantee will be provided an opportunity for informal consultation before HUD will exercise any remedies authorized in 2 CFR 200.338.

[57 FR 61740, Dec. 28, 1992, as amended at 80 FR 75938, Dec. 7, 2015]

**§ 574.510 Environmental procedures and standards.**

(a) Activities under this part are subject to HUD environmental regulations in part 58 of this title, except that HUD will perform an environmental review in accordance with part 50 of this title for any competitive grant for Fiscal Year 2000.

(b) The recipient, its project partners and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until the responsible entity (as defined in § 58.2 of this title) has completed the environmental review procedures required by part 58 and the environmental certification and RROF have been approved (or HUD has performed an environmental review and the recipient has received HUD approval of the property). HUD will not release grant funds if the recipient or any other party commits grant funds (*i.e.*, incurs any costs or expenditures to be paid or reimbursed with such funds) before the recipient submits and

HUD approves its RROF (where such submission is required).

(c) For activities under a grant to a nonprofit entity that would generally be subject to review under part 58, HUD may make a finding in accordance with § 58.11(d) and may itself perform the environmental review under the provisions of part 50 of this title if the recipient nonprofit entity objects in writing to the responsible entity's performing the review under part 58. Irrespective of whether the responsible entity in accord with part 58 (or HUD in accord with part 50) performs the environmental review, the recipient shall supply all available, relevant information necessary for the responsible entity (or HUD, if applicable) to perform for each property any environmental review required by this part. The recipient also shall carry out mitigating measures required by the responsible entity (or HUD, if applicable) or select alternate eligible property.

[68 FR 56130, Sept. 29, 2003]

#### § 574.520 Performance reports.

(a) *Formula grants.* For a formula grant recipient, the performance reporting requirements are specified in 24 CFR part 91.

(b) *Competitive grants.* A grantee shall submit to HUD annually a report describing the use of the amounts received, including the number of individuals assisted, the types of assistance provided, data on emergency transfers requested under 24 CFR 5.2005(e), pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests, and any other information that HUD may require. Annual reports are required until all grant funds are expended.

[60 FR 1918, Jan. 5, 1995, as amended at 81 FR 80806, Nov. 16, 2016]

#### § 574.530 Recordkeeping.

Each grantee must ensure that records are maintained for a 4-year period to document compliance with the provisions of this part. Grantees must maintain the following:

(a) Current and accurate data on the race and ethnicity of program participants.

(b) Documentation of the actions the grantee has taken to affirmatively further fair housing, pursuant to §§ 5.151 and 5.152 of this title.

(c) Data on emergency transfers requested under 24 CFR 5.2005(e), pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

[80 FR 42368, July 16, 2015, as amended at 81 FR 80806, Nov. 16, 2016; 85 FR 47911, Aug. 7, 2020; 86 FR 30792, June 10, 2021]

#### § 574.540 Deobligation of funds.

HUD may deobligate all or a portion of the amounts approved for eligible activities if such amounts are not expended in a timely manner, or the proposed activity for which funding was approved is not provided in accordance with the approved application or action plan and the requirements of this regulation. HUD may deobligate any amount of grant funds that have not been expended within a three-year period from the date of the signing of the grant agreement. The grant agreement may set forth other circumstances under which funds may be deobligated or sanctions imposed.

[61 FR 7963, Feb. 29, 1996]

### Subpart G—Other Federal Requirements

#### § 574.600 Cross-reference.

The Federal requirements set forth in 24 CFR part 5 and part 75 apply to this program as specified in this subpart.

[61 FR 5209, Feb. 9, 1996, as amended at 85 FR 61567, Sept. 29, 2020]

#### § 574.603 Nondiscrimination and equal opportunity.

Within the population eligible for this program, the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5 and the following requirements apply:

(a) *Fair housing requirements.* (1) Grantees and project sponsors shall comply with the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101–12213) and implementing regulations at 28 CFR part 35 (States and local government grantees)

and part 36 (public accommodations and requirements for certain types of short-term housing assistance).

(2) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264) (Equal Employment Opportunity) does not apply to this program.

(b) *Affirmative outreach.* A grantee or project sponsor must adopt procedures to ensure that all persons who qualify for the assistance, regardless of their race, color, religion, sex, age, national origin, familial status, or handicap, know of the availability of the HOPWA program, including facilities and services accessible to persons with a handicap, and maintain evidence of implementation of the procedures.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 33894, June 30, 1994. Redesignated and amended at 61 FR 5209, Feb. 9, 1996; 61 FR 7964, Feb. 29, 1996]

**§ 574.604 Protections for victims of domestic violence, dating violence, sexual assault, and stalking.**

(a) *General*—(1) *Applicability of VAWA requirements.* Except as provided in paragraph (a)(2) of this section, the Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), apply to housing assisted with HOPWA grant funds for acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing; new construction; and operating costs, as provided in § 574.300. The requirements set forth in 24 CFR part 5, subpart L, also apply to project-based and tenant-based rental assistance, as provided in §§ 574.300 and 574.320, and community residences, as provided in § 574.340.

(2) *Limited applicability of VAWA requirements.* The VAWA requirements set forth in 24 CFR part 5, subpart L do not apply to short-term supported housing, as provided in § 574.330, except that no individual may be denied admission to or removed from the short-term supported housing on the basis of or as a direct result of the fact that the individual is or has been a victim of do-

mestic violence, dating violence, sexual assault, or stalking, if the individual otherwise qualifies for admission or occupancy.

(3) The terms “affiliated individual,” “dating violence,” “domestic violence,” “sexual assault,” and “stalking” are defined in 24 CFR 5.2003.

(b) *Covered housing provider.* As used in this part, the term, “covered housing provider,” which is defined in 24 CFR 5.2003, refers to the HOPWA grantee, project sponsor, or housing or facility owner, or manager, as described in this section.

(1)(i) For housing assisted with HOPWA grant funds for acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing; new construction; operating costs; community residences; and project-based rental assistance, the HOPWA grantee is responsible for ensuring that each project sponsor undertakes the following actions (or, if administering the HOPWA assistance directly, the grantee shall undertake the following actions):

(A) Sets a policy for determining the “reasonable grace period” for remaining persons residing in the unit to establish eligibility for HOPWA assistance or find alternative housing, which period shall be no less than 90 calendar days nor more than one year from the date of bifurcation of a lease, consistent with 24 CFR 574.460;

(B) Provides notice of occupancy rights and the certification form at the times listed in paragraph (d) of this section;

(C) Adopts and administers an emergency transfer plan, as developed by the grantee in accordance with 24 CFR 5.2005(e) of this section, and facilitates emergency transfers; and

(D) Maintains the confidentiality of documentation submitted by tenants requesting emergency transfers and of each tenant’s housing location consistent with § 574.440 and 24 CFR 5.2007(c).

(ii)(A) If a tenant seeks VAWA protections, set forth in 24 CFR part 5, subpart L, the tenant must submit such request through the project sponsor (or the grantee if the grantee is directly administering HOPWA assistance). Grantees and project sponsors

will work with the housing or facility owner or manager to facilitate protections on the tenant's behalf. Project sponsors must follow the documentation specifications in 24 CFR 5.2007, including the confidentiality requirements in 24 CFR 5.2007(c).

(B) The grantee or project sponsor is responsible for ensuring that the housing or facility owner or manager develops and uses a HOPWA lease addendum with VAWA protections and is made aware of the option to bifurcate a lease in accordance with §574.460 and 24 CFR 5.2009.

(2)(i) For tenant-based rental assistance, the HOPWA grantee is responsible for ensuring that each project sponsor providing tenant-based rental assistance undertakes the following actions (or, if administering the HOPWA assistance directly, the grantee shall undertake the following actions):

(A) Sets policy for determining the "reasonable grace period" for remaining persons residing in the unit to establish eligibility for HOPWA assistance or find alternative housing, which period shall be no less than 90 calendar days and no more than one year from the date of bifurcation of a lease, consistent with 24 CFR 574.460;

(B) Provides notice of occupancy rights and the certification form at the times listed in paragraph (d) of this section;

(C) Adopts and administers an emergency transfer plan, as developed by the grantee in accordance with 24 CFR 5.2005(e) of this section, and facilitates emergency transfers; and

(D) Maintains the confidentiality of documentation submitted by tenants requesting emergency transfers and of each tenant's housing location consistent with §574.440 and 24 CFR 5.2007(c).

(ii)(A) If a tenant seeks VAWA protections set forth in 24 CFR part 5, subpart L, the tenant must submit such request through the project sponsor (or the grantee if the grantee is directly administering HOPWA assistance). The project sponsor will work with the housing owner or manager to facilitate protections on the tenant's behalf. Project sponsors must follow the documentation specifications in 24 CFR 5.2007, including the confidentiality re-

quirements in 24 CFR 5.2007(c). The project sponsor (or the grantee if the grantee is directly administering HOPWA assistance) is also responsible for determining on a case-by-case basis whether to provide new tenant-based rental assistance to a remaining tenant if lease bifurcation or an emergency transfer results in division of the household.

(B) The grantee or project sponsor is responsible for ensuring that the housing owner or manager develops and uses a HOPWA lease addendum with VAWA protections and is made aware of the option to bifurcate a lease in accordance with §574.460 and 24 CFR 5.2009.

(c) *Effective date.* The core statutory protections of VAWA that prohibit denial or termination of assistance or eviction because an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking applied upon enactment of VAWA 2013 on March 7, 2013. For formula grants, compliance with the VAWA regulatory requirements under this section and 24 CFR part 5, subpart L, are required for any project covered under §574.604(a) for which the date of the HOPWA funding commitment is made on or after *December 16, 2016*. For competitive grants, compliance with the VAWA regulatory requirements under this section and 24 CFR part 5, subpart L, are required for awards made on or after *December 16, 2016*.

(d) *Notification requirements.* (1) As provided in paragraph (b) of this section, the grantee is responsible for ensuring that the notice of occupancy rights and certification form described in 24 CFR 5.2005(a) is provided to each person receiving project-based or tenant-based rental assistance under HOPWA or residing in rental housing assisted under the eligible activities described in §574.604(a) at the following times:

(i) At the time the person is denied rental assistance or admission to a HOPWA-assisted unit;

(ii) At the time the person is admitted to a HOPWA-assisted unit or is provided rental assistance;

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(iii) With any notification of eviction from the HOPWA-assisted unit or notification of termination of rental assistance; and

(iv) During the 12-month period following December 16, 2016, either during annual recertification or lease renewal, whichever is applicable, or, if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means.

(2) The grantee is responsible for ensuring that, for each tenant receiving HOPWA tenant-based rental assistance, the owner or manager of the tenant's housing unit commits to provide the notice of occupancy rights and certification form described in 24 CFR 5.2005 with any notification of eviction that the owner or manager provides to the tenant during the period for which the tenant is receiving HOPWA tenant-based rental assistance. This commitment, as well as the confidentiality requirements under 24 CFR 5.2007(c), must be set forth in the VAWA lease term/addendum required under paragraph (f) of this section.

(e) *Definition of reasonable time.* For the purpose of 24 CFR 5.2009(b), the reasonable time to establish eligibility or find alternative housing following bifurcation of a lease is the reasonable grace period described in § 574.460.

(f) *VAWA lease term/addendum.* As provided in paragraph (b) of this section, the grantee or project sponsor is responsible for ensuring that the housing or facility owner or manager, as applicable, develops and uses a VAWA lease term/addendum to incorporate all requirements that apply to the housing or facility owner or manager under 24 CFR part 5, subpart L, and this section, including the prohibited bases for eviction under 24 CFR 5.2005(b), the provisions regarding construction of lease terms and terms of assistance under 24 CFR 5.2005(c), and the confidentiality of documentation submitted by tenants requesting emergency transfers and of each tenant's housing location consistent with 24 CFR 5.2007(c). The VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if a determination is made that the tenant has met the conditions for an emergency

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transfer under 24 CFR 5.2005(e). The grantee or project sponsor is responsible for ensuring that the housing or facility owner, or manager, as applicable, adds the VAWA lease term/addendum to the leases for all HOPWA-assisted units and the leases for all eligible persons receiving HOPWA tenant-based rental assistance.

[81 FR 80806, Nov. 16, 2016]

### § 574.605 Applicability of uniform administrative requirements, cost principles, and audit requirements for Federal awards.

The provisions of 2 CFR part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, apply to HOPWA grants.

[80 FR 75938, Dec. 7, 2015]

### § 574.625 Conflict of interest.

(a) In addition to the conflict of interest requirements in 2 CFR 200.317 (for recipients and subrecipients that are States) and 2 CFR 200.318 (for recipients and subrecipients that are not States), no person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee or project sponsor and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(b) *Exceptions: Threshold requirements.* Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (a) of this section when it determines that the exception will serve to further the purposes of the HOPWA program and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(c) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (b) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(2) Whether the person affected is a member of a group or class of eligible persons and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (a) of this section;

(5) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations.

[57 FR 61740, Dec. 28, 1992, as amended at 80 FR 75938, Dec. 7, 2015]

**§ 574.630 Displacement, relocation and real property acquisition.**

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, grantees and project sponsors must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24.

(c) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Appeals.* A person who disagrees with the grantee's or project sponsor's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the grantee. A low-income person who is dissatisfied with the grantee's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(e) *Responsibility of grantee.* (1) Each grantee shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid for with funds available from other sources.

(3) The grantee shall maintain records in sufficient detail to demonstrate compliance with these provisions.

(f) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for

an assisted project including any permanent move for an assisted project, including any permanent move from the real property that is made:

(i) After notice by the grantee, project sponsor, or property owner to move permanently from the property, if the move occurs on or after the date that the grantee submits to HUD an application for assistance that is later approved and funded;

(ii) Before the submission of the application to HUD, if the grantee, project sponsor, or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(A) The tenant moves after the “initiation of negotiations” and the move occurs before the tenant has been provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(1) The tenant’s monthly rent before the initiation of negotiations and estimated average utility costs, or

(2) 30 percent of gross household income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex and either:

(1) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or

(2) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, a person does not qualify as a “displaced person” (and is not eligible for reloca-

tion assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation or applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purposes of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a “displaced person” (or for any assistance provided under this section), if the project is approved;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The grantee or project sponsor may request, at any time, HUD’s determination of whether a displacement is or would be covered under this section.

(g) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term “initiation of negotiations” means the execution of the agreement between the grantee and the project sponsor.

**§ 574.635 Lead-based paint.**

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, H, J, K, M, and R of this part apply to activities under this program.

[64 FR 50226, Sept. 15, 1999]

**§ 574.640 Flood insurance protection.**

No property to be assisted under this part may be located in an area that has

been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(a)(1) The community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59 through 79); or

(2) Less than a year has passed since FEMA notification regarding such hazards; and

(b) The grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

#### **§ 574.645 Coastal barriers.**

In accordance with the Coastal Barrier Resources Act, 16 U.S.C. 3501, no financial assistance under this part may be made available within the Coastal Barrier Resources System.

#### **§ 574.650 Audit.**

Grantees and project sponsors are subject to the audit requirements set forth in 2 CFR part 200, subpart F.

[80 FR 75938, Dec. 7, 2015]

#### **§ 574.655 Wage rates.**

The provisions of the Davis-Bacon Act (40 U.S.C. 276a–276a–5) do not apply to this program, except where funds received under this part are combined with funds from other Federal programs that are subject to the Act.

[59 FR 17201, Apr. 11, 1994]

#### **§ 574.660 Housing counseling.**

Housing counseling, as defined in § 5.100, that is funded with or provided in connection with HOPWA funds must be carried out in accordance with § 5.111. When grantees provide housing services to eligible persons (including persons undergoing relocation) that are incidental to a larger set of holistic case management services, these services do not meet the definition of housing counseling, as defined in § 5.100, and therefore are not required to be carried out in accordance with the certification requirements of § 5.111.

[81 FR 90659, Dec. 14, 2016, as amended at 82 FR 8811, Jan. 31, 2017]

## **PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM**

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