

# HUD Implements Homelessness Prevention and Rapid Re-Housing Program

The American Recovery and Reinvestment Act of 2009 allocated \$1.5 billion for the Homelessness Prevention and Rapid Re-Housing Program (HPRP). Almost all of the funding will be allocated in grants,<sup>1</sup> and it must be committed and spent on a very tight schedule. The deadlines that the Department of Housing and Urban Development (HUD) and grantees must abide by are set forth in the chart on page 115 titled "Important Dates for Application and Expenditure of HPRP Funds." Significantly, the chart does not include deadlines under state or local laws.

HUD recently published a Notice regarding the application process and expenditure requirements for these funds.<sup>2</sup> The key provisions of that Notice are discussed below.<sup>3</sup>

## Purpose of HPRP and Eligible Grantees

The purpose of the HPRP is to "provide homelessness prevention assistance to households who would otherwise become homeless...and to provide assistance to rapidly rehouse persons who are homeless."<sup>4</sup> The eligible beneficiaries must have incomes at or below 50% of area median income and must have an initial consultation with a case manager.<sup>5</sup> In addition, the household must be either homeless or at risk of losing its home and "meet both of the following circumstances: (1) no appropriate subsequent housing options have been identified: AND (2) the household lacks the financial resources and support networks needed to obtain immediate housing or remain in its existing housing."<sup>6</sup>

A list of grantees and the amounts they are eligible to receive is included in the Notice.<sup>7</sup> The funds are essentially distributed based on the formula used for the Emergency Shelter Grants (ESG) program. However, HUD

set the grant minimum for the HPRP funds at \$500,000 to increase the number of cities and counties eligible to directly receive HPRP funds.<sup>8</sup> As a result, 485 cities and counties will receive HPRP funding, in contrast to the 305 cities and counties that receive funds under the ESG program.<sup>9</sup> State grantees must allocate virtually all of the funds to subgrantees, such as units of local governments or nonprofit organizations, which are certified by the local government. Counties and cities may carry out the activities directly or distribute the funds to nonprofit organizations.<sup>10</sup>

## Eligible HPRP Activities

Eligible activities include four distinct areas: financial support, housing relocation and stabilization, data collection and evaluation, and administrative costs. Financial support includes payments for short-term rental assistance (one to three months), long-term rental assistance (four to eighteen months, including arrearages), rental arrearages (up to six months), security deposits, utility deposits, utility payments (up to eighteen months, including arrearages), utility arrearages (up to six months), moving costs, and motel and hotel vouchers.<sup>11</sup> The financial support may only be paid directly to third parties, such as landlords or utility companies.<sup>12</sup> Housing relocation and stabilization services<sup>13</sup> include case management, outreach and engagement, housing search and placement, legal services,<sup>14</sup> and credit repair. Data expenses include the use of the Homeless Management Information System. Most administrative costs should be included within one of the other three eligible categories. The remaining administrative expenses, for items such as the cost of an audit, may not exceed 5%.<sup>15</sup>

## Targeting Families with the Greatest Risk of Homelessness or Who Are Homeless

The Notice strongly encourages grantees "to target prevention assistance to those individuals and families at greatest risk of becoming homeless."<sup>16</sup> HUD further

<sup>1</sup>Notice of Allocations, Application Procedures, and Requirements for Homelessness Prevention and Rapid Re-Housing Program Grantees Under the American Recovery and Reinvestment Act of 2009, at 1, 9, available at <http://www.hudhre.info/index.cfm> [hereinafter Notice]; see also NHLP, *Obama Signs Stimulus Bill Providing Major Support for Affordable Housing*, 39 HOUS. LAW BULL. 71 (Mar. 2009).

<sup>2</sup>Notice, *supra* note 1, at 1, 9.

<sup>3</sup>There is helpful information on the HUD Homelessness Resource Exchange web page at <http://www.hudhre.info/index.cfm?do=viewHPRPListservArchive>. In addition, the National Alliance to End Homelessness (NAEH) has developed a planning guide regarding use of the HPRP funds. See National Alliance to End Homelessness, *Creating a Plan for the Homeless Prevention Fund*, Mar. 5, 2009. <http://www.endhomelessness.org/section/prevention/> [hereinafter NAEH Guide].

<sup>4</sup>Notice, *supra* note 1, at 5.

<sup>5</sup>*Id.* at 22-23.

<sup>6</sup>*Id.* at 23 (emphasis in original).

<sup>7</sup>*Id.* at 46-51.

<sup>8</sup>*Id.* at 9.

<sup>9</sup>*Id.* at 10.

<sup>10</sup>*Id.* at 8, 11-12.

<sup>11</sup>*Id.* at 13-16. A household may not receive duplicative assistance for the same item, i.e., rent, but may receive rental assistance from VASH or vouchers and get security deposit assistance from the HPRP. *Id.* at 16.

<sup>12</sup>*Id.* at 13.

<sup>13</sup>*Id.* at 16-17.

<sup>14</sup>The Notice states, "Legal Services: HPRP funds may be used for legal services to help people stay in their homes, such as services or activities provided by a lawyer or other person(s) under the supervision of a lawyer to assist program participants with legal advice and representation in administrative or court proceedings related to tenant/landlord matters or housing issues. Legal services related to mortgages are not eligible." *Id.* at 17.

<sup>15</sup>*Id.* at 18-19.

<sup>16</sup>*Id.* at 23.

suggests that the test is to determine whether the household would be homeless but for the assistance.<sup>17</sup> The Notice lists eighteen risk factors for homelessness and suggests that a grantee might require that a program participant have at least two of the risk factors to qualify for assistance. However, these factors are optional, and grantees may consider other risk factors in developing their local programs. The Notice's risk factors include:

- Extremely low income (less than 30% of AMI),<sup>18</sup>
- Homeless within the prior twelve months;
- Mental health and substance abuse issues;
- Young head of household (under age twenty-five with children or pregnant);
- Eviction within two weeks from a private dwelling;<sup>19</sup>
- Discharge from an institution in which the individual has been a resident for more than 180 days, including prisons, mental health institutions and hospitals, or past institutional care;
- Sudden and significant loss of income;
- Credit problems that preclude obtaining housing.<sup>20</sup>

Individuals and families who meet HUD's definition of homeless are eligible for rapid re-housing assistance. Individuals or families are considered homeless if they meet one of the following criteria:

- Sleeping in an emergency shelter;
- Sleeping in a place not meant for human habitation;
- Staying in an institution for up to 180 days but was in an emergency shelter or other place not fit for human habitation prior to entry into the institution;
- Timing out of transitional housing; or
- Victims of domestic violence.<sup>21</sup>

HUD has not developed documentation requirements for establishing that an individual is homeless or at risk of homelessness. The agency has provided some examples

of appropriate documentation, including "eviction notice or writ of eviction, documentation of loss of income, pay stubs, letter of eviction from family member, etc."<sup>22</sup> HUD has also directed grantees and subgrantees to use information posted at its Homelessness Resource Exchange website.<sup>23</sup>

## Termination of Assistance and Confidentiality

HPRP participants have some protections against arbitrary terminations of housing assistance. The participant must receive a written notice containing a clear statement of the reasons for termination. The participant is entitled to a review of the termination decision with the opportunity to present written or oral objections. The review must be conducted by a person other than the person or subordinate of the person who made or approved the termination decision, and the participant must receive prompt written notice of the final decision.<sup>24</sup>

Each grantee or subgrantee must develop procedures to protect participants' confidentiality and must ensure that the address or location of any assisted housing available to participants is not made public.<sup>25</sup>

## Maximizing Resources from Recovery Funds

Grantees are strongly encouraged to maximize all resources that may be available with Recovery Act funds.<sup>26</sup> Relevant housing funds may include Neighborhood Stabilization Program (NSP) funds, community development block grant funds and public housing capital funds.<sup>27</sup> For example, a grantee could coordinate with a public housing agency (PHA) to assist a homeless family for up to eighteen months with rent and services in transitional housing. The PHA could then provide a priority to the family for a public housing unit that has been rehabilitated with capital funds. Or, the funds could be used to provide housing assistance—such as rental assistance, security deposit assistance or utility deposits—to a family moving into housing that has been purchased or rehabilitated with NSP funds. Note that if program recipients use HPRP assistance to move into a unit, the unit must meet certain habitability standards.<sup>28</sup>

<sup>17</sup>*Id.*

<sup>18</sup>NAEH suggests that the standard should be families with incomes below 15% of AMI. NAEH Guide, *supra* note 4, at 6.

<sup>19</sup>NAEH suggests that eviction from public or assisted housing is also a significant risk factor. *See id.*

<sup>20</sup>The other factors include residency in housing that has been condemned and is no longer meant for human habitation, sudden and significant increase in utility costs, physical disabilities and other chronic health issues, including HIV/AIDS, severe housing cost burden, current or past involvement with child welfare, pending foreclosure of rental housing, high overcrowding, recent traumatic life event, and significant amount of medical debt. Notice, *supra* note 1, at 24-25. NAEH's HPRP planning guide suggests other risk factors. *See* NAEH Guide, *supra* note 4, at 6.

<sup>21</sup>Notice, *supra* note 1, at 25-26.

<sup>22</sup>Homelessness Prevention and Rapid Re-Housing Program (HPRP) Questions and Answers at 9, Mar. 20, 2009 [updated Apr. 3, 2009], <http://www.hudhre.info/index.cfm?do=viewHPRP> [hereinafter HPRP Q&A].

<sup>23</sup>*Id.*

<sup>24</sup>Notice, *supra* note 1, at 33.

<sup>25</sup>*Id.*

<sup>26</sup>*Id.* at 20.

<sup>27</sup>The NSP and public housing capital funds are not mentioned in the Notice.

<sup>28</sup>*Id.* at 56; *see also* HPRP Q&A, *supra* note 23, at 5.

## Coordination with Continuum of Care and Development of Discharge Policy

The Notice directs grantees to coordinate with local Continuum of Care (CoC) to ensure that the activities are consistent with local strategies for preventing homelessness.<sup>29</sup> In addition, grantees are encouraged to coordinate with other local organizations that are planning and carrying out activities related to prevention and rapid rehousing. The Notice lists as examples FEMA boards, agencies responsible for implementing plans to end homelessness, and agencies that administer mainstream resources such as Temporary Assistance to Needy Families (TANF).<sup>30</sup> NAEH sets forth in its guide a much more extensive list of potential partners, including legal services agencies.<sup>31</sup>

Grantees are also required to develop and implement policies for the discharge of persons from publicly funded institutions, including health care facilities, foster care or youth facilities, or corrections programs and institutions. The purpose of such policies is to prevent homelessness of persons leaving these institutions.<sup>32</sup>

## Job Creation and Training Opportunities

As noted below, HPRP grantees are required to report on the estimated number of new jobs created and jobs retained. In addition, Section 3 of the Housing and Urban Development Act of 1968 requires recipients of certain HUD financial assistance to provide training, jobs and economic opportunity to low- and very low-income residents if the funding is for construction, rehabilitation or other public works. Although HPRP funds may not be used for construction or rehabilitation, a grantee may provide contracting and hiring preferences for Section 3 businesses and residents.<sup>33</sup> The Section 3 rules encourage recipients of other HUD funds “to provide, to the greatest extent feasible, training, employment, and contracting opportunities generated by the expenditure of this assistance to low- and very low-income persons and business concerns owned by low- and very low income persons, or which employ [such] persons.”<sup>34</sup>

## Application for the HPRP funds

Grantees are required to amend their Consolidated Plans (ConPlan) by completing and filing form HUD-40119 by May 18. To aid grantees in meeting this deadline, HUD reduced the public comment period from thirty

days to twelve.<sup>35</sup> The form requires grantees to describe: (1) citizen participation in the planning process; (2) the plan for ensuring effective and timely use of grant funds; (3) the process by which the grantee will select and allocate funds to subgrantees; and (4) the plan for collaborating with local agencies and the CoC. Grantees must also estimate how much they will spend on various HPRP activities, including financial assistance, case management, outreach, legal services, credit repair, data collection and evaluation, and administration. HUD has indicated that grantees may change these allocations during implementation.<sup>36</sup> To improve transparency, “HUD strongly recommends that each grantee post its substantial amendment materials on the grantee’s official web site as the materials are developed and submitted to HUD.”<sup>37</sup>

## Reports

HUD will create a reporting form for grantees. The report will include information regarding:

- the total amount of Recovery Act funds received from HUD by the grantee;
- the subgrantees and the amounts awarded to each;
- funds allocated to the eligible HPRP activities and the amount expended for each category;
- the number of unduplicated families served;
- the estimated number of new jobs created and jobs retained.

## Conclusion

The HPRP funds are substantial and should assist local jurisdictions in addressing and preventing homelessness. The timelines for allocating and spending the funds will present significant challenges for states and local governments. Another challenge is that there are 180 jurisdictions nationwide that have never directly received funds for homelessness prevention and assistance for homeless households. Advocates currently have opportunities to ensure that the HPRP funds are spent in a manner that substantially serves the needs of homeless families, as well as those who are at risk of becoming homeless. Even if advocates miss the deadline for commenting on the ConPlan amendments, allocations set forth in the ConPlans may be changed during the implementation phase.

An additional challenge is that the maximum amount of rental assistance is eighteen months. This is a relatively

<sup>29</sup>Notice, *supra* note 1 at 29.

<sup>30</sup>*Id.*

<sup>31</sup>NAEH Guide, *supra* note 4, at 16.

<sup>32</sup>Notice, *supra* note 1, at 21.

<sup>33</sup>24 C.F.R. § 135.5 (2008) (definition of Section 3 resident and Section 3 business).

<sup>34</sup>§ 135.3(d).

<sup>35</sup>The regular notice period for a substantial amendment to a ConPlan is thirty days. § 91.105(c)(2).

<sup>36</sup>HPRP Q&A, *supra* note 23, at 9.

<sup>37</sup>Notice, *supra* note 1, at 28-29.

short period of time, especially for families with multiple risk factors for homelessness or who are currently homeless. To address these challenges, PHAs and subsidized housing providers should consider adopting admission preferences for recipients of HPRP assistance.

Preventing homelessness and keeping families in

their homes is a key element of the HPRP, and the provision of legal services is essential to this process. Legal services organizations should contact local HPRP grantees and the CoC to discuss the role that HPRP money should play in funding eviction defense and other types of representation that prevent homelessness. ■

### Important Dates Deadlines for Application and Expenditure of HPRP Funds

Date or Notice Period	Action Necessary to Obtain HPRP Funds
12-day notice to public	Public notice for comment on substantial amendment to Consolidated Plan
5-18-09 or earlier	Grantees must submit and postmark application to HUD field office and HUD headquarters. Application may need to be submitted before May 18 to meet local deadlines for ensuring that funds are allocated by Sept. 30, 2009.
45 days from date application is received by HUD	HUD approves application or application is deemed approved
7-2-09	HUD will complete reviews of all applicants
15 days from HUD notice disapproving application	If HUD disapproves the application, grantee has 15 days to resubmit application
9-01-09 or [date*]	Grant agreement signed by HUD field office and sent to grantee
15 days from 9-01-09 or [date*]	Grantee must sign and return grant agreement
9-30-09	Grantee awards or signs all legally binding agreements with subgrantees. 100% of grantee funds must be allocated
10-10-09	Initial Performance Report due to HUD
1-10-10	Quarterly Performance Report due to HUD
4-10-10	Quarterly Performance Report due to HUD
7-10-10	Quarterly Performance Report due to HUD
10-10-10	Quarterly Performance Report due to HUD
11-30-10	Annual Performance Report
1-10-11	Quarterly Performance Report due to HUD
4-10-11	Quarterly Performance Report due to HUD
7-10-11	Quarterly Performance Report due to HUD
[date*] in 2011	60% of all funds must be expended. HUD will reallocate any unspent funds of the 60% to other grantees
10-10-11	Quarterly Performance Report due to HUD
11-30-11	Annual Performance Report
1-10-12	Quarterly Performance Report due to HUD
4-10-12	Quarterly Performance Report due to HUD
7-10-12	Quarterly Performance Report due to HUD
[date*] in 2012	100% of all funds must be expended

[date\*] is the date that grant agreement is executed