

# **38 CFR 61.82 Participant fees for supportive housing (and participant agreements, too)**

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# 38 CFR 61.82 PARTICIPANT FEES FOR SUPPORTIVE HOUSING

## 38 CFR 61.82 Participant fees for supportive housing

- Today we will review a GPD grantee's ability to use participant agreements and charge Veteran participants fees and the oversight of fee administration
- Participant fees and agreements are codified in 38 CFR 61.82
  - Link: <https://www.ecfr.gov/current/title-38/chapter-I/part-61/subpart-F/section-61.82>
  - GPD liaisons from each VA medical center may review fee collection as part of their oversight duties
  - A GPD grantee's responsibility is to ensure that any participant agreements and fees collected conform to GPD regulations
- **But first...**

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## A refresher on the VA GPD national program office's (NPO) role

- The GPD NPO serves in a **primarily consultative** role for direct grantee **operations**
- Direct oversight of GPD grantee **operations** (e.g., direct Veteran care) is the **responsibility of each VA medical center**, with the VA medical center director being the final decider on approval of Veteran placements (VHA Directive 1162.01)
  - GPD liaisons, however, **are not** subject matter experts in most fiscal areas, so **grantees should contact directly the GPD NPO's fiscal team**, [GPDFiscal@va.gov](mailto:GPDFiscal@va.gov), for questions about the use of per diem funds, emergency expenses, etc.
  - GPD liaisons **are** your subject matter experts for all things operations and Veteran oversight
- The **GPD NPO cannot determine the calculation of individual fees for grantees or VA liaisons**, or **determine the type of housing when applying HUD fair market rent (FMR) standards**; but we can help coach on the regulations, advise on corrective steps if fees are misapplied, and help share ideas

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## Participant fees and agreements are

- **Not mandatory for grantees to charge**
- **Not “rent”**
- **Not a cause to exclude a Veteran from a GPD program**
  - 38 CFR 61.82(f)(4): “Participant agreements may not be used to **exclude homeless veterans with little or no income from the program**”
- **Not evidence of a “lease” where the failure to pay could be used as cause for eviction and fees are used to fund eviction costs**
  - 38 CFR 61.82(e): “In projects funded under this part where participants sign agreements, VA treats the costs associated with **participant eviction to be as unallowable.**”
  - 38 CFR 61.82(f)(3): “Participant agreements must include a clause that allows program participants **the ability to break the lease or program agreement without penalty** for medical or clinical necessity.”

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## Participant fees and agreements are (continued)

- **Not extracurricular fees**
  - 38 CFR 61.82(d): “In addition to a participant fee, recipients may charge residents reasonable fees for extracurricular services and activities (extracurricular fee) that participants are not required to receive under the terms of the grant award, **are not paid for by VA per diem**, or provided by VA. **Extracurricular fees must be voluntary on the part of the participant.**”

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## Participant fees and agreements are

- **Allowed for the grantee to implement at their discretion as long as they conform to the regs**
- **Therapeutic**
  - 38 CFR 61.82(c): “Participant fees may be used for **costs of operating the supportive housing** or to assist supportive housing residents' **move to permanent housing** and **must have a therapeutic benefit.**”
- **Encouraging of self-determination**
  - 38 CFR 61.82(f)(2): “Participant agreements must be part of a therapeutic plan to increase self-determination and responsibility.”

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## Participant fees and agreements are (continued)

- **Fair, clear, and fully documented in operating policies and with the Veteran**
  - 38 CFR 61.82(a): “The participant fee determination and collection process/procedures should be documented in the grant recipient's operating procedures to **ensure consistency, fairness, and accuracy of fees collected.**”
  - 38 CFR 61.82(f)(5): “Participant agreements and conditions must be fully disclosed to potential participants and **acknowledged in writing by both parties.**”

# 38 CFR 61.82 PARTICIPANT FEES FOR SUPPORTIVE HOUSING

## 38 CFR 61.82 Participant fees for supportive housing

- <https://www.ecfr.gov/current/title-38/chapter-I/part-61/subpart-F/section-61.82>
- **Read each section carefully and in its entirety**
- Consult with your GPD liaison with questions if you implement fees
- **Document, document, document**

### ECFR CONTENT

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

- (a) Each participant of supportive housing may be required to pay a participant fee in an amount determined by the recipient, except that such participant fee may not exceed 30 percent of the participant's monthly income after deducting medical expenses, child care expenses, court ordered child support payments, or other court ordered payments; nor may it exceed the program's set maximum rate or the HUD Fair Market Rent for that type of housing and its location, whichever is less. The participant fee determination and collection process/procedures should be documented in the grant recipient's operating procedures to ensure consistency, fairness, and accuracy of fees collected. The participant's monthly income includes all income earned by or paid to the participant.
- (b) Retroactive benefit payments from any source to program participants, for the purpose of this part, may be considered income in the month received and therefore may be used in calculating the participant fee for that month.
- (c) Participant fees may be used for costs of operating the supportive housing or to assist supportive housing residents' move to permanent housing, and must have a therapeutic benefit.
- (d) In addition to a participant fee, recipients may charge residents reasonable fees for extracurricular services and activities (extracurricular fee) that participants are not required to receive under the terms of the grant award, are not paid for by VA per diem, or provided by VA. Extracurricular fees must be voluntary on the part of the participant.
- (e) In projects funded under this part where participants sign agreements, VA treats the costs associated with participant eviction to be as unallowable.
- (f) Use of participant agreements.
  - (1) Participant agreements must be between the grant recipient of record and the program participant.
  - (2) Participant agreements must be part of a therapeutic plan to increase self-determination and responsibility.
  - (3) Participant agreements must include a clause that allows program participants the ability to break the lease or program agreement without penalty for medical or clinical necessity.
  - (4) Participant agreements may not be used to exclude homeless veterans with little or no income from the program.
  - (5) Participant agreements and conditions must be fully disclosed to potential participants and acknowledged in writing by both parties.

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

# 38 CFR 61.82 PARTICIPANT FEES FOR SUPPORTIVE HOUSING

## 38 CFR 61.82(a) verbatim

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

# 38 CFR 61.82 PARTICIPANT FEES FOR SUPPORTIVE HOUSING

Notes about FMR—HUD sets FMR: <https://www.huduser.gov/portal/datasets/fmr.html>

- For example, I've used the link above and located my local FMR for the county of "my" GPD unit:

Final FY 2025 & Final FY 2024 FMRs By Unit Bedrooms					
Year	<a href="#">Efficiency</a>	<a href="#">One-Bedroom</a>	Two-Bedroom	<a href="#">Three-Bedroom</a>	<a href="#">Four-Bedroom</a>
FY 2025 FMR	\$1,233	\$1,319	\$1,614	\$1,945	\$2,359
<a href="#">FY 2024 FMR</a>	\$1,289	\$1,398	\$1,693	\$2,047	\$2,536

- Great, I have a one-bedroom unit, so my FMR calculation is \$1,319, right? But, actually, two Veterans share the bedroom in my one-bedroom unit...
- So, the FMR need to be prorated among the number of Veterans sharing the bedroom to find the maximum FMR allowed (\$659.50)
- **Bottom line: FMR may need to be prorated if Veterans are sharing rooms (check with PHA)**

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## “Windfalls” from retroactive benefit payouts, etc.

- Yes, lump-sum benefit payments (for example) may be considered in the program fee calculus **in the month they were received by the Veteran (and not moving forward)**
  - 38 CFR 61.82(b): “Retroactive benefit payments from any source to program participants, for the purpose of this part, may be considered income in the month received and therefore may be used in calculating the participant fee for that month.”
  - If you know impending debt will be coming due in a soon-upcoming month, however, please make a **good-faith effort to account for the debt and encourage Veteran repayment**

# 38 CFR 61.82 PARTICIPANT FEES FOR SUPPORTIVE HOUSING

## That was the easy part...now for the “soft skill” challenges

- What should happen if fees have been overcharged?
- What to do about milieu management when Veterans are bickering about fees, “narcising” on other participants, and in general griping about it?
- How to make fees be seen as a benefit to Veterans?

# 38 CFR 61.82 PARTICIPANT FEES FOR SUPPORTIVE HOUSING

**That was the easy part... now for the “soft skill” challenges**

- **What should happen if fees have been overcharged?**
  - The grantee and the GPD liaison consult together and the liaison acts in an oversight role
  - Establish the dates the error began and the error was identified
  - Establish a reasonable “look-back” period and develop a list of all Veterans overcharged
  - Calculate for each Veteran the amount overcharged
  - Make a good-faith effort to contact each Veteran and reimburse them the amount of overpayment
  - Immediate update internal written policies to include how to correctly calculate fees
  - Liaisons should note this event in the administrative file
- **But won't word get out in the community and Veterans will come to our door looking for payment?**
  - This is likely, so grantees should read the regs, consult with the VA medical center liaison, and make sure to **calculate fees correctly from the start**

# 38 CFR 61.82 PARTICIPANT FEES FOR SUPPORTIVE HOUSING

**That was the easy part...now for the “soft skill” challenges**

- **What to do about milieu management when Veterans are bickering about fees, “narcing” on other participants, and in general griping about it?**
  - Brainstorm
  - Talk with other providers
  - Get creative and focus on the benefits

# REAL-LIFE GRANTEE DISCUSSION

Grantee Alpha: We stopped charging fees because it just became too unmanageable. The guys were accusing each other of hiding money and didn't understand why some had to pay and some didn't. They'd claim others were working under-the-table and hiding it. It became a mess.

Grantee Bravo: We know some people just won't pay. We've worked through this by charging fees, but we tie it to a letter of recommendation to future landlords. If you pay the fees, great—you get a letter from us vouching for how you paid every month. If you choose not to pay the fees, you don't get a letter of reference.



# 38 CFR 61.82 PARTICIPANT FEES FOR SUPPORTIVE HOUSING

That was the easy part... now for the “soft skill” challenges

- **How to make fees be seen as a benefit to Veterans?**
  - Be clear with Veterans, manage expectations, and have strong case managers
  - **Idea from several grantees: Consider putting the collected fees aside into an account for the Veteran to be given back when moving into permanent housing**
  - Ensure that if you’re saving fees to return to Veterans, the policy is exceptionally clear, financial controls are exceptionally tight, trust is built with the Veteran, and reserved fees are safeguarded and secure
- But back to our lead-off conversation, the GPD NPO cannot make these decisions for grantees or liaisons—**conform to the regulations while centering on the aim of benefiting the Veteran, reach out for guidance when you need it**
- **How do you manage fees and agreements?**

# LINKS TO BOOKMARK

- <https://www.ecfr.gov/current/title-38/chapter-I/part-61?toc=1>
- <https://www.huduser.gov/portal/datasets/fmr.html>
- [https://www.va.gov/HOMELESS/docs/GPD/providers/Recipient\\_Guide\\_Transitional\\_Housing.pdf](https://www.va.gov/HOMELESS/docs/GPD/providers/Recipient_Guide_Transitional_Housing.pdf)
- [https://www.va.gov/HOMELESS/GPD\\_ProviderWebsite.asp](https://www.va.gov/HOMELESS/GPD_ProviderWebsite.asp)