

### HUD's Emergency Shelter Grants Program (GAO-10-491).

**Indirect Costs.** This interim rule reflects HUD's decision to adopt a consistent policy for indirect costs for the Emergency Solutions Grant (ESG), Continuum of Care and Rural Housing Stability Programs, in response to further grantee and subgrantee questions and concerns. The interim rule provides that Emergency Solutions Grant (ESG) funds may be used to pay indirect costs in accordance with OMB Circulars A-87 (2 CFR part 225) and A-122 (2 CFR part 230), as applicable. Indirect costs may be allocated to each eligible activity, so long as the allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circulars A-87 (2 CFR part 225) and A-122 (2 CFR part 230), as applicable. The indirect costs charged to an activity subject to an expenditure limit must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limit.

### Award and Use of Grant Amounts (Subpart C)

The major changes to this subpart include clarification of the submission requirements for territories, elaboration of the matching requirements, clarification of the obligation requirements, and the addition of minimum requirements for making timely drawdowns and payments to subrecipients.

**Submission Requirements.** The application requirements generally remain the same as the current application requirements, except that territories will be required to submit a consolidated plan in accordance with the requirements that apply to local governments under HUD's Consolidated Plan regulations codified in 24 CFR part 91. The interim rule also clarifies that certain changes in the recipients' Emergency Solutions Grant (ESG) programs require an amendment to the consolidated plan in accordance with 24 CFR 91.505.

**Matching Requirements.** The revisions to the matching contribution requirements (and recordkeeping requirements related to the matching requirements) integrate the matching requirements in 24 CFR 85.24<sup>3</sup> and provide further clarification on how matching contributions must be counted. The interim rule also specifies that program income is to be used as a match, rather than being treated as an

<sup>3</sup> HUD's regulations in 24 CFR part 85 address administrative requirements for grants and cooperative agreements to state, local, and federally recognized Indian tribal governments.

addition to the (ESG) grant, because of the sizable matching requirement in Emergency Solutions Grant (ESG).

**Obligation, expenditure, and payment requirements.** The interim rule clarifies the obligation of funds requirements and imposes new expenditure-of-funds requirements. The interim rule requires the recipient to draw down its funds from each year's allocation not less than once during each quarter of the recipient's program year. This requirement is based on HUD's experience in administering homeless assistance grants, and is intended to ensure the timely reimbursements from HUD to recipients. In addition, the recipient (and its subrecipients that are units of general purpose local government) will be required to make timely payments to each of its subrecipients within 30 days after the date of receiving the subrecipient's complete payment request. This requirement is also based on HUD's experience in administering homeless assistance grants and is intended to ensure timely payment of private nonprofit organizations, which may not be able to cover their expenses for as long a period as state and local governments. As in the Emergency Shelter Grants program, all of the recipient's grant must be expended for eligible activity costs within 24 months after the date HUD signs the grant agreement with the recipient.

### Reallocation (Subpart D)

The interim rule makes substantial changes to the Emergency Solutions Grant (ESG) reallocation provisions in order to improve administrative efficiency. For example, if the amount of unused or returned funds is not sufficient to justify the administrative burden of reallocating those funds, whether for HUD or ESG recipients, the interim rule provides for those funds to be added to the next fiscal year allocation.

### Program Requirements (Subpart E)

The major changes to this subpart include the addition of new requirements that facilitate coordination at the state and local levels as a means to prevent and reduce homelessness; elaboration on the requirements concerning the integration and use of appropriate assistance and services, termination of assistance, habitability standards, and conflicts of interest; modification of the homeless participation requirement to reasonably and practicably implement the statutory requirement; and clarification of the applicable requirements under other federal laws and regulations.

**Systems coordination.** Consistent with sections 402(f) and 413(b) of the McKinney-Vento Act, the interim rule contains a new requirement for Emergency Solutions Grant (ESG) recipients to consult with Continuums of Care in allocating funds for eligible activities; developing performance standards, evaluating outcomes of (ESG)-assisted projects and developing funding, policies, and procedures for the administration and operation of the HMIS. This requirement will be discussed in further detail in regard to the revisions of the consolidated planning requirements at 24 CFR part 91 (section II.B of this preamble).

The interim rule requires ESG recipients and subrecipients to coordinate and integrate, to the maximum extent practicable, ESG-funded activities with other programs targeted toward homeless people, as well as mainstream housing, health, social services, employment, education, and youth programs for which families and individuals at risk of homelessness and homeless individuals and families may be eligible. These requirements are consistent with recurring HUD appropriations language for the homeless assistance grants and with the *Federal Strategic Plan to Prevent and End Homelessness* (FSP).<sup>4</sup>

**Centralized or coordinated assessment.** This interim rule introduces a proposed requirement for ESG recipients and subrecipients to use a centralized or coordinated system to initially assess the eligibility and needs of each individual or family who seeks homeless assistance or homelessness prevention assistance. This centralized or coordinated assessment system would be developed and implemented by the Continuum of Care in accordance with minimum requirements to be established by HUD. HUD is currently developing its minimum requirements for these systems and will present these requirements for public review and comment in the upcoming proposed rule for the Continuum of Care program. Please note that this interim rule does not require any ESG recipient or subrecipient to use a centralized or coordinated assessment system until the Continuum of Care program final rule has been published and until the Continuum of Care for the area develops and implements a system that meets the minimum requirements in that final rule.

Through the administration of the Rapid Re-Housing for Families Demonstration program and the

<sup>4</sup> See [http://www.usich.gov/PDF/OpeningDoors\\_2010\\_FSPPeventEndHomeless.pdf](http://www.usich.gov/PDF/OpeningDoors_2010_FSPPeventEndHomeless.pdf).

Homelessness Prevention and Rapid Re-Housing Program, as well as best practices identified in communities, HUD has learned that centralized or coordinated assessment systems are important in ensuring the success of homeless assistance and homelessness prevention programs in communities. In particular, such assessment systems help communities systematically assess the needs of program participants and effectively match each individual or family with the most appropriate resources available to address that individual or family's particular needs.

Therefore, HUD intends to require each Continuum of Care to develop and implement a centralized or coordinated assessment system in its geographic area. Such a system must be designed locally in response to local needs and conditions. For example, rural areas will have significantly different systems than urban ones. While the common thread between typical models is the use of a common assessment tool (such as a vulnerability index), the form, detail, and use of that tool will vary from one community to the next. Some examples of centralized or coordinated assessment systems include: A central location or locations within a geographic area where individuals and families must present for homeless services; a 211 or other hotline system that screens and directly connects callers to appropriate homeless housing/service providers in the area; a "no wrong door" approach in which a homeless family or individual can present at any homeless service provider in the geographic area but is assessed using the same tool and methodology so that referrals are consistently completed across the Continuum of Care; a specialized team of case workers that provides assessment services to providers within the Continuum of Care; or in larger geographic areas, a regional approach in which "hubs" are created within smaller geographic areas.

HUD recognizes that imposing a requirement for a centralized or coordinated assessment system may have certain costs and risks. Among the risks that HUD wishes specifically to address are the risks facing individuals and families fleeing domestic violence, dating violence, sexual assault, and stalking. In developing the baseline requirements for a centralized or coordinated intake system, HUD is considering whether victim service providers should be exempt from participating in a local centralized or coordinated assessment process, or whether victim service providers should have the option to participate or not. HUD is seeking comment specifically

from ESG-funded victim service providers on this question. HUD also plans to require each Continuum of Care to develop a specific policy on how its particular system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from non-victim service providers. These policies could include reserving private areas at an assessment location for evaluations of individuals or families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking; a separate "track" within the assessment framework that is specifically designed for domestic violence victims; or the co-location of victim service providers with centralized assessment teams.

HUD invites suggestions for ensuring that the requirements it imposes regarding centralized or coordinated assessment systems will best help communities use their resources effectively and best meet the needs of all families and individuals who need assistance. Some specific questions HUD asks commenters to address are: What barriers to accessing housing/services might a centralized or coordinated intake system pose to victims of domestic violence? How can those barriers be eliminated? What specific measures should be implemented to ensure safety and confidentiality for individuals and families who are fleeing or attempting to flee domestic violence situations? How should those additional standards be implemented to ensure that victims of domestic violence have immediate access to housing and services without increasing the burden on those victims? For communities that already have centralized or coordinated assessment systems in place, are victims of domestic violence and/or domestic violence service providers integrated into that system? In either scenario (they are integrated into an assessment process or they are not integrated into it), how does your community ensure the safety and confidentiality of this population, as well as access to homeless housing and services? What HUD-sponsored training would be helpful to assist communities in completing the initial assessment of victims of domestic violence in a safe and confidential manner?

In addition to comments addressing the needs of victims of domestic violence, dating violence, sexual assault, and stalking, HUD invites general comments on the use of a centralized or coordinated assessment

system, particularly from those in communities that have already implemented one of these systems who can share both what has worked well and how these systems could be improved. HUD specifically seeks comment on any additional risks that a centralized or coordinated assessment system may create for victims of domestic violence, dating violence, sexual assault, or stalking who are seeking emergency shelter services due to immediate danger, regardless of whether they are seeking services through a victim service provider or non-victim service provider.

*Standards for administering assistance and minimum assistance requirements.* As discussed later in this preamble with respect to the revisions to HUD's Consolidated Plan regulations in 24 CFR part 91, this interim rule requires a number of written standards to be established by recipients and subrecipients for administering ESG assistance, in order to balance the broad discretion given to recipients in developing street outreach, emergency shelter, rapid re-housing, and homelessness prevention programs to accommodate the unique needs, strengths, and other characteristics of their communities.

The interim rule also specifies that all program participants must be assisted as needed in obtaining services and financial assistance through other homeless and public assistance programs. Furthermore, each program participant receiving homelessness prevention or rapid re-housing assistance must be required to meet regularly with a case manager (except where prohibited by Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA)), and the assistance provider must develop an individualized plan to help that program participant retain permanent housing after the ESG assistance ends. These requirements are intended to help ensure that the ESG-funded emergency, short-term or medium-term assistance will be effective in helping program participants regain long-term housing stability and avoid relapses into homelessness.

*Terminating Assistance.* If a program participant who receives ESG assistance violates program requirements, the recipient or subrecipient may terminate the assistance in accordance with a formal process established by the recipient or subrecipient that protects the rights of the individuals affected. This applies to all forms of ESG assistance. In this interim rule, HUD enhances the minimum process

requirements for the termination of homelessness prevention or rapid rehousing assistance, in order to reflect the process set forth in the Supportive Housing Program (SHP) regulations. These enhanced process requirements are prompted by the longer duration and higher expectations involved in homelessness prevention and rapid rehousing assistance, as compared to the duration and expectations involved in street outreach or emergency shelter activities.

To terminate rental assistance or housing relocation and stabilization services to a program participant, the minimum required formal process must consist of a written notice to the program participant containing a clear statement of the reasons for termination, a review of the decision, and a prompt written notice of the final decision to the program participant. The review of the decision must give the program participant the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision. In addition, the interim rule provides that the recipient or subrecipient may resume assistance to a family or individual whose assistance has been terminated.

**Shelter and Housing Standards.** The revised habitability standards incorporate lead-based paint remediation and disclosure requirements. The revised standards for emergency shelters require all shelters to meet minimum habitability standards adopted from the SHP regulations and current Emergency Solutions Grant guidance. Shelters renovated with ESG funds are also required to meet state or local government safety and sanitation standards, as applicable, include energy-efficient appliances and materials. If ESG funds are used to help a program participant remain in or move into permanent housing, that housing must meet habitability standards.

**Conflicts of Interest.** This interim rule clarifies the existing personal conflicts-of-interest provision by incorporating language from the CDBG program regulation. In addition, the interim rule adds a new provision to reduce organizational conflicts of interest, based on HUD's experience in administering HPRP.

**Homeless Participation.** The interim rule revises the current homeless participation requirement so that if a recipient is unable to meet the participation of homeless individuals requirement in section 416(d) of the McKinney-Vento Act, the recipient need not submit and obtain HUD approval of

a formal waiver request, so long as the recipient develops a plan to consult with homeless or formerly homeless individuals in considering and making policies and decisions regarding any facilities, services, or other assistance that receive ESG funding; includes the plan in its annual action plan to be submitted under 24 CFR part 91; and obtains HUD's approval of its annual action plan. This revision is intended to reduce administrative burden to both recipients and to HUD.

**Other Federal Requirements.** In general, the revisions to the section on "other Federal requirements" clarify the degree to which certain requirements are applicable, remove certain requirements that are redundant or moved elsewhere in the rule for improved organizational purposes, and change certain requirements to correspond with changes in the McKinney-Vento Act or other changes made by this interim rule. Chief among these changes is the change to the environmental review requirements in accordance with the HEARTH Act's repeal of section 443 of the McKinney-Vento Act. Under this interim rule, Emergency Solutions Grant (ESG) activities would be made subject to environmental review by HUD under HUD's environmental regulations in 24 CFR part 50, and HUD's environmental regulations in 24 CFR part 58 will no longer be applicable to such activities.

The interim rule does not retain the provision in the current Emergency Shelter Grants program regulation specifying that for purposes of this program, the term "dwelling units" under 24 CFR part 8 includes "sleeping accommodations." The language is being removed because it did not provide grantees with direction on how to apply this provision. Nevertheless, Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8 apply to the Emergency Solutions Grants program, including accessibility requirements under Subpart C—Program Accessibility. A recipient shall operate each existing program or activity receiving federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. Grantees are also required to provide reasonable accommodations for persons with disabilities in order to enable program participants with a disability to have an equal opportunity to participate in the program or activity.

Grantees that undertake alterations to shelters may be subject to additional accessibility requirements in accordance

with 24 CFR part 8. In certain instances, recipients undertaking alterations may be required to ensure that 5 percent of the total sleeping areas, such as 5 percent (or at least one) of the sleeping rooms where a number of sleeping rooms are provided, and 5 percent (or at least one) of the total number of sleeping areas, such as beds, where a number of beds are provided in a room, are accessible for persons with mobility impairments and that an additional 2 percent of the total individual sleeping areas are accessible for persons with visual impairments. The Americans with Disabilities Act may also apply and require a greater level of accessibility in certain shelters.

**Relocation and Acquisition.** The interim rule updates the relocation and acquisition requirements and makes them more consistent with the requirements in other HUD programs. Section 576.102 specifies that the cost of providing relocation assistance and payments arising out of the Uniform Act (URA) is an eligible activity, as per section 211 of the URA (42 U.S.C. 4631(a)). Temporary relocation and other alternatives to minimize displacement in other HUD programs that provide permanent housing are inapplicable due to the nature of the ESG program. Emergency shelters assisted under the ESG program provide temporary shelter for the homeless. Existing tenants would not fall within the program definition of "homeless." Section 576.408(b) provides that temporary relocation is not an available alternative to permanently displacing a tenant who moves as a direct result of acquisition, demolition, or rehabilitation for a project assisted with ESG funds. Additionally, § 576.408(b) provides that an agency cannot avoid treating such tenant as a displaced person by offering the tenant a unit in the same building/complex upon project completion. Finally, § 576.408(d) of the interim rule clearly states that the URA applies to an acquisition undertaken in connection with an ESG-assisted project irrespective of the source of funding for the acquisition.

#### Grant Administration (Subpart F)

The changes to this subpart substantially revise the Emergency Solutions Grant (ESG) recordkeeping and reporting requirements and the enforcement provisions. The changes to the recordkeeping requirements include the addition of specific documentation requirements to demonstrate compliance with ESG regulations, as well as new requirements regarding record retention periods, confidentiality, and rights of access to

records. The reporting requirements and the enforcement provisions are each expanded and further clarified.

**Recordkeeping and reporting requirements.** Grant recipients under the ESG program have always been required to show compliance with the program's regulations through appropriate records. However, the existing regulations for the Emergency Shelter Grants program are not specific about the records to be maintained. The interim rule elaborates upon the recordkeeping requirements to provide sufficient notice and clarify the documentation that HUD requires for assessing compliance with the new requirements of the program. The recordkeeping requirements for documenting homeless status were published in the proposed rule for the homeless definition.<sup>5</sup> Recordkeeping requirements with similar levels of specificity will apply to documentation of "at risk of homelessness" and "annual income." Further requirements are modeled after the recordkeeping requirements for the HOME Investment Partnerships program (24 CFR 92.508) and other HUD regulations.

Included along with these changes are new or expanded requirements regarding confidentiality, rights of access to records, record retention periods, and reporting requirements. Most significantly, to protect the safety and privacy of all program participants, the interim rule broadens program's confidentiality requirements. The McKinney-Vento Act only requires procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under the ESG program. The interim rule requires written procedures to ensure the security and confidentiality of all records containing personally identifying information of any individual or family who applies for and/or receives Emergency Solutions Grant (ESG) assistance.

**Enforcement.** The interim rule revises the sanctions section under the existing regulations for the Emergency Shelter Grants program, including the heading of the section on sanctions, to strengthen the enforcement procedures and the array of remedial actions and sanctions for recipients and subrecipients of Emergency Solutions Grant (ESG) funds. These revisions draw from the requirements at 24 CFR 85.43 and other HUD program regulations.

**B. Consolidated Submissions for Community Planning and Development Programs (24 CFR Part 91)**

In addition to revising regulations for the Emergency Shelter Grants program at 24 CFR part 576 to establish the regulations for Emergency Solutions Grant (ESG), this interim rule revises selected sections of the consolidated planning regulations at 24 CFR part 91, in order to reflect both the HEARTH Act amendments to the McKinney-Vento Act and significant developments in HUD's homelessness policies and program administration over the last 15 years. In developing and implementing the Continuum of Care concept through the annual notices of funding availability (NOFAs) for its competitive programs, HUD sought to establish and standardize complementary planning requirements between the homeless components of the Consolidated Plan and the annual submission of the Continuum of Care Plan. The structure of the annual Continuum of Care Plan (CoC) plan and the plan's sections on community participation, needs assessment, inventory of housing and services, strategies, annual application, and performance were developed to harmonize with the Consolidated Plan's homelessness components. Many communities closely aligned the Consolidated Plan and the Continuum of Care Plan (CoC) Plan covering their jurisdiction.

The HEARTH Act amendments to the McKinney-Vento Act contain provisions requiring coordination, collaboration, and consultation between Continuums of Care and ESG state and local government recipients. The McKinney-Vento Act requires "collaborative applicants" under the Continuum of Care program to participate in the Consolidated Plan for the geographic areas they serve and analyze patterns of use and evaluate outcomes for ESG projects in those areas. ESG recipients in turn must consult with these collaborative applicants on the allocation of ESG funds and participate in HMIS, which the collaborative applicants are required to establish.

In describing these and related requirements for cross-program coordination, this interim rule uses the term "Continuum of Care" instead of "collaborative applicant." The interim rule defines "Continuum of Care" as the group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers;

mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area.

The use of "Continuum of Care" instead of "collaborative applicant" is intended to maintain consistency with the terminology HUD has established and grantees have become familiar with in the Continuum of Care planning process for the Supportive Housing program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy program. The term "collaborative applicant," as used in the McKinney-Vento Act, covers two distinct entities under the existing Continuum of Care planning process: One entity whose function is planning and facilitating collaboration and another entity whose function is applying for and managing the homeless assistance grant. Because HUD has always called the planning entity the Continuum of Care, HUD is continuing that practice in this interim rule.

The interim rule strengthens and standardizes the homelessness elements affecting all jurisdictions required to submit a Consolidated Plan. The changes to the Consolidated Plan sections on homelessness have been guided by the larger purposes of the HEARTH Act and the principles and priorities set forth in the *Federal Strategic Plan to Prevent and End Homelessness (FSP)*. The changes to the Consolidated Plan will foster closer coordination between not only Emergency Solutions Grant (ESG) and Continuum of Care (CoC) programs, but other mainstream housing and services programs that can provide greater resources to homeless persons and people at imminent risk of homelessness.

**Definitions.** The Consolidated Plan regulations are modified to add and revise this section to conform to definitions used in this interim rule for 24 CFR part 576 and the proposed rule that will soon be published for the Continuum of Care program. A definition of rapid re-housing assistance is added to bring coverage of general homeless assistance models in 24 CFR part 91 up-to-date. Other definitions are

<sup>5</sup> See the April 20, 2010, edition of the *Federal Register* at 75 FR 20544.

eliminated because they will no longer be used in part 91 after the changes in the regulations to the McKinney-Vento Act programs.

HUD specifically invites comments regarding the definition of chronically homeless. The McKinney-Vento Act defines "chronically homeless" as an individual or family who: (i) Is homeless and lives or resides in a place not meant for human habitation, a safe haven, or in an emergency shelter; (ii) has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least 1 year or on at least 4 separate occasions in the last 3 years; and (iii) has an adult head of household (or a minor head of household if no adult is present in the household) with a diagnosable substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002)), post traumatic stress disorder, cognitive impairments resulting from a brain injury, or chronic physical illness or disability, including the co-occurrence of 2 or more of those conditions. Additionally, the statutory definition includes as chronically homeless a person who currently lives or resides in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital or other similar facility, and has resided there for fewer than 90 days if such person met the other criteria for homeless prior to entering that facility. (See 42 U.S.C. 11360(2))

The regulatory definition of "chronically homeless" does not elaborate significantly on the statutory definition. However, HUD has determined that when an individual or family has not been continuously homeless for at least one year but has been homeless on at least four separate occasions in the last 3 years, each separate occasion must be at least 15 days in duration to ensure consistency for counting and eligibility purposes. HUD has determined that the 15-day minimum is an appropriate measure to distinguish the chronically homeless from the homeless population in general, so as to recognize chronically homeless people who have spent a significant amount of time as homeless.

The regulatory definition also clarifies that a family will qualify as chronically homeless if the head of household has met all of the requirements in paragraphs (i) through (iii) of the statutory definition, given that a family's composition may fluctuate

during the course of the head of household's homeless experience.

*Consultation: Local Governments/States.* The interim rule revises the consultation requirements in 24 CFR part 91 to implement the McKinney-Vento Act's new requirement that ESG recipients consult with Continuums of Care when allocating their ESG funds to carry out eligible activities. In response to the concerns of prospective grantees under the Continuum of Care program, the interim rule includes several requirements to make it easier for Continuums of Care to meet their requirements under the McKinney-Vento Act, including participating in the Consolidated Plan for their jurisdiction and designing a collaborative process for evaluating the outcomes of ESG projects. Similar changes to facilitate the participation of Continuums of Care (CoCs) in the Consolidated Planning process are also made to the sections on citizen participation at 24 CFR 91.105 and 91.115.

The consultation sections were also revised to conform to the FSP's emphasis not only on chronically homeless people, but on families with children, veterans and their families, and unaccompanied youth, and the FSP's emphasis on strengthening collaboration with programs and entities beyond the programs targeted to homeless people. The consultation sections refer specifically to "publicly funded institutions and systems of care that may discharge people into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions)." This is done to be consistent with the emphasis on discharge planning in section 406 of the McKinney-Vento Act. For this same reason, HUD also refers to these publicly funded institutions and systems of care in each section of the interim rule that specifically addresses the prevention of homelessness.

*Housing Needs Assessment; Local Governments/States.* The interim rule adds a new category of persons for whom states and local jurisdictions are required to assess housing assistance needs: Formerly homeless families and individuals who are receiving rapid re-housing assistance and are nearing the termination of that assistance. The addition of this category is intended to help focus communities on helping these families stay housed after their rapid re-housing assistance ends.

*Homeless Needs Assessment; Local Government/States.* The changes under the interim rule increase HUD's flexibility in establishing and modifying

standards for collecting data on homeless populations and subpopulations and performance measures. The changes also provide additional definition to the description of the characteristics and needs of persons who are currently housed but threatened with homelessness. These changes permit HUD to more closely harmonize data included in each jurisdiction's Consolidated Plan with data that the Continuum(s) of Care for that jurisdiction will be required to collect and submit under the Continuum of Care program. The collection of consistent homeless needs data in these two planning processes will permit local and national assessment of progress in meeting the goals set forth in the FSP.

*Housing Market Analysis; Facilities, Housing, and Services for Homeless Persons; Local Governments/States.* The interim rule allows HUD to establish and modify descriptions of the facilities, housing, and services for homeless persons to increase consistency between the Consolidated Plan and the Continuum of Care Plan. The interim rule adds mainstream services to the inventory of services meeting the needs of homeless persons, consistent with the overall emphasis on using and collaborating with mainstream assistance programs to prevent and end homelessness. Similar to changes made to other sections, the special focus accorded to chronically homeless people is broadened to include families with children, veterans and their families, and unaccompanied youth, in order to reflect the priorities in the FSP.

*Strategic Plan; Homelessness Strategies; Local Government/States.* The interim rule refocuses the general homelessness-related strategies on the ultimate goals of reducing and ending homelessness and aligns them with Continuum of Care planning strategies and performance measures, such as shortening the period of time that persons experience homelessness and helping persons who were recently homeless avoid becoming homeless again. The changes under the interim rule also emphasize the priorities of the FSP. The strategic framework set out in this section is carried through in conforming changes to the Action Plan and performance reporting sections of the Consolidated Plan.

*Action Plan; Local Government/States.* The changes to the Action Plan sections for local governments and States require the ESG recipient to consult with applicable Continuums of Care when allocating funds in the area(s) served by the Continuum(s) of Care and the ESG recipient and when

developing the performance standards for the assisted activities. These changes reflect the McKinney-Vento Act requirements that ESG recipients consult with Continuums of Care on their allocation of ESG funds and that Continuums of Care in turn analyze patterns of use of ESG funds and help evaluate outcomes for ESG-funded projects. These changes are also consistent with the statutory scheme of the HEARTH Act, which generally requires increased collaboration between Continuums of Care and ESG recipients.

The changes under the interim rule for the ESG portion of the action plan require each local government seeking an ESG grant to specify the standards under which homelessness prevention and rapid re-housing assistance will be administered and describe the centralized or coordinated assessments system(s) that will be used. By helping to ensure that the program is administered fairly and methodically, these requirements provide balance to the broad discretion that ESG recipients are given in the design of their ESG programs. Including these standards in the action plan allows the program design to be strengthened as the plan is developed and refined through the consultation and citizen participation stages in the planning process. The requirements for states differ slightly from those that apply to local governments, in order to accommodate for the restrictions on states' use of ESG funds and the variety of areas and Continuums of Care their programs encompass. Under the state programs, the written standards for providing ESG assistance may vary by subrecipient, Continuum of Care, or the geographic area over which services are coordinated.

**Certifications.** The changes to the ESG certifications clarify the certifications and bring them into closer conformance with the corresponding requirements under part 576 and the McKinney-Vento Act.

### III. Justification for Interim Rulemaking

In accordance with its regulations on rulemaking at 24 CFR part 10, HUD generally publishes its rules for advance public comment. Notice and public procedures may be omitted, however, if HUD determines that, in a particular case or class of cases, notice and public procedure are "impracticable, unnecessary, or contrary to the public interest." (See 24 CFR 10.1.)

In this case, HUD has determined that it would be contrary to the public interest to delay promulgation of the

regulations for the Emergency Solutions Grants program because Congress has provided funding for this new program in the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112-10, approved April 15, 2011) (FY 2011 Appropriations Act). The FY 2011 Appropriations Act appropriates, in section 2241 of the statute, \$1,905,000,000 for homeless assistance grants, of which at least \$225,000,000 shall be for the Emergency Solutions Grant program. While many federal programs, including HUD programs, received a reduction in funding in the FY 2011 Appropriations Act, Congress increased funding for HUD's homeless assistance grants, and for the first time, authorized funding for a program, (the Emergency Solutions Grants program). HUD interprets this increase in funding as recognition by Congress of the significant needs that remain to help America's homeless population and the expectation of Congress that HUD will move expediently to expend this funding to assist and serve the homeless through its programs. HUD interprets the substantial funding, a minimum of \$225,000,000, for the Emergency Solutions Grant program, as recognition by Congress that this program, which is an expansion of the predecessor Emergency Shelter Grants program, and includes features that were part of the Recovery Act's HPRP, is one that can have an immediate impact in helping the homeless.

Given what HUD sees as a congressional charge to move expediently, HUD is issuing this rule providing for regulations for the Emergency Solutions Grants program as an interim rule. Interim regulations in place will allow HUD to move forward in making FY 2011 funds available to grantees. As has been discussed in this preamble, the foundation for the regulations for the Emergency Solutions Grants program are those of its predecessor program, the Emergency Shelters Grant program, regulations with which HUD grantees are well familiar. HUD grantees are also familiar with the requirements of the HPRP and, as the preamble has highlighted, this interim rule adopts many of the features and requirements of HPRP.

Although for the reasons stated above, HUD is issuing this rule to take immediate effect, HUD welcomes all comments on this interim rule and all comments will be taken into consideration in the development of the final rule.

## IV. Findings and Certifications

### Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. This rule was determined to be a "significant regulatory action," as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). As discussed earlier in this preamble, this interim rule establishes the regulations for the Emergency Solutions Grants program, which is the successor program to the Emergency Shelter Grants program. In establishing the regulations for the Emergency Solutions Grants program, the interim rule uses as its base the regulations for the Emergency Shelter Grants program and makes such changes as necessary to reflect the changes and focus of the Emergency Solutions Grants program. While emergency shelter remains an important component of the Emergency Solutions Grants program, the new Emergency Solutions Grants program places a greater focus on homelessness prevention for persons at risk of homelessness and rapid re-housing assistance for homeless persons. Accordingly, the rule does not alter the fundamental goal of the program, which is to assist those who are homeless and in danger of becoming homeless. Therefore, the administrative changes made by this rule do not result in an economic effect equal to \$100 million, which would be approximately half of the program's funding (\$225 million). HUD believes that the administrative changes made by the interim rule would also have no discernible impact upon the economy.

The slight shift in emphasis from emergency shelter in the Emergency Shelter Grants program to homelessness prevention and rapid rehousing assistance in the Emergency Solutions Grants program does not represent a significant regulatory change. Rapid rehousing is already familiar to HUD's homeless grantee providers from funding received under the HPRP, a temporary program funded through the American Recovery and Reinvestment Act of 2009, and their experience with this program which continues to today. Because HPRP activities will continue through September 30, 2012, the interim rule is directed to ensuring continuity between HPRP and Emergency Solutions Grant (ESG) program.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters

building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877-8339.

#### Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private

sector. This interim rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule solely addresses the allocation and use of grant funds under the new McKinney-Vento Act homeless assistance programs as consolidated and amended by the HEARTH Act. As discussed in the preamble, the majority of the regulatory provisions in this rule track the regulatory provisions of the existing Emergency Shelter Grants program, with which prospective recipients of Emergency Solutions Grant (ESG) are familiar. Accordingly, the transition from the Emergency Shelter Grants program to the Emergency Solutions Grant program, in regard to funding and program requirements, should raise minimal issues because applicants and grantees are well-familiar with these requirements and, through the years, in soliciting information on the burden of the Emergency Solutions Grant requirements, grantees have not advised that such requirements are burdensome. Therefore, HUD has determined that this rule would not have a significant

economic impact on a substantial number of small entities.

Notwithstanding that determination, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

#### Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the executive order.

#### Paperwork Reduction Act

The information collection requirements contained in this interim rule have been submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this interim rule is estimated as follows:

#### REPORTING AND RECORDKEEPING BURDEN

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
576.400(a) Consultation With Continuums of Care .....	360	1	360	6.00	2,160
576.400(b) Coordination With Other Targeted Homeless Services .....	2,360	1	2,360	8.00	18,880
576.400(c) System and Program Coordination With Mainstream Resources .....	2,360	1	2,360	16.00	37,760
576.400(d) Centralized or Coordinated Assessment .....	2,000	1	2,000	3.00	6,000
576.400(e) Written Standards for Determining the Amount of Assistance .....	808	1	808	5.00	4,040
576.400(f) Participation in HMIS .....	78,000	1	78,000	0.50	39,000
576.401(a) Initial Evaluation .....	50,000	1	30,000	1.00	30,000
576.401(b) Recertification .....	20,000	2	40,000	0.50	20,000
576.401(d) Connection to Mainstream Resources .....	78,000	3	234,000	0.25	58,500
576.401(e) Housing Retention Plan .....	50,000	1	50,000	0.75	37,500
576.402 Terminating Assistance .....	808	1	808	4.00	3,232
576.403 Habitability Review .....	52,000	1	52,000	0.6	31,200
576.405 Homeless Participation .....	2,360	12	28,320	1.00	28,320
576.500 Recordkeeping Requirements .....	2,360	1	2,360	12.75	30,009
576.501(b) Remedial Actions .....	20	1	20	8.00	160
576.501(c) Recipient Sanctions .....	360	1	360	12.00	4,320
576.501(c) Subrecipient Response .....	2,000	1	2,000	8.00	16,000

REPORTING AND RECORDKEEPING BURDEN—Continued

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
Total .....	.....	.....	.....	.....	367,081

Total estimated burden hours: 367,081.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the affected agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR-5474-I-01) and be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395-6947, and Reports Liaison Officer, Office of the Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development, Room 7233, 451 Seventh Street SW., Washington, DC 20410-7000.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the

instructions provided on that site to submit comments electronically.

**List of Subjects**

*24 CFR Part 91*

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

*24 CFR Part 576*

Community facilities, Emergency solutions grants, Grant programs—housing and community development, Grant program—social programs, Homeless, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, parts 91 and 576 of title 24 of the Code of Federal Regulations are amended as follows:

**PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS**

■ 1. The authority citation for 24 CFR part 91 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

■ 2. In § 91.2, paragraph (a)(2) is revised to read as follows:

**§ 91.2 Applicability.**

(a) \* \* \*

(2) The Emergency Solutions Grants (ESG) program (see 24 CFR part 576);

■ 3. In § 91.5, the definitions of “Chronically homeless person,” “Disabling condition,” “Homeless family with children,” and “Homeless subpopulations” are removed; the definition of “Emergency shelter” is revised; and the definitions of “At risk of homelessness,” “Chronically homeless,” “Continuum of Care,” “Homeless Management Information System (HMIS),” “Rapid re-housing assistance,” and “Victim service provider” are added to read as follows:

**§ 91.5 Definitions.**

\* \* \* \* \*

*At risk of homelessness.* (1) An individual or family who:

(i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;

(ii) Does not have sufficient resources or support networks, e.g., family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the “Homeless” definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as “homeless” under this section, but qualifies as “homeless” under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C.



254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

\* \* \* \* \*

**Chronically homeless.** (1) An individual who:

(i) Is homeless and lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and

(ii) Has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least one year or on at least four separate occasions in the last 3 years, where each homeless occasion was at least 15 days; and

(iii) Can be diagnosed with one or more of the following conditions: substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act of 2000 (42 U.S.C. 15002)), post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability;

(2) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or

(3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) of this definition, including a family whose composition has fluctuated while the head of household has been homeless.

\* \* \* \* \*

**Continuum of Care.** The group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and

formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area.

**Emergency shelter.** Any facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless, and which does not require occupants to sign leases or occupancy agreements.

\* \* \* \* \*

**Homeless Management Information System (HMIS).** The information system designated by the Continuum of Care to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at risk of homelessness.

\* \* \* \* \*

**Rapid re-housing assistance.** The provision of housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing.

\* \* \* \* \*

**Victim service provider.** A private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. This term includes rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs.

\* \* \* \* \*

■ 4. In § 91.100, paragraph (a)(2) is revised and a new paragraph (d) is added to read as follows:

**§ 91.100 Consultation; local governments.**

(a) \* \* \*

(2) When preparing the portions of the consolidated plan describing the jurisdiction's homeless strategy and the resources available to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) and persons at risk of homelessness, the jurisdiction must consult with:

(i) The Continuum(s) of Care that serve(s) the jurisdiction's geographic area;

(ii) Public and private agencies that address housing, health, social service, victim services, employment, or education needs of low-income individuals and families; homeless individuals and families, including homeless veterans; youth; and/or other persons with special needs;

(iii) Publicly funded institutions and systems of care that may discharge persons into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and

(iv) Business and civic leaders.

\* \* \* \* \*

(d) Emergency Solutions Grants (ESG). A jurisdiction that receives an ESG grant must consult with the Continuum of Care in determining how to allocate its ESG grant for eligible activities; in developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and in developing funding, policies, and procedures for the operation and administration of the HMIS.

\* \* \* \* \*

■ 5. In § 91.105, paragraph (a)(2) is revised to read as follows:

**§ 91.105 Citizen participation plan; local governments.**

(a) \* \* \*

(2) **Encouragement of citizen participation.** (i) The citizen participation plan must provide for and encourage citizens to participate in the development of any consolidated plan, any substantial amendment to the consolidated plan, and the performance report. These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used, and by residents of predominantly low- and moderate-income neighborhoods, as defined by the jurisdiction. A jurisdiction is also expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.

(ii) The jurisdiction shall encourage the participation of local and regional institutions, the Continuum of Care and other organizations (including businesses, developers, nonprofit organizations, philanthropic organizations, and community-based

and faith-based organizations) in the process of developing and implementing the consolidated plan.

(iii) The jurisdiction shall encourage, in conjunction with consultation with public housing agencies, the participation of residents of public and assisted housing developments, in the process of developing and implementing the consolidated plan, along with other low-income residents of targeted revitalization areas in which the developments are located. The jurisdictions shall make an effort to provide information to the public housing agency (PHA) about consolidated plan activities related to its developments and surrounding communities so that the PHA can make this information available at the annual public hearing required for the PHA Plan.

(iv) The jurisdiction should explore alternative public involvement techniques and quantitative ways to measure efforts that encourage citizen participation in a shared vision for change in communities and neighborhoods, and the review of program performance; e.g., use of focus groups and the Internet.

\* \* \* \* \*

■ 6. Section 91.110 is revised to read as follows:

**§ 91.110 Consultation; States.**

(a) When preparing the consolidated plan, the State shall consult with other public and private agencies that provide assisted housing (including any state housing agency administering public housing), health services, and social and fair housing services (including those focusing on services to children, elderly persons, persons with disabilities, persons with HIV/AIDS and their families, and homeless persons) during preparation of the consolidated plan.

(b) When preparing the portions of the consolidated plan describing the State's homeless strategy and the resources available to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) and persons at risk of homelessness, the State must consult with:

(1) Each Continuum of Care within the state;

(2) Public and private agencies that address housing, health, social services, victim services, employment, or education needs of low-income individuals and families; of homeless individuals and families, including homeless veterans; youth; and/or of other persons with special needs;

(3) Publicly funded institutions and systems of care that may discharge persons into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and

(4) Business and civic leaders.

(c) When preparing the portion of its consolidated plan concerning lead-based paint hazards, the State shall consult with state or local health and child welfare agencies and examine existing data related to lead-based paint hazards and poisonings, including health department data on the addresses of housing units in which children have been identified as lead-poisoned.

(d) When preparing its method of distribution of assistance under the CDBG program, a State must consult with local governments in nonentitlement areas of the state.

(e) The State must also consult with each Continuum of Care within the state in determining how to allocate its ESG grant for eligible activities; developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and developing funding, policies, and procedures for the operation and administration of the HMIS.

■ 7. In § 91.115, paragraph (a)(2) is revised to read as follows:

**§ 91.115 Citizen participation plan; States.**

(a) \* \* \*

(2) *Encouragement of citizen participation.* (i) The citizen participation plan must provide for and encourage citizens to participate in the development of the consolidated plan, any substantial amendments to the consolidated plan, and the performance report. These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used, and by residents of predominantly low- and moderate-income neighborhoods. A State is also expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.

(ii) The State shall encourage the participation of local, regional, and statewide institutions, Continuums of Care, and other organizations (including businesses, developers, nonprofit organizations, philanthropic organizations, and community-based and faith-based organizations) that are involved with or affected by the programs or activities covered by the

consolidated plan in the process of developing and implementing the consolidated plan.

(iii) The state should explore alternative public involvement techniques that encourage a shared vision of change for the community and the review of program performance; e.g., the use of focus groups and the Internet.

\* \* \* \* \*

■ 8. In § 91.200, paragraph (b) is revised to read as follows:

**§ 91.200 General.**

\* \* \* \* \*

(b) The jurisdiction shall describe:

(1) The lead agency or entity responsible for overseeing the development of the plan and the significant aspects of the process by which the consolidated plan was developed;

(2) The identity of the agencies, groups, organizations, and others who participated in the process; and

(3) A jurisdiction's consultations with:

(i) The Continuum of Care that serves the jurisdiction's geographic area;

(ii) Public and private agencies that address housing, health, social services, employment, or education needs of low-income individuals and families, of homeless individuals and families, of youth, and/or of other persons with special needs;

(iii) Publicly funded institutions and systems of care that may discharge persons into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions);

(iv) Other entities.

\* \* \* \* \*

■ 9. In § 91.205, paragraph (b)(1) and paragraph (c) are revised to read as follows:

**§ 91.205 Housing and homeless needs assessment.**

\* \* \* \* \*

(b)(1)(i) The plan shall estimate the number and type of families in need of housing assistance for:

(A) Extremely low-income, low-income, moderate-income, and middle-income families;

(B) Renters and owners;

(C) Elderly persons;

(D) Single persons;

(E) Large families;

(F) Public housing residents;

(G) Families on the public housing and Section 8 tenant-based waiting list;

(H) Persons with HIV/AIDS and their families;

(I) Victims of domestic violence, dating violence, sexual assault, and stalking;

(J) Persons with disabilities; and

(K) Formerly homeless families and individuals who are receiving rapid re-housing assistance and are nearing the termination of that assistance.

(ii) The description of housing needs shall include a concise summary of the cost burden and severe cost burden, overcrowding (especially for large families), and substandard housing conditions being experienced by extremely low-income, low-income, moderate-income, and middle-income renters and owners compared to the jurisdiction as a whole. (The jurisdiction must define in its consolidated plan the terms "standard condition" and "substandard condition but suitable for rehabilitation.")

\* \* \* \* \*

(c) *Persons who are homeless or at risk of homelessness.* (1) The plan must describe, in a form prescribed by HUD, the nature and extent of unsheltered and sheltered homelessness, including rural homelessness, within the jurisdiction. At a minimum, the recipient must use data from the Homeless Management Information System (HMIS) and data from the Point-In-Time (PIT) count conducted in accordance with HUD standards.

(i) The description must include, for each category of homeless persons specified by HUD (including chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth), the number of persons experiencing homelessness on a given night, the number of persons who experience homelessness each year, the number of persons who lose their housing and become homeless each year, the number of persons who exit homelessness each year, the number of days that persons experience homelessness, and other measures specified by HUD.

(ii) The plan also must contain a brief narrative description of the nature and extent of homelessness by racial and ethnic group, to the extent information is available.

(2) The plan must include a narrative description of the characteristics and needs of low-income individuals and families with children (especially extremely low-income) who are currently housed but threatened with homelessness. This information may be evidenced by the characteristics and needs of individuals and families with children who are currently entering the homeless assistance system or appearing for the first time on the streets. The description must also specify particular housing characteristics that have been

linked with instability and an increased risk of homelessness.

\* \* \* \* \*

10. In § 91.210, paragraph (c) is revised to read as follows:

**§ 91.210 Housing market analysis.**

\* \* \* \* \*

(c) *Facilities, housing, and services for homeless persons.* The plan must include a brief inventory of facilities, housing, and services that meet the needs of homeless persons within the jurisdiction, particularly chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth.

(1) The inventory of facilities and housing (e.g., emergency shelter, transitional housing, and permanent supportive housing) must be presented in a form specified by HUD.

(2) The inventory of services must include both services targeted to homeless persons and mainstream services, such as health, mental health, and employment services to the extent those services are used to complement services targeted to homeless persons.

\* \* \* \* \*

■ 11. In § 91.215, paragraphs (b), (d), (k), and (l) are revised to read as follows:

**§ 91.215 Strategic plan.**

\* \* \* \* \*

(b) *Affordable housing.* With respect to affordable housing, the consolidated plan must include the priority housing needs table prescribed by HUD and must do the following:

(1) The affordable housing section shall describe how the characteristics of the housing market and the severity of housing problems and needs of extremely low-income, low-income, and moderate-income renters and owners, persons at risk of homelessness, and homeless persons identified in accordance with § 91.205 provided the rationale for establishing allocation priorities and use of funds made available for rental assistance, production of new units, rehabilitation of existing units, or acquisition of existing units (including preserving affordable housing units that may be lost from the assisted housing inventory for any reason). Household and income types may be grouped together for discussion where the analysis would apply to more than one of them. If the jurisdiction intends to use HOME funds for tenant-based assistance, the jurisdiction must specify local market conditions that led to the choice of that option.

(2) The affordable housing section shall include specific objectives that

describe proposed accomplishments, that the jurisdiction hopes to achieve and must specify the number of extremely low-income, low-income, and moderate-income families, and homeless persons to whom the jurisdiction will provide affordable housing as defined in 24 CFR 92.252 for rental housing and 24 CFR 92.254 for homeownership over a specific time period.

\* \* \* \* \*

(d) *Homelessness.* The consolidated plan must include the priority homeless needs table prescribed by HUD and must describe the jurisdiction's strategy for reducing and ending homelessness through:

(1) Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs;

(2) Addressing the emergency shelter and transitional housing needs of homeless persons;

(3) Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again; and

(4) Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families who are:

(i) Likely to become homeless after being discharged from publicly funded institutions and systems of care into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions) or

(ii) Receiving assistance from public and private agencies that address housing, health, social services, employment, education, or youth needs.

\* \* \* \* \*

(k) *Institutional structure.* The consolidated plan must provide a concise summary of the institutional structure, including private industry; nonprofit organizations; community and faith-based organizations; philanthropic organizations; the Continuum of Care; and public institutions, departments and agencies through which the jurisdiction will carry out its housing, homeless, and community development plan; a brief assessment of the strengths

and gaps in that delivery system; and a concise summary of what the jurisdiction will do to overcome gaps in the institutional structure for carrying out its strategy for addressing its priority needs.

(l) *Coordination.* The consolidated plan must provide a concise summary of the jurisdiction's activities to enhance coordination among the Continuum of Care, public and assisted housing providers, and private and governmental health, mental health, and service agencies. The summary must address the jurisdiction's efforts to coordinate housing assistance and services for homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) and persons who were recently homeless but now live in permanent housing. With respect to the public entities involved, the plan must describe the means of cooperation and coordination among the State and any units of general local government in the metropolitan area in the implementation of its consolidated plan. With respect to economic development, the jurisdiction should describe efforts to enhance coordination with private industry, businesses, developers, and social service agencies.

■ 12. In § 91.220, paragraph (i) is revised and a new paragraph (l)(4) is added to read as follows:

**§ 91.220 Action plan.**

\* \* \* \* \*

(i) *Homeless and other special needs activities.* (1) The jurisdiction must describe its one-year goals and specific actions steps for reducing and ending homelessness through:

(i) Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs;

(ii) Addressing the emergency shelter and transitional housing needs of homeless persons; and

(iii) Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again; and

(iv) Helping low-income individuals and families avoid becoming homeless,

especially extremely low-income individuals and families who are:

(A) Being discharged from publicly funded institutions and systems of care, such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions; or

(B) Receiving assistance from public and private agencies that address housing, health, social services, employment, education, or youth needs.

(2) The jurisdiction must specify the activities that it plans to undertake during the next year to address the housing and supportive service needs identified in accordance with § 91.215(e) with respect to persons who are not homeless but have other special needs.

\* \* \* \* \*

(l) \* \* \*

(4) *ESG.* (i) The jurisdiction must include its written standards for providing ESG assistance. The minimum requirements regarding these standards are set forth in 24 CFR 576.400(e)(1) and (e)(3).

(ii) If the Continuum of Care for the jurisdiction's area has established a centralized or coordinated assessment system that meets HUD requirements, the jurisdiction must describe that centralized or coordinated assessment system. The requirements for using a centralized or coordinated assessment system, including the exception for victim service providers, are set forth under 24 CFR 576.400(d).

(iii) The jurisdiction must identify its process for making subawards and a description of how the jurisdiction intends to make its allocation available to private nonprofit organizations (including community and faith-based organizations), and in the case of urban counties, funding to participating units of local government.

(iv) If the jurisdiction is unable to meet the homeless participation requirement in 24 CFR 576.405(a), the jurisdiction must specify its plan for reaching out to and consulting with homeless or formerly homeless individuals in considering and making policies and decisions regarding any facilities or services that receive funding under ESG.

(v) The jurisdiction must describe the performance standards for evaluating ESG activities.

(vi) The jurisdiction must describe its consultation with each Continuum of Care that serves the jurisdiction in determining how to allocate ESG funds each program year; developing the performance standards for, and evaluating the outcomes of, projects and

activities assisted by ESG funds; and developing funding, policies, and procedures for the administration and operation of the HMIS.

■ 13. In § 91.225, paragraph (c) is revised to read as follows:

**§ 91.225 Certifications.**

\* \* \* \* \*

(c) *ESG.* For jurisdictions that seek ESG funding under 24 CFR part 576, the following certifications are required:

(1) If an emergency shelter's rehabilitation costs exceed 75 percent of the value of the building before rehabilitation, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed rehabilitation;

(2) If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed conversion;

(3) In all other cases where ESG funds are used for renovation, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 3 years after the date the building is first occupied by a homeless individual or family after the completed renovation;

(4) In the case of assistance involving shelter operations or essential services related to street outreach or emergency shelter, the jurisdiction will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure, so long as the jurisdiction serves the same type of persons (e.g., families with children, unaccompanied youth, disabled individuals, or victims of domestic violence) or persons in the same geographic area;

(5) Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary;

(6) The jurisdiction will assist homeless individuals in obtaining permanent housing, appropriate supportive services (including medical and mental health treatment, victim services, counseling, supervision, and other services essential for achieving independent living), and other Federal, State, local, and private assistance available for these individuals;

(7) The jurisdiction will obtain matching amounts required under 24 CFR 576.201;

(8) The jurisdiction has established and is implementing procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter;

(9) To the maximum extent practicable, the jurisdiction will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, in providing services assisted under the program, and in providing services for occupants of facilities assisted under the program;

(10) All activities the jurisdiction undertakes with assistance under ESG are consistent with the jurisdiction's consolidated plan; and

(11) The jurisdiction will establish and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health-care facilities, mental health facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent this discharge from immediately resulting in homelessness for these persons.

\* \* \* \* \*

■ 14. In § 91.300, paragraph (b) is revised to read as follows:

**§ 91.300 General.**

\* \* \* \* \*

(b) The State shall describe:

(1) The lead agency or entity responsible for overseeing the development of the plan and the significant aspects of the process by which the consolidated plan was developed;

(2) The identity of the agencies, groups, organizations, and others who participated in the process;

(3) The State's consultations with:

(i) Continuums of Care;

(ii) Public and private agencies that address housing, health, social services, employment, or education needs of low-income individuals and families, homeless individuals and families, youth, and/or other persons with special needs;

(iii) Publicly funded institutions and systems of care that may discharge persons into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and

(iv) Other entities.

\* \* \* \* \*

■ 15. In § 91.305, paragraphs (b)(1) and (c) are revised to read as follows:

**§ 91.305 Housing and homeless needs assessment.**

\* \* \* \* \*

(b)(1)(i) The plan shall estimate the number and type of families in need of housing assistance for:

(A) Extremely low-income, low-income, moderate-income, and middle-income families;

(B) Renters and owners;

(C) Elderly persons;

(D) Single persons;

(E) Large families;

(F) Public housing residents;

(G) Families on the public housing and Section 8 tenant-based waiting list;

(H) Persons with HIV/AIDS and their families;

(I) Victims of domestic violence, dating violence, sexual assault, and stalking;

(J) Persons with disabilities; and

(K) Formerly homeless families and individuals who are receiving rapid rehousing assistance and are nearing the termination of that assistance.

(ii) The description of housing needs shall include a concise summary of the cost burden and severe cost burden, overcrowding (especially for large families), and substandard housing conditions being experienced by extremely low-income, low-income, moderate-income, and middle-income renters and owners compared to the state as a whole. (The state must define in its consolidated plan the terms "standard condition" and "substandard condition but suitable for rehabilitation.")

\* \* \* \* \*

(c) *Persons who are homeless or at risk of homelessness.* (1) The plan must describe, in a form prescribed by HUD, the nature and extent of homelessness, including rural homelessness, within the state.

(i) The description must include, for each category of homeless persons specified by HUD (including chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth), the number of persons experiencing homelessness on a given night, the number of persons who

experience homelessness each year, the number of persons who lose their housing and become homeless each year, the number of persons who exit homelessness each year, and the number of days that persons experience homelessness, and any other measures specified by HUD.

(ii) The plan also must contain a brief narrative description of the nature and extent of homelessness by racial and ethnic group, to the extent that information is available.

(2) The plan must include a narrative description of the characteristics and needs of low-income individuals and families with children (especially extremely low-income) who are currently housed but threatened with homelessness. This information may be evidenced by the characteristics and needs of individuals and families with children who are currently entering the homeless assistance system or appearing for the first time on the streets. The description must also include specific housing characteristics linked to instability and an increased risk of homelessness.

\* \* \* \* \*

■ 16. In § 91.310, paragraph (b) is revised to read as follows:

**§ 91.310 Housing market analysis.**

\* \* \* \* \*

(b) *Facilities, housing, and services for homeless persons.* The plan must include a brief inventory of facilities and services that meet the needs of homeless persons within the state, particularly chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth.

(1) The inventory of facilities and housing (e.g., emergency shelter, transitional housing, and permanent supportive housing) must be presented in a form specified by HUD.

(2) The inventory of services must include both services targeted to homeless persons and mainstream services, such as health, mental health, and employment services to the extent those services are used to complement services targeted to homeless persons.

\* \* \* \* \*

■ 17. In § 91.315, paragraphs (b), (d), (k), and (l) are revised to read as follows:

**§ 91.315 Strategic plan.**

\* \* \* \* \*

(b) *Affordable housing.* With respect to affordable housing, the consolidated plan must include the priority housing needs table prescribed by HUD and the following:

(1) The affordable housing section shall describe how the characteristics of

the housing market and the severity of housing problems and needs of extremely low-income, low-income, and moderate-income renters and owners, persons at risk of homelessness, and homeless persons identified in accordance with § 91.305 provided the rationale for establishing allocation priorities and use of funds made available for rental assistance, production of new units, rehabilitation of existing units, or acquisition of existing units (including preserving affordable housing units that may be lost from the assisted housing inventory for any reason). Household and income types may be grouped together for discussion where the analysis would apply to more than one of them. If the State intends to use HOME funds for tenant-based rental assistance, the State must specify local market conditions that led to the choice of that option.

(2) The affordable housing section shall include specific objectives that describe proposed accomplishments that the jurisdiction hopes to achieve and must specify the number of extremely low-income, low-income, and moderate-income families, and homeless persons to whom the jurisdiction will provide affordable housing as defined in 24 CFR 92.252 for rental housing and 24 CFR 92.254 for homeownership over a specific time period.

\* \* \* \* \*

(d) *Homelessness.* The consolidated plan must include the priority homeless needs table prescribed by HUD and must describe the State's strategy for reducing and ending homelessness through:

(1) Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs;

(2) Addressing the emergency shelter and transitional housing needs of homeless persons;

(3) Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again; and

(4) Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families who are:

(i) Likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or

(ii) Receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.

\* \* \* \* \*

(k) *Institutional structure.* The consolidated plan must provide a concise summary of the institutional structure, including businesses, developers, nonprofit organizations, philanthropic organizations, community-based and faith-based organizations, the Continuum of Care, and public institutions, departments, and agencies through which the State will carry out its housing, homeless, and community development plan; a brief assessment of the strengths and gaps in that delivery system; and a concise summary of what the State will do to overcome gaps in the institutional structure for carrying out its strategy for addressing its priority needs.

(l) *Coordination.* The consolidated plan must provide a concise summary of the jurisdiction's activities to enhance coordination among Continuums of Care, public and assisted housing providers, and private and governmental health, mental health, and service agencies. The summary must include the jurisdiction's efforts to coordinate housing assistance and services for homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) and persons who were recently homeless but now live in permanent housing. With respect to the public entities involved, the plan must describe the means of cooperation and coordination among the State and any units of general local government in the implementation of its consolidated plan. With respect to economic development, the State should describe efforts to enhance coordination with private industry, businesses, developers, and social service agencies.

\* \* \* \* \*

■ 18. In § 91.320, paragraphs (h) and (k)(3) are revised to read as follows:

**§ 91.320 Action plan.**

\* \* \* \* \*

(h) *Homeless and other special needs activities.* (1) The State must describe its one-year goals and specific actions steps for reducing and ending homelessness through:

(i) Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs;

(ii) Addressing the emergency shelter and transitional housing needs of homeless persons;

(iii) Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again; and

(iv) Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families who are:

(A) Being discharged from publicly funded institutions and systems of care (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or

(B) Receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.

(2) The State must specify the activities that it plans to undertake during the next year to address the housing and supportive service needs identified in accordance with § 91.315(e) with respect to persons who are not homeless but have other special needs.

\* \* \* \* \*

(k) \* \* \*

(3) *ESG.* (i) The State must either include its written standards for providing Emergency Solutions Grant (ESG) assistance or describe its requirements for its subrecipients to establish and implement written standards for providing ESG assistance. The minimum requirements regarding these standards are set forth in 24 CFR 576.400(e)(2) and (e)(3).

(ii) For each area of the State in which a Continuum of Care has established a centralized or coordinated assessment system that meets HUD requirements, the State must describe that centralized or coordinated assessment system. The requirements for using a centralized or coordinated assessment system, including the exception for victim service providers, are set forth under 24 CFR 576.400(d).

(iii) The State must identify its process for making subawards and a

description of how the State intends to make its allocation available to units of general local government and private nonprofit organizations, including community and faith-based organizations.

(iv) The State must describe the performance standards for evaluating ESG activities.

(v) The State must describe its consultation with each Continuum of Care in determining how to allocate ESG funds each program year; developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and developing funding, policies and procedures for the administration and operation of the HMIS.

\* \* \* \* \*

■ 19. In § 91.325, paragraph (c) is revised to read as follows:

§ 91.325 Certifications.

\* \* \* \* \*

(c) *ESG*. Each State that seeks funding under ESG must provide the following certifications:

(1) The State will obtain any matching amounts required under 24 CFR 576.201 in a manner so that its subrecipients that are least capable of providing matching amounts receive the benefit of the exception under 24 CFR 576.201(a)(2);

(2) The State will establish and implement, to the maximum extent practicable and where appropriate, policies, and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health-care facilities, mental health facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent this discharge from immediately resulting in homelessness for these persons;

(3) The State will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter; and

(4) The State will ensure that its subrecipients comply with the following criteria:

(i) If an emergency shelter's rehabilitation costs exceed 75 percent of the value of the building before rehabilitation, the building will be maintained as a shelter for homeless individuals and families for a minimum

of 10 years after the date the building is first occupied by a homeless individual or family after the completed rehabilitation;

(ii) If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the building will be maintained as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed conversion;

(iii) In all other cases where ESG funds are used for renovation, the building will be maintained as a shelter for homeless individuals and families for a minimum of 3 years after the date the building is first occupied by a homeless individual or family after the completed renovation;

(iv) If ESG funds are used for shelter operations or essential services related to street outreach or emergency shelter, the subrecipient will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure, so long as the applicant serves the same type of persons (e.g., families with children, unaccompanied youth, veterans, disabled individuals, or victims of domestic violence) or persons in the same geographic area;

(v) Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary;

(vi) The subrecipient will assist homeless individuals in obtaining permanent housing, appropriate supportive services (including medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living), and other Federal, State, local, and private assistance available for such individuals;

(vii) To the maximum extent practicable, the subrecipient will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under ESG, in providing services assisted under ESG, and in providing services for occupants of facilities assisted under ESG; and

(viii) All activities the subrecipient undertakes with assistance under ESG are consistent with the State's current HUD-approved consolidated plan.

\* \* \* \* \*

■ 20. In § 91.520, paragraph (b) is revised, paragraphs (c), (d), (e), (f), and

(g) are redesignated as paragraphs (d), (e), (f), (h), and (i), respectively, and new paragraphs (c) and (g) are added to read as follows:

§ 91.520 Performance reports.

\* \* \* \* \*

(b) *Affordable housing*. The report shall include an evaluation of the jurisdiction's progress in meeting its specific objective of providing affordable housing, including the number and types of families served. This element of the report must include the number of extremely low-income, low-income, moderate-income, middle-income, and homeless persons served.

(c) *Homelessness*. The report must include, in a form prescribed by HUD, an evaluation of the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

(1) Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs;

(2) Addressing the emergency shelter and transitional housing needs of homeless persons;

(3) Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again; and

(4) Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are

(i) Likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions);

(ii) Receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.

\* \* \* \* \*

(g) *ESG*. For jurisdictions receiving funding under the ESG program provided in 24 CFR part 576, the report, in a form prescribed by HUD, must include the number of persons assisted, the types of assistance provided, and the project or program outcomes data measured under the performance

standards developed in consultation with the Continuum(s) of Care.

\* \* \* \* \*

■ 21. Part 576 is revised to read as follows:

## PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

### Subpart A—General Provisions

Sec.

- 576.1 Applicability and purpose.
- 576.2 Definitions.
- 576.3 Allocation of funding.

### Subpart B—Program Components and Eligible Activities

- 576.100 General provisions and expenditure limits.
- 576.101 Street outreach component.
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### Subpart C—Award and Use of Funds

- 576.200 Submission requirements and grant approval.
- 576.201 Matching requirement.
- 576.202 Means of carrying out grant activities.
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### Subpart D—Reallocations

- 576.300 In general.
- 576.301 Metropolitan cities and urban counties.
- 576.302 States.
- 576.303 Territories.
- 576.304 Alternative method.

### Subpart E—Program Requirements

- 576.400 Area-wide systems coordination requirements.
- 576.401 Evaluation of program participant eligibility and needs.
- 576.402 Terminating assistance.
- 576.403 Shelter and housing standards.
- 576.404 Conflicts of interest.
- 576.405 Homeless participation.
- 576.406 Faith-based activities.
- 576.407 Other Federal requirements.
- 576.408 Displacement, relocation, and acquisition.

### Subpart F—Grant Administration

- 576.500 Recordkeeping and reporting requirements.
- 576.501 Enforcement.

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

### Subpart A—General Provisions

#### § 576.1 Applicability and purpose.

This part implements the Emergency Solutions Grants (ESG) program authorized by subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371–11378). The program authorizes the Department of Housing and Urban Development (HUD) to make grants to States, units of general purpose local government, and territories for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain expenses related to operating emergency shelters, for essential services related to emergency shelters and street outreach for the homeless, and for homelessness prevention and rapid re-housing assistance.

#### § 576.2 Definitions.

*At risk of homelessness* means: (1) An individual or family who:

- (i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;
- (ii) Does not have sufficient resources or support networks, *e.g.*, family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the “homeless” definition in this section; and
- (iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 persons reside per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth

facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient’s approved consolidated plan;

(2) A child or youth who does not qualify as “homeless” under this section, but qualifies as “homeless” under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as “homeless” under this section, but qualifies as “homeless” under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

*Consolidated plan* means a plan prepared in accordance with 24 CFR part 91. An *approved consolidated plan* means a consolidated plan that has been approved by HUD in accordance with 24 CFR part 91.

*Continuum of Care* means the group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers; mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area.

*Emergency shelter* means any facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless and which does not require occupants to sign leases or occupancy agreements. Any project funded as an emergency shelter



under a Fiscal Year 2010 Emergency Solutions grant may continue to be funded under ESG.

*Homeless* means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, to obtain other permanent housing.

*Homeless Management Information System (HMIS)* means the information system designated by the Continuum of Care to comply with the HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at-risk of homelessness.

*Metropolitan city* means a city that was classified as a metropolitan city under 42 U.S.C. 5302(a) for the fiscal year immediately preceding the fiscal year for which ESG funds are made available. This term includes the District of Columbia.

*Private nonprofit organization* means a private nonprofit organization that is a secular or religious organization described in section 501(c) of the Internal Revenue Code of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. A private nonprofit organization does not include a governmental organization, such as a

public housing agency or housing finance agency.

*Program income* shall have the meaning provided in 24 CFR 85.25. Program income includes any amount of a security or utility deposit returned to the recipient or subrecipient.

*Program participant* means an individual or family who is assisted under ESG program.

*Program year* means the consolidated program year established by the recipient under 24 CFR part 91.

*Recipient* means any State, territory, metropolitan city, or urban county, or in the case of reallocation, any unit of general purpose local government that is approved by HUD to assume financial responsibility and enters into a grant agreement with HUD to administer assistance under this part.

*State* means each of the several States and the Commonwealth of Puerto Rico.

*Subrecipient* means a unit of general purpose local government or private nonprofit organization to which a recipient makes available ESG funds.

*Territory* means each of the following: the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

*Unit of general purpose local government* means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

*Urban county* means a county that was classified as an urban county under 42 U.S.C. 5302(a) for the fiscal year immediately preceding the fiscal year for which ESG funds are made available.

*Victim service provider* means a private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. This term includes rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs.

### § 576.3 Allocation of funding.

(a) *Territories.* HUD will set aside for allocation to the territories up to 0.2 percent, but not less than 0.1 percent, of the total amount of each appropriation under this part in any fiscal year. HUD will allocate this set-aside amount to each territory based on its proportionate share of the total population of all territories and its rate of compliance with the most recent expenditure deadline under § 576.203.

(b) *States, metropolitan cities, and urban counties.* HUD will allocate the amounts that remain after the set-aside to territories under paragraph (a) of this section to States, metropolitan cities, and urban counties, as follows:

(1) HUD will provide that the percentage of the total amount available for allocation to each State, metropolitan city, or urban county is equal to the percentage of the total amount available under section 106 of the Housing and Community Development Act of 1974 for the prior fiscal year that was allocated to that State, metropolitan city, or urban county.

(2) Except as otherwise provided by law, if the amount a metropolitan city or urban county would be allocated under paragraph (b)(1) is less than 0.05 percent of the total fiscal year appropriation for ESG, that amount will be added to the allocation for the State in which the city or county is located.

(c) *Notification of allocation amount.* HUD will notify each State, metropolitan city, urban county, and territory that is eligible to receive an allocation under this section of the amount of its allocation.

#### Subpart B—Program Components and Eligible Activities

##### § 576.100 General provisions and expenditure limits.

(a) ESG funds may be used for five program components: street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and HMIS; as well as administrative activities. The five program components and the eligible activities that may be funded under each are set forth in § 576.101 through § 576.107. Eligible administrative activities are set forth in § 576.108.

(b) The total amount of the recipient's fiscal year grant that may be used for street outreach and emergency shelter activities cannot exceed the greater of:

(1) 60 percent of the recipient's fiscal year grant; or

(2) The amount of Fiscal Year 2010 grant funds committed for homeless assistance activities.

(c) The total amount of ESG funds that may be used for administrative activities cannot exceed 7.5 percent of the recipient's fiscal year grant.

(d) Subject to the cost principles in OMB Circulars A-87 (2 CFR 225) and A-122 (2 CFR 230) and other requirements in this part, employee compensation and other overhead costs directly related to carrying out street outreach, emergency shelter, homelessness prevention, rapid re-housing, and HMIS are eligible costs of those program components. These costs are not subject to the expenditure limit in paragraph (c) of this section.

##### § 576.101 Street outreach component.

(a) *Eligible costs.* Subject to the expenditure limit in § 576.100(b), ESG funds may be used for costs of providing essential services necessary to reach out to unsheltered homeless people; connect them with emergency shelter, housing, or critical services; and provide urgent, nonfacility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or an appropriate health facility. For the purposes of this section, the term "unsheltered homeless people" means individuals and families who qualify as homeless under paragraph (1)(i) of the "homeless" definition under § 576.2. The eligible costs and requirements for essential services consist of:

(1) *Engagement.* The costs of activities to locate, identify, and build relationships with unsheltered homeless people and engage them for the purpose of providing immediate support, intervention, and connections with homeless assistance programs and/or mainstream social services and housing programs. These activities consist of making an initial assessment of needs and eligibility; providing crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; and actively connecting and providing information and referrals to programs targeted to homeless people and mainstream social services and housing programs, including emergency shelter, transitional housing, community-based services, permanent supportive housing, and rapid re-housing programs. Eligible costs include the cell phone costs of outreach workers during the performance of these activities.

(2) *Case management.* The cost of assessing housing and service needs, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant. Eligible services and activities are as follows: using the centralized or coordinated assessment system as required under § 576.400(d); conducting the initial evaluation required under § 576.401(a), including verifying and documenting eligibility; counseling; developing, securing and coordinating services; obtaining Federal, State, and local benefits; monitoring and evaluating program participant progress; providing information and referrals to other providers; and developing an individualized housing and service plan, including planning a path to permanent housing stability.

(3) *Emergency health services.* (i) Eligible costs are for the direct outpatient treatment of medical

conditions and are provided by licensed medical professionals operating in community-based settings, including streets, parks, and other places where unsheltered homeless people are living.

(ii) ESG funds may be used only for these services to the extent that other appropriate health services are inaccessible or unavailable within the area.

(iii) Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate emergency medical treatment; and providing medication and follow-up services.

##### (4) *Emergency mental health services.*

(i) Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions operating in community-based settings, including streets, parks, and other places where unsheltered people are living.

(ii) ESG funds may be used only for these services to the extent that other appropriate mental health services are inaccessible or unavailable within the community.

(iii) Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances.

(iv) Eligible treatment consists of crisis interventions, the prescription of psychotropic medications, explanation about the use and management of medications, and combinations of therapeutic approaches to address multiple problems.

(5) *Transportation.* The transportation costs of travel by outreach workers, social workers, medical professionals, or other service providers are eligible, provided that this travel takes place during the provision of services eligible under this section. The costs of transporting unsheltered people to emergency shelters or other service facilities are also eligible. These costs include the following:

(i) The cost of a program participant's travel on public transportation;

(ii) If service workers use their own vehicles, mileage allowance for service workers to visit program participants;

(iii) The cost of purchasing or leasing a vehicle for the recipient or subrecipient in which staff transports program participants and/or staff serving program participants, and the cost of gas, insurance, taxes and maintenance for the vehicle; and

(iv) The travel costs of recipient or subrecipient staff to accompany or assist program participants to use public transportation.

(6) *Services for special populations.* ESG funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under paragraphs (a)(1) through (a)(5) of this section. The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(b) *Minimum period of use.* The recipient or subrecipient must provide services to homeless individuals and families for at least the period during which ESG funds are provided.

(c) *Maintenance of effort.* (1) If the recipient or subrecipient is a unit of general purpose local government, its ESG funds cannot be used to replace funds the local government provided for street outreach and emergency shelter services during the immediately preceding 12-month period, unless HUD determines that the unit of general purpose local government is in a severe financial deficit.

(2) Upon the recipient's request, HUD will determine whether the unit of general purpose local government is in a severe financial deficit, based on the recipient's demonstration of each of the following:

(i) The average poverty rate in the unit of general purpose local government's jurisdiction was equal to or greater than 125 percent of the average national poverty rate, during the calendar year for which the most recent data are available, as determined according to information from the U.S. Census Bureau.

(ii) The average per-capita income in the unit of general purpose local government's jurisdiction was less than 75 percent of the average national per-capita income, during the calendar year for which the most recent data are available, as determined according to information from the Census Bureau.

(iii) The unit of general purpose local government has a current annual budget deficit that requires a reduction in funding for services for homeless people.

(iv) The unit of general purpose local government has taken all reasonable steps to prevent a reduction in funding

of services for homeless people. Reasonable steps may include steps to increase revenue generation, steps to maximize cost savings, or steps to reduce expenditures in areas other than services for homeless people.

#### § 576.102 Emergency shelter component.

(a) *General.* Subject to the expenditure limit in § 576.100(b), ESG funds may be used for costs of providing essential services to homeless families and individuals in emergency shelters, renovating buildings to be used as emergency shelter for homeless families and individuals, and operating emergency shelters.

(1) *Essential services.* ESG funds may be used to provide essential services to individuals and families who are in an emergency shelter, as follows:

(i) *Case management.* The cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant is eligible. Component services and activities consist of:

(A) Using the centralized or coordinated assessment system as required under § 576.400(d);

(B) Conducting the initial evaluation required under § 576.401(a), including verifying and documenting eligibility;

(C) Counseling;

(D) Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;

(E) Monitoring and evaluating program participant progress;

(F) Providing information and referrals to other providers;

(G) Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and

(H) Developing an individualized housing and service plan, including planning a path to permanent housing stability.

(ii) *Child care.* The costs of child care for program participants, including providing meals and snacks, and comprehensive and coordinated sets of appropriate developmental activities, are eligible. The children must be under the age of 13, unless they are disabled. Disabled children must be under the age of 18. The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

(iii) *Education services.* When necessary for the program participant to obtain and maintain housing, the costs of improving knowledge and basic educational skills are eligible. Services include instruction or training in consumer education, health education,

substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED). Component services or activities are screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies and instructional material; counseling; and referral to community resources.

(iv) *Employment assistance and job training.* The costs of employment assistance and job training programs are eligible, including classroom, online, and/or computer instruction; on-the-job instruction; and services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of providing reasonable stipends to program participants in employment assistance and job training programs is an eligible cost. Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates. Services that assist individuals in securing employment consist of employment screening, assessment, or testing; structured job skills and job-seeking skills; special training and tutoring, including literacy training and prevocational training; books and instructional material; counseling or job coaching; and referral to community resources.

(v) *Outpatient health services.* Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals. Emergency Solutions Grant (ESG) funds may be used only for these services to the extent that other appropriate health services are unavailable within the community. Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate medical treatment, preventive medical care, and health maintenance services, including emergency medical services; providing medication and follow-up services; and providing preventive and noncosmetic dental care.

(vi) *Legal services.* (A) Eligible costs are the hourly fees for legal advice and representation by attorneys licensed and in good standing with the bar association of the State in which the services are provided, and by person(s) under the supervision of the licensed attorney, regarding matters that interfere with the program participant's ability to obtain and retain housing.

(B) Emergency Solutions Grant (ESG) funds may be used only for these

services to the extent that other appropriate legal services are unavailable or inaccessible within the community.

(C) Eligible subject matters are child support, guardianship, paternity, emancipation, and legal separation, orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking, appeal of veterans and public benefit claim denials, and the resolution of outstanding criminal warrants.

(D) Component services or activities may include client intake, preparation of cases for trial, provision of legal advice, representation at hearings, and counseling.

(E) Fees based on the actual service performed (*i.e.*, fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a legal services provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services.

(F) Legal services for immigration and citizenship matters and issues relating to mortgages are ineligible costs. Retainer fee arrangements and contingency fee arrangements are ineligible costs.

(vii) *Life skills training.* The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance use, and homelessness are eligible costs. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are budgeting resources, managing money, managing a household, resolving conflict, shopping for food and needed items, improving nutrition, using public transportation, and parenting.

(viii) *Mental health services.* (A) Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions.

(B) ESG funds may only be used for these services to the extent that other appropriate mental health services are unavailable or inaccessible within the community.

(C) Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances. Problem areas may include family and marital

relationships, parent-child problems, or symptom management.

(D) Eligible treatment consists of crisis interventions; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

(ix) *Substance abuse treatment services.* (A) Eligible substance abuse treatment services are designed to prevent, reduce, eliminate, or deter relapse of substance abuse or addictive behaviors and are provided by licensed or certified professionals.

(B) ESG funds may only be used for these services to the extent that other appropriate substance abuse treatment services are unavailable or inaccessible within the community.

(C) Eligible treatment consists of client intake and assessment, and outpatient treatment for up to 30 days. Group and individual counseling and drug testing are eligible costs. Inpatient detoxification and other inpatient drug or alcohol treatment are not eligible costs.

(x) *Transportation.* Eligible costs consist of the transportation costs of a program participant's travel to and from medical care, employment, child care, or other eligible essential services facilities. These costs include the following:

(A) The cost of a program participant's travel on public transportation;

(B) If service workers use their own vehicles, mileage allowance for service workers to visit program participants;

(C) The cost of purchasing or leasing a vehicle for the recipient or subrecipient in which staff transports program participants and/or staff serving program participants, and the cost of gas, insurance, taxes, and maintenance for the vehicle; and

(D) The travel costs of recipient or subrecipient staff to accompany or assist program participants to use public transportation.

(xi) *Services for special populations.* ESG funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under paragraphs (a)(1)(i) through (a)(1)(x) of this section. The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented

history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(2) *Renovation.* Eligible costs include labor, materials, tools, and other costs for renovation (including major rehabilitation of an emergency shelter or conversion of a building into an emergency shelter). The emergency shelter must be owned by a government entity or private nonprofit organization.

(3) *Shelter operations.* Eligible costs are the costs of maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of the emergency shelter. Where no appropriate emergency shelter is available for a homeless family or individual, eligible costs may also include a hotel or motel voucher for that family or individual.

(4) *Assistance required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).* Eligible costs are the costs of providing URA assistance under § 576.408, including relocation payments and other assistance to persons displaced by a project assisted with ESG funds. Persons that receive URA assistance are not considered "program participants" for the purposes of this part, and relocation payments and other URA assistance are not considered "rental assistance" or "housing relocation and stabilization services" for the purposes of this part.

(b) *Prohibition against involuntary family separation.* The age, of a child under age 18 must not be used as a basis for denying any family's admission to an emergency shelter that uses Emergency Solutions Grant (ESG) funding or services and provides shelter to families with children under age 18.

(c) *Minimum period of use.* (1) *Renovated buildings.* Each building renovated with ESG funds must be maintained as a shelter for homeless individuals and families for not less than a period of 3 or 10 years, depending on the type of renovation and the value of the building. The "value of the building" is the reasonable monetary value assigned to the building, such as the value assigned by an independent real estate appraiser. The minimum use period must begin on the date the building is first occupied by a homeless individual or family after the completed renovation. A minimum period of use of 10 years, required for major rehabilitation and conversion, must be enforced by a recorded deed or use restriction.

(i) *Major rehabilitation.* If the rehabilitation cost of an emergency

shelter exceeds 75 percent of the value of the building before rehabilitation, the minimum period of use is 10 years.

(ii) *Conversion.* If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the minimum period of use is 10 years.

(iii) *Renovation other than major rehabilitation or conversion.* In all other cases where ESG funds are used for renovation, the minimum period of use is 3 years.

(2) *Essential services and shelter operations.* Where the recipient or subrecipient uses ESG funds solely for essential services or shelter operations, the recipient or subrecipient must provide services or shelter to homeless individuals and families at least for the period during which the ESG funds are provided. The recipient or subrecipient does not need to limit these services or shelter to a particular site or structure, so long as the site or structure serves the same type of persons originally served with the assistance (e.g., families with children, unaccompanied youth, disabled individuals, or victims of domestic violence) or serves homeless persons in the same area where the recipient or subrecipient originally provided the services or shelter.

(d) *Maintenance of effort.* The maintenance of effort requirements under § 576.101(c), which apply to the use of ESG funds for essential services related to street outreach, also apply for the use of such funds for essential services related to emergency shelter.

**§ 576.103 Homelessness prevention component.**

ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance necessary to prevent an individual or family from moving into an emergency shelter or another place described in paragraph (1) of the "homeless" definition in § 576.2. This assistance, referred to as homelessness prevention, may be provided to individuals and families who meet the criteria under the "at risk of homelessness" definition, or who meet the criteria in paragraph (2), (3), or (4) of the "homeless" definition in § 576.2 and have an annual income below 30 percent of median family income for the area, as determined by HUD. The costs of homelessness prevention are only eligible to the extent that the assistance is necessary to help the program participant regain stability in the program participant's current permanent housing or move into other permanent housing and achieve stability in that housing. Homelessness

prevention must be provided in accordance with the housing relocation and stabilization services requirements in § 576.105, the short-term and medium-term rental assistance requirements in § 576.106, and the written standards and procedures established under § 576.400.

**§ 576.104 Rapid re-housing assistance component.**

ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing. This assistance, referred to as rapid re-housing assistance, may be provided to program participants who meet the criteria under paragraph (1) of the "homeless" definition in § 576.2 or who meet the criteria under paragraph (4) of the "homeless" definition and live in an emergency shelter or other place described in paragraph (1) of the "homeless" definition. The rapid re-housing assistance must be provided in accordance with the housing relocation and stabilization services requirements in § 576.105, the short- and medium-term rental assistance requirements in § 576.106, and the written standards and procedures established under § 576.400.

**§ 576.105 Housing relocation and stabilization services.**

(a) *Financial assistance costs.* Subject to the general conditions under § 576.103 and § 576.104, ESG funds may be used to pay housing owners, utility companies, and other third parties for the following costs:

(1) *Rental application fees.* ESG funds may pay for the rental housing application fee that is charged by the owner to all applicants.

(2) *Security deposits.* ESG funds may pay for a security deposit that is equal to no more than 2 months' rent.

(3) *Last month's rent.* If necessary to obtain housing for a program participant, the last month's rent may be paid from ESG funds to the owner of that housing at the time the owner is paid the security deposit and the first month's rent. This assistance must not exceed one month's rent and must be included in calculating the program participant's total rental assistance, which cannot exceed 24 months during any 3-year period.

(4) *Utility deposits.* ESG funds may pay for a standard utility deposit required by the utility company for all customers for the utilities listed in paragraph (5) of this section.

(5) *Utility payments.* ESG funds may pay for up to 24 months of utility payments per program participant, per service, including up to 6 months of utility payments in arrears, per service. A partial payment of a utility bill counts as one month. This assistance may only be provided if the program participant or a member of the same household has an account in his or her name with a utility company or proof of responsibility to make utility payments. Eligible utility services are gas, electric, water, and sewage. No program participant shall receive more than 24 months of utility assistance within any 3-year period.

(6) *Moving costs.* ESG funds may pay for moving costs, such as truck rental or hiring a moving company. This assistance may include payment of temporary storage fees for up to 3 months, provided that the fees are accrued after the date the program participant begins receiving assistance under paragraph (b) of this section and before the program participant moves into permanent housing. Payment of temporary storage fees in arrears is not eligible.

(b) *Services costs.* Subject to the general restrictions under § 576.103 and § 576.104, ESG funds may be used to pay the costs of providing the following services:

(1) *Housing search and placement.* Services or activities necessary to assist program participants in locating, obtaining, and retaining suitable permanent housing, include the following:

(i) Assessment of housing barriers, needs, and preferences;

(ii) Development of an action plan for locating housing;

(iii) Housing search;

(iv) Outreach to and negotiation with owners;

(v) Assistance with submitting rental applications and understanding leases;

(vi) Assessment of housing for compliance with Emergency Solutions Grant (ESG) requirements for habitability, lead-based paint, and rent reasonableness;

(vii) Assistance with obtaining utilities and making moving arrangements; and

(viii) Tenant counseling.

(2) *Housing stability case management.* ESG funds may be used to pay cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to facilitate housing stability for a program participant who resides in permanent housing or to assist a program participant in overcoming immediate barriers to obtaining housing. This

assistance cannot exceed 30 days during the period the program participant is seeking permanent housing and cannot exceed 24 months during the period the program participant is living in permanent housing. Component services and activities consist of:

(A) Using the centralized or coordinated assessment system as required under § 576.400(d), to evaluate individuals and families applying for or receiving homelessness prevention or rapid re-housing assistance;

(B) Conducting the initial evaluation required under § 576.401(a), including verifying and documenting eligibility, for individuals and families applying for homelessness prevention or rapid re-housing assistance;

(C) Counseling;

(D) Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;

(E) Monitoring and evaluating program participant progress;

(F) Providing information and referrals to other providers;

(G) Developing an individualized housing and service plan, including planning a path to permanent housing stability; and

(H) Conducting re-evaluations required under § 576.401(b).

(3) *Mediation.* ESG funds may pay for mediation between the program participant and the owner or person(s) with whom the program participant is living, provided that the mediation is necessary to prevent the program participant from losing permanent housing in which the program participant currently resides.

(4) *Legal services.* ESG funds may pay for legal services, as set forth in § 576.102(a)(1)(vi), except that the eligible subject matters also include landlord/tenant matters, and the services must be necessary to resolve a legal problem that prohibits the program participant from obtaining permanent housing or will likely result in the program participant losing the permanent housing in which the program participant currently resides.

(5) *Credit repair.* ESG funds may pay for credit counseling and other services necessary to assist program participants with critical skills related to household budgeting, managing money, accessing a free personal credit report, and resolving personal credit problems. This assistance does not include the payment or modification of a debt.

(c) *Maximum amounts and periods of assistance.* The recipient may set a maximum dollar amount that a program participant may receive for each type of financial assistance under paragraph (a) of this section. The recipient may also

set a maximum period for which a program participant may receive any of the types of assistance or services under this section. However, except for housing stability case management, the total period for which any program participant may receive the services under paragraph (b) of this section must not exceed 24 months during any 3-year period. The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.

(d) *Use with other subsidies.* Financial assistance under paragraph (a) of this section cannot be provided to a program participant who is receiving the same type of assistance through other public sources or to a program participant who has been provided with replacement housing payments under the URA, during the period of time covered by the URA payments.

**§ 576.106 Short-term and medium-term rental assistance.**

(a) *General provisions.* Subject to the general conditions under § 576.103 and § 576.104, the recipient or subrecipient may provide a program participant with up to 24 months of rental assistance during any 3-year period. This assistance may be short-term rental assistance, medium-term rental assistance, payment of rental arrears, or any combination of this assistance.

(1) Short-term rental assistance is assistance for up to 3 months of rent.

(2) Medium-term rental assistance is assistance for more than 3 months but not more than 24 months of rent.

(3) Payment of rental arrears consists of a one-time payment for up to 6 months of rent in arrears, including any late fees on those arrears.

(4) Rental assistance may be tenant-based or project-based, as set forth in paragraphs (h) and (i) of this section.

(b) *Discretion to set caps and conditions.* Subject to the requirements of this section, the recipient may set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, or a maximum number of times that a program participant may receive rental assistance. The recipient may also require program participants to share in the costs of rent.

(c) *Use with other subsidies.* Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, rental assistance cannot be provided to a program participant who is receiving tenant-based rental assistance, or living in a housing unit receiving project-based rental assistance

or operating assistance, through other public sources. Rental assistance may not be provided to a program participant who has been provided with replacement housing payments under the URA during the period of time covered by the URA payments.

(d) *Rent restrictions.* (1) Rental assistance cannot be provided unless the rent does not exceed the Fair Market Rent established by HUD, as provided under 24 CFR part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.

(2) For purposes of calculating rent under this section, the rent shall equal the sum of the total monthly rent for the unit, any fees required for occupancy under the lease (other than late fees and pet fees) and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.

(e) *Rental assistance agreement.* The recipient or subrecipient may make rental assistance payments only to an owner with whom the recipient or subrecipient has entered into a rental assistance agreement. The rental assistance agreement must set forth the terms under which rental assistance will be provided, including the requirements that apply under this section. The rental assistance agreement must provide that, during the term of the agreement, the owner must give the recipient or subrecipient a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant.

(f) *Late payments.* The recipient or subrecipient must make timely payments to each owner in accordance with the rental assistance agreement. The rental assistance agreement must contain the same payment due date, grace period, and late payment penalty requirements as the program participant's lease. The recipient or subrecipient is solely responsible for paying late payment penalties that it incurs with non-ESG funds.

(g) *Lease.* Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the owner and the program participant. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and

the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of one year.

(h) *Tenant-based rental assistance.*

(1) A program participant who receives tenant-based rental assistance may select a housing unit in which to live and may move to another unit or building and continue to receive rental assistance, as long as the program participant continues to meet the program requirements.

(2) The recipient may require that all program participants live within a particular area for the period in which the rental assistance is provided.

(3) The rental assistance agreement with the owner must terminate and no further rental assistance payments under that agreement may be made if:

(i) The program participant moves out of the housing unit for which the program participant has a lease;

(ii) The lease terminates and is not renewed; or

(iii) The program participant becomes ineligible to receive ESG rental assistance.

(i) *Project-based rental assistance.* If the recipient or subrecipient identifies a permanent housing unit that meets ESG requirements and becomes available before a program participant is identified to lease the unit, the recipient or subrecipient may enter into a rental assistance agreement with the owner to reserve the unit and subsidize its rent in accordance with the following requirements:

(1) The rental assistance agreement may cover one or more permanent housing units in the same building. Each unit covered by the rental assistance agreement ("assisted unit") may only be occupied by program participants, except as provided under paragraph (i)(4) of this section.

(2) The recipient or subrecipient may pay up to 100 percent of the first month's rent, provided that a program participant signs a lease and moves into the unit before the end of the month for which the first month's rent is paid. The rent paid before a program participant moves into the unit must not exceed the rent to be charged under the program participant's lease and must be included when determining that program participant's total rental assistance.

(3) The recipient or subrecipient may make monthly rental assistance payments only for each whole or partial month an assisted unit is leased to a program participant. When a program

participant moves out of an assisted unit, the recipient or subrecipient may pay the next month's rent, *i.e.*, the first month's rent for a new program participant, as provided in paragraph (i)(2) of this section.

(4) The program participant's lease must not condition the term of occupancy to the provision of rental assistance payments. If the program participant is determined ineligible or reaches the maximum number of months over which rental assistance can be provided, the recipient or subrecipient must suspend or terminate the rental assistance payments for the unit. If the payments are suspended, the individual or family may remain in the assisted unit as permitted under the lease, and the recipient or subrecipient may resume payments if the individual or family again becomes eligible and needs further rental assistance. If the payments are terminated, the rental assistance may be transferred to another available unit in the same building, provided that the other unit meets all ESG requirements.

(5) The rental assistance agreement must have an initial term of one year. When a new program participant moves into an assisted unit, the term of the rental assistance agreement may be extended to cover the initial term of the program participant's lease. If the program participant's lease is renewed, the rental assistance agreement may be renewed or extended, as needed, up to the maximum number of months for which the program participant remains eligible. However, under no circumstances may the recipient or subrecipient commit ESG funds to be expended beyond the expenditure deadline in § 576.203 or commit funds for a future ESG grant before the grant is awarded.

(j) *Changes in household composition.* The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.

**§ 576.107 HMIS component.**

(a) *Eligible costs.*

(1) The recipient or subrecipient may use ESG funds to pay the costs of contributing data to the HMIS designated by the Continuum of Care for the area, including the costs of:

(i) Purchasing or leasing computer hardware;

(ii) Purchasing software or software licenses;

(iii) Purchasing or leasing equipment, including telephones, fax machines, and furniture;

(iv) Obtaining technical support;

(v) Leasing office space;

(vi) Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;

(vii) Paying salaries for operating HMIS, including:

(A) Completing data entry;

(B) Monitoring and reviewing data quality;

(C) Completing data analysis;

(D) Reporting to the HMIS Lead;

(F) Training staff on using the HMIS or comparable database; and

(G) Implementing and complying with HMIS requirements;

(viii) Paying costs of staff to travel to and attend HUD-sponsored and HUD-approved training on HMIS and programs authorized by Title IV of the McKinney-Vento Homeless Assistance Act;

(ix) Paying staff travel costs to conduct intake; and

(x) Paying participation fees charged by the HMIS Lead, if the recipient or subrecipient is not the HMIS Lead. The HMIS Lead is the entity designated by the Continuum of Care to operate the area's HMIS.

(2) If the recipient is the HMIS lead agency, as designated by the Continuum of Care in the most recent fiscal year Continuum of Care Homeless Assistance Grants Competition, it may also use ESG funds to pay the costs of:

(i) Hosting and maintaining HMIS software or data;

(ii) Backing up, recovering, or repairing HMIS software or data;

(iii) Upgrading, customizing, and enhancing the HMIS;

(iv) Integrating and warehousing data, including development of a data warehouse for use in aggregating data from subrecipients using multiple software systems;

(v) Administering the system;

(vi) Reporting to providers, the Continuum of Care, and HUD; and

(vii) Conducting training on using the system or a comparable database, including traveling to the training.

(3) If the subrecipient is a victim services provider or a legal services provider, it may use ESG funds to establish and operate a comparable database that collects client-level data over time (*i.e.*, longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS.

(b) *General restrictions.* Activities funded under this section must comply with HUD's standards on participation, data collection, and reporting under a local HMIS.

**§ 576.108 Administrative activities.**

(a) *Eligible costs.* The recipient may use up to 7.5 percent of its ESG grant for the payment of administrative costs related to the planning and execution of ESG activities. This does not include staff and overhead costs directly related to carrying out activities eligible under § 576.101 through § 576.107, because those costs are eligible as part of those activities. Eligible administrative costs include:

(1) *General management, oversight and coordination.* Costs of overall program management, coordination, monitoring, and evaluation. These costs include, but are not limited to, necessary expenditures for the following:

(i) Salaries, wages, and related costs of the recipient's staff, the staff of subrecipients, or other staff engaged in program administration. In charging costs to this category, the recipient may either include the entire salary, wages, and related costs allocable to the program of each person whose *primary* responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The recipient may use only one of these methods for each fiscal year grant. Program administration assignments include the following:

(A) Preparing program budgets and schedules, and amendments to those budgets and schedules;

(B) Developing systems for assuring compliance with program requirements;

(C) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;

(D) Monitoring program activities for progress and compliance with program requirements;

(E) Preparing reports and other documents directly related to the program for submission to HUD;

(F) Coordinating the resolution of audit and monitoring findings;

(G) Evaluating program results against stated objectives; and

(H) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i)(A) through (G) of this section.

(ii) Travel costs incurred for monitoring of subrecipients;

(iii) Administrative services performed under third-party contracts or agreements, including general legal

services, accounting services, and audit services; and

(iv) Other costs for goods and services required for administration of the program, including rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(2) *Training on ESG requirements.* Costs of providing training on ESG requirements and attending HUD-sponsored ESG trainings.

(3) *Consolidated plan.* Costs of preparing and amending the ESG and homelessness-related sections of the consolidated plan in accordance with ESG requirements and 24 CFR part 91.

(4) *Environmental review.* Costs of carrying out the environmental review responsibilities under § 576.407.

(b) *Sharing requirement.* (1) *States.* If the recipient is a State, the recipient must share its funds for administrative costs with its subrecipients that are units of general purpose local government. The amount shared must be reasonable under the circumstances. The recipient may share its funds for administrative costs with its subrecipients that are private nonprofit organizations.

(2) *Territories, metropolitan cities, and urban counties.* If the recipient is a territory, metropolitan city, or urban county, the recipient may share its funds for administrative costs with its subrecipients.

**§ 576.109 Indirect costs.**

(a) *In general.* ESG grant funds may be used to pay indirect costs in accordance with OMB Circular A-87 (2 CFR part 225), or A-122 (2 CFR part 230), as applicable.

(b) *Allocation.* Indirect costs may be allocated to each eligible activity under § 576.101 through § 576.108, so long as that allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circular A-87 (2 CFR part 225), or A-122 (2 CFR part 230), as applicable.

(c) *Expenditure limits.* The indirect costs charged to an activity subject to an expenditure limit under § 576.100 must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limit.

**Subpart C—Award and Use of Funds****§ 576.200 Submission requirements and grant approval.**

(a) *Application submission and approval.* In addition to meeting the application submission requirements in 24 CFR part 5, subpart K, each State, urban county, or metropolitan city must submit and obtain HUD approval of a

consolidated plan in accordance with the requirements in 24 CFR part 91, and each territory must submit and obtain HUD approval of a consolidated plan in accordance with the requirements that apply to local governments under 24 CFR part 91. As provided under 24 CFR 85.12, HUD may impose special conditions or restrictions on a grant, if the recipient is determined to be high risk.

(b) *Amendments.* The recipient must amend its approved consolidated plan in order to make a change in its allocation priorities; make a change in its method of distributing funds; carry out an activity not previously described in the plan; or change the purpose, scope, location, or beneficiaries of an activity. The amendment must be completed and submitted to HUD in accordance with the requirements under 24 CFR 91.505.

**§ 576.201 Matching requirement.**

(a) *Required amount of matching contributions.* (1) Except as provided under paragraphs (a)(2) and (a)(3) of this section, the recipient must make matching contributions to supplement the recipient's ESG program in an amount that equals the amount of ESG funds provided by HUD.

(2) If the recipient is a State, the first \$100,000 of the fiscal year grant is not required to be matched. However, the recipient must transfer the benefit of this exception to its subrecipients that are least capable of providing the recipient with matching contributions.

(3) This matching requirement does not apply if the recipient is a territory.

(b) *Eligible sources of matching contributions.* (1) Subject to the requirement for States under paragraph (a)(2) of this section, the recipient may require its subrecipients to make matching contributions consistent with this section to help meet the recipient's matching requirement.

(2) Matching contributions may be obtained from any source, including any Federal source other than the ESG program, as well as state, local, and private sources. However, the following requirements apply to matching contributions from a Federal source of funds:

(i) The recipient must ensure the laws governing any funds to be used as matching contributions do not prohibit those funds from being used to match Emergency Solutions Grant (ESG) funds.

(ii) If ESG funds are used to satisfy the matching requirements of another Federal program, then funding from that program may not be used to satisfy the matching requirements under this section.



(c) *Recognition of matching contributions.* (1) In order to meet the matching requirement, the matching contributions must meet all requirements that apply to the ESG funds provided by HUD, except for the expenditure limits in § 576.100.

(2) The matching contributions must be provided after the date that HUD signs the grant agreement.

(3) To count toward the required match for the recipient's fiscal year grant, cash contributions must be expended within the expenditure deadline in § 576.203, and noncash contributions must be made within the expenditure deadline in § 576.203.

(4) Contributions used to match a previous ESG grant may not be used to match a subsequent ESG grant.

(5) Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award may not count as satisfying the matching requirement of this section.

(d) *Eligible types of matching contributions.* The matching requirement may be met by one or both of the following:

(1) *Cash contributions.* Cash expended for allowable costs, as defined in OMB Circulars A-87 (2 CFR part 225) and A-122 (2 CFR part 230), of the recipient or subrecipient.

(2) *Noncash contributions.* The value of any real property, equipment, goods, or services contributed to the recipient's or subrecipient's ESG program, provided that if the recipient or subrecipient had to pay for them with grant funds, the costs would have been allowable. Noncash contributions may also include the purchase value of any donated building.

(e) *Calculating the amount of noncash contributions.* (1) To determine the value of any donated material or building, or of any lease, the recipient must use a method reasonably calculated to establish the fair market value.

(2) Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or subrecipient's organization. If the recipient or subrecipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market.

(3) Some noncash contributions are real property, equipment, goods, or services that, if the recipient or subrecipient had to pay for them with grant funds, the payments would have been indirect costs. Matching credit for these contributions must be given only if the recipient or subrecipient has

established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of those contributions.

(f) *Costs paid by program income.* Costs paid by program income shall count toward meeting the recipient's matching requirements, provided the costs are eligible ESG costs that supplement the recipient's ESG program.

#### **§ 576.202 Means of carrying out grant activities.**

(a) *States.* If the recipient is a State, the recipient may use an amount consistent with the restrictions in § 576.100 and § 576.108 to carry out administrative activities through its employees or procurement contracts. If the recipient is a State, and has been identified as the HMIS lead by the Continuum of Care, the State may use funds to carry out HMIS activities set forth in § 576.107(a)(2). The recipient must subgrant the remaining funds in its fiscal year grant to:

(1) Units of general purpose local government in the State, which may include metropolitan cities and urban counties that receive ESG funds directly from HUD; or

(2) Private nonprofit organizations, provided that for emergency shelter activities the recipient obtains a certification of approval from the unit of general purpose local government for the geographic area in which those activities are to be carried out.

(b) *Recipients other than States; subrecipients.* The recipient, if it is not a State, and all subrecipients may carry out all eligible activities through their employees, procurement contracts, or subgrants to private nonprofit organizations. If the recipient is an urban county, it may carry out activities through any of its member governments, so long as the county applies to its members the same requirements that are applicable to local government subrecipients under this part.

#### **§ 576.203 Obligation, expenditure, and payment requirements.**

(a) *Obligation of funds.* (1) *Funds allocated to States.* (i) Within 60 days from the date that HUD signs the grant agreement with the State (or grant amendment for reallocated funds), the recipient must obligate the entire grant, except the amount for its administrative costs. This requirement is met by a subgrant agreement with, or a letter of award requiring payment from the grant to, a subrecipient.

(ii) Within 120 days after the date that the State obligates its funds to a unit of

general purpose local government, the subrecipient must obligate all of those funds by a subgrant agreement with, or a letter of award requiring payment to, a private nonprofit organization; a procurement contract; or the written designation of a department within the government of the subrecipient to directly carry out an eligible activity.

(2) *Funds allocated to metropolitan cities, urban counties, and territories.* Within 180 days after the date that HUD signs the grant agreement (or a grant amendment for reallocation of funds) with the metropolitan city, urban county, or territory, the recipient must obligate all the grant amount, except the amount for its administrative costs. This requirement is met by an agreement with, or a letter of award requiring payment to, a subrecipient; a procurement contract; or a written designation of a department within the government of the recipient to directly carry out an eligible activity. If the recipient is an urban county, this requirement may also be met with an agreement with, or letter of award requiring payment to, a member government, which has designated a department to directly carry out an eligible activity.

(b) *Expenditures.* The recipient must draw down and expend funds from each year's grant not less than once during each quarter of the recipient's program year. All of the recipient's grant must be expended for eligible activity costs within 24 months after the date HUD signs the grant agreement with the recipient. For the purposes of this paragraph, expenditure means either an actual cash disbursement for a direct charge for a good or service or an indirect cost or the accrual of a direct charge for a good or service or an indirect cost.

(c) *Payments to subrecipients.* The recipient must pay each subrecipient for allowable costs within 30 days after receiving the subrecipient's complete payment request. This requirement also applies to each subrecipient that is a unit of general purpose local government.

#### **Subpart D—Reallocations**

##### **§ 576.300 In general.**

(1) Funds not awarded by HUD due to failure by the recipient to submit and obtain HUD approval of a consolidated plan will be reallocated in accordance with §§ 576.301 through 576.303.

(2) Recaptured funds will be awarded by formula. In October and April each year, HUD will determine if the amount of recaptured funds is at least 30 percent of the most recent fiscal year

appropriation. If so, HUD will amend all existing grants and reallocate the funds. If the amount is less than 30 percent of the most recent fiscal year appropriation, the funds will be reallocated in conjunction with the next fiscal year's allocation of funding.

**§ 576.301 Metropolitan cities and urban counties.**

Grant funds returned by a metropolitan city or urban county will be reallocated as follows:

(a) *Eligible recipient.* HUD will make the funds available to the State in which the city or county is located.

(b) *Notification of availability.* HUD will promptly notify the State of the availability of the amounts to be reallocated.

(c) *Application requirement.* Within 45 days after the date of notification, the State must submit to HUD a substantial amendment to its consolidated plan in accordance with 24 CFR part 91.

(d) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under § 576.3 apply to grant funds reallocated under this section, except that the State must distribute the reallocated funds:

(1) To private nonprofit organizations and units of general purpose local government in the geographic area in which the metropolitan city or urban county is located;

(2) If funds remain, to private nonprofit organizations and units of general purpose local government located throughout the State.

**§ 576.302 States.**

Grant funds returned by a State will be reallocated as follows:

(a) *Eligible recipients.* HUD will make the funds available:

(1) To metropolitan cities and urban counties in the State that were not allocated funds under § 576.3 because the amount they would have been allocated did not meet the minimum requirement under § 576.3(b)(2);

(2) If funds remain, to county governments in the State other than urban counties;

(3) Then, if funds remain, to metropolitan cities and urban counties in the State that were allocated funds under § 576.3.

(b) *Notification of availability.* HUD will notify eligible recipients of the availability of the funds by a notification letter or **Federal Register** notice, which will specify how the awards of funds will be made.

(c) *Application requirements.* Within 45 days after the date of notification, the eligible recipient must submit to HUD:

(1) A substantial amendment to its approved consolidated plan in accordance with 24 CFR part 91; or

(2) If the eligible recipient does not have an approved consolidated plan, an abbreviated consolidated plan that meets the requirements in the **Federal Register** notice or notification letter from HUD.

(d) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under § 576.3 apply to grant funds reallocated under this section.

**§ 576.303 Territories.**

(a) *General.* Grant funds returned by a territory will be reallocated to other territories, then if funds remain, to States.

(b) *Allocation method.* The funds will be allocated as follows:

(1) For territories, the funds will be allocated among the territories in direct proportion with each territory's share of the total population of all of the eligible territories. If HUD determines that a territory failed to spend its funds in accordance with ESG requirements, then HUD may exclude the territory from the allocation of reallocation amounts under this section.

(2) For States, the funds will be allocated to each State in direct proportion with each State's share of the total amount of funds allocated to States under § 576.3.

(c) *Notification of availability.* HUD will notify eligible recipients of the availability of the fund by a letter or **Federal Register** notice, which will specify how the awards of funds will be made.

(d) *Application requirements.* Within 45 days after the date of notification, the eligible recipient must submit to HUD a substantial amendment to its consolidated plan in accordance with 24 CFR part 91.

(e) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under § 576.3 apply to grant funds reallocated under this section.

**Subpart E—Program Requirements**

**§ 576.400 Area-wide systems coordination requirements.**

(a) *Consultation with Continuums of Care.* The recipient must consult with each Continuum of Care that serves the recipient's jurisdiction in determining how to allocate ESG funds each program year; developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and developing funding, policies, and procedures for

the administration and operation of the HMIS.

(b) *Coordination with other targeted homeless services.* The recipient and its subrecipients must coordinate and integrate, to the maximum extent practicable, ESG-funded activities with other programs targeted to homeless people in the area covered by the Continuum of Care or area over which the services are coordinated to provide a strategic, community-wide system to prevent and end homelessness for that area. These programs include:

(1) Shelter Plus Care Program (24 CFR part 582);

(2) Supportive Housing Program (24 CFR part 583);

(3) Section 8 Moderate Rehabilitation Program for Single Room Occupancy Program for Homeless Individuals (24 CFR part 882);

(4) HUD—Veterans Affairs Supportive Housing (HUD—VASH) (division K, title II, Consolidated Appropriations Act, 2008, Pub. L. 110-161 (2007), 73 FR 25026 (May 6, 2008));

(5) Education for Homeless Children and Youth Grants for State and Local Activities (title VII-B of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*));

(6) Grants for the Benefit of Homeless Individuals (section 506 of the Public Health Services Act (42 U.S.C. 290aa-5));

(7) Healthcare for the Homeless (42 CFR part 51c);

(8) Programs for Runaway and Homeless Youth (Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*));

(9) Projects for Assistance in Transition from Homelessness (part C of title V of the Public Health Service Act (42 U.S.C. 290cc-21 *et seq.*));

(10) Services in Supportive Housing Grants (section 520A of the Public Health Service Act);

(11) Emergency Food and Shelter Program (title III of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11331 *et seq.*));

(12) Transitional Housing Assistance Grants for Victims of Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program (section 40299 of the Violent Crime Control and Law Enforcement Act (42 U.S.C. 13975));

(13) Homeless Veterans Reintegration Program (section 5(a)(1)) of the Homeless Veterans Comprehensive Assistance Act (38 U.S.C. 2021);

(14) Domiciliary Care for Homeless Veterans Program (38 U.S.C. 2043);

(15) VA Homeless Providers Grant and Per Diem Program (38 CFR part 61);

(16) Health Care for Homeless Veterans Program (38 U.S.C. 2031);

(17) Homeless Veterans Dental Program (38 U.S.C. 2062);

(18) Supportive Services for Veteran Families Program (38 CFR part 62); and

(19) Veteran Justice Outreach Initiative (38 U.S.C. 2031).

(c) *System and program coordination with mainstream resources.* The recipient and its subrecipients must coordinate and integrate, to the maximum extent practicable, ESG-funded activities with mainstream housing, health, social services, employment, education, and youth programs for which families and individuals at risk of homelessness and homeless individuals and families may be eligible. Examples of these programs include:

(1) Public housing programs assisted under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (24 CFR parts 905, 968, and 990);

(2) Housing programs receiving tenant-based or project-based assistance under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) (respectively 24 CFR parts 982 and 983);

(3) Supportive Housing for Persons with Disabilities (Section 811) (24 CFR part 891);

(4) HOME Investment Partnerships Program (24 CFR part 92);

(5) Temporary Assistance for Needy Families (TANF) (45 CFR parts 260–265);

(6) Health Center Program (42 CFR part 51c);

(7) State Children's Health Insurance Program (42 CFR part 457);

(8) Head Start (45 CFR chapter XIII, subchapter B);

(9) Mental Health and Substance Abuse Block Grants (45 CFR part 96); and

(10) Services funded under the Workforce Investment Act (29 U.S.C. 2801 *et seq.*).

(d) *Centralized or coordinated assessment.* Once the Continuum of Care has developed a centralized assessment system or a coordinated assessment system in accordance with requirements to be established by HUD, each ESG-funded program or project within the Continuum of Care's area must use that assessment system. The recipient and subrecipient must work with the Continuum of Care to ensure the screening, assessment and referral of program participants are consistent with the written standards required by paragraph (e) of this section. A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system.

(e) *Written standards for providing ESG assistance.* (1) If the recipient is a metropolitan city, urban county, or

territory, the recipient must have written standards for providing Emergency Solutions Grant (ESG) assistance and must consistently apply those standards for all program participants. The recipient must describe these standards in its consolidated plan.

(2) If the recipient is a state:

(i) The recipient must establish and consistently apply, or require that its subrecipients establish and consistently apply, written standards for providing ESG assistance. If the written standards are established by the subrecipients, the recipient may require these written standards to be:

(A) Established for each area covered by a Continuum of Care or area over which the services are coordinated and followed by each subrecipient providing assistance in that area; or

(B) Established by each subrecipient and applied consistently within the subrecipient's program.

(ii) Written standards developed by the state must be included in the state's Consolidated Plan. If the written standards are developed by its subrecipients, the recipient must describe its requirements for the establishment and implementation of these standards in the state's Consolidated Plan.

(3) At a minimum these written standards must include:

(i) Standard policies and procedures for evaluating individuals' and families' eligibility for assistance under Emergency Solutions Grant (ESG);

(ii) Standards for targeting and providing essential services related to street outreach;

(iii) Policies and procedures for admission, diversion, referral, and discharge by emergency shelters assisted under ESG, including standards regarding length of stay, if any, and safeguards to meet the safety and shelter needs of special populations, *e.g.*, victims of domestic violence, dating violence, sexual assault, and stalking; and individuals and families who have the highest barriers to housing and are likely to be homeless the longest;

(iv) Policies and procedures for assessing, prioritizing, and reassessing individuals' and families' needs for essential services related to emergency shelter;

(v) Policies and procedures for coordination among emergency shelter providers, essential services providers, homelessness prevention, and rapid re-housing assistance providers; other homeless assistance providers; and mainstream service and housing providers (see § 576.400(b) and (c) for a list of programs with which ESG-funded

activities must be coordinated and integrated to the maximum extent practicable);

(vi) Policies and procedures for determining and prioritizing which eligible families and individuals will receive homelessness prevention assistance and which eligible families and individuals will receive rapid re-housing assistance;

(vii) Standards for determining what percentage or amount of rent and utilities costs each program participant must pay while receiving homelessness prevention or rapid re-housing assistance;

(viii) Standards for determining how long a particular program participant will be provided with rental assistance and whether and how the amount of that assistance will be adjusted over time; and

(ix) Standards for determining the type, amount, and duration of housing stabilization and/or relocation services to provide to a program participant, including the limits, if any, on the homelessness prevention or rapid re-housing assistance that each program participant may receive, such as the maximum amount of assistance, maximum number of months the program participant receive assistance; or the maximum number of times the program participant may receive assistance.

(f) *Participation in HMIS.* The recipient must ensure that data on all persons served and all activities assisted under ESG are entered into the applicable community-wide HMIS in the area in which those persons and activities are located, or a comparable database, in accordance with HUD's standards on participation, data collection, and reporting under a local HMIS. If the subrecipient is a victim service provider or a legal services provider, it may use a comparable database that collects client-level data over time (*i.e.*, longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS.

#### **§ 576.401 Evaluation of program participant eligibility and needs.**

(a) *Evaluations.* The recipient or its subrecipient must conduct an initial evaluation to determine the eligibility of each individual or family's eligibility for ESG assistance and the amount and types of assistance the individual or family needs to regain stability in permanent housing. These evaluations must be conducted in accordance with the centralized or coordinated

assessment requirements set forth under § 576.400(d) and the written standards established under § 576.400(e).

(b) *Re-evaluations for homelessness prevention and rapid re-housing assistance.* (1) The recipient or subrecipient must re-evaluate the program participant's eligibility and the types and amounts of assistance the program participant needs not less than once every 3 months for program participants receiving homelessness prevention assistance, and not less than once annually for program participants receiving rapid re-housing assistance. At a minimum, each re-evaluation of eligibility must establish that:

(i) The program participant does not have an annual income that exceeds 30 percent of median family income for the area, as determined by HUD; and

(ii) The program participant lacks sufficient resources and support networks necessary to retain housing without ESG assistance.

(2) The recipient or subrecipient may require each program participant receiving homelessness prevention or rapid re-housing assistance to notify the recipient or subrecipient regarding changes in the program participant's income or other circumstances (e.g., changes in household composition) that affect the program participant's need for assistance under ESG. When notified of a relevant change, the recipient or subrecipient must re-evaluate the program participant's eligibility and the amount and types of assistance the program participant needs.

(c) *Annual income.* When determining the annual income of an individual or family, the recipient or subrecipient must use the standard for calculating annual income under 24 CFR 5.609.

(d) *Connecting program participants to mainstream and other resources.* The recipient and its subrecipients must assist each program participant, as needed, to obtain:

(1) Appropriate supportive services, including assistance in obtaining permanent housing, medical health treatment, mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(2) Other Federal, State, local, and private assistance available to assist the program participant in obtaining housing stability, including:

(i) Medicaid (42 CFR chapter IV, subchapter C);

(ii) Supplemental Nutrition Assistance Program (7 CFR parts 271–283);

(iii) Women, Infants and Children (WIC) (7 CFR part 246);

(iv) Federal-State Unemployment Insurance Program (20 CFR parts 601–603, 606, 609, 614–617, 625, 640, 650);

(v) Social Security Disability Insurance (SSDI) (20 CFR part 404);

(vi) Supplemental Security Income (SSI) (20 CFR part 416);

(vii) Child and Adult Care Food Program (42 U.S.C. 1766(t) (7 CFR part 226));

(viii) Other assistance available under the programs listed in § 576.400(c).

(e) *Housing stability case management.* (1) While providing homelessness prevention or rapid re-housing assistance to a program participant, the recipient or subrecipient must:

(i) Require the program participant to meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability; and

(ii) Develop a plan to assist the program participant to retain permanent housing after the ESG assistance ends, taking into account all relevant considerations, such as the program participant's current or expected income and expenses; other public or private assistance for which the program participant will be eligible and likely to receive; and the relative affordability of available housing in the area.

(2) The recipient or subrecipient is exempt from the requirement under paragraph (e)(1)(i) of this section if the Violence Against Women Act of 1994 (42 U.S.C. 13701 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits that recipient or subrecipient from making its shelter or housing conditional on the participant's acceptance of services.

#### § 576.402 Terminating assistance.

(a) *In general.* If a program participant violates program requirements, the recipient or subrecipient may terminate the assistance in accordance with a formal process established by the recipient or subrecipient that recognizes the rights of individuals affected. The recipient or subrecipient must exercise judgment and examine all extenuating circumstances in determining when violations warrant termination so that a program participant's assistance is terminated only in the most severe cases.

(b) *Program participants receiving rental assistance or housing relocation and stabilization services.* To terminate rental assistance or housing relocation and stabilization services to a program participant, the required formal process, at a minimum, must consist of:

(1) Written notice to the program participant containing a clear statement of the reasons for termination;

(2) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(3) Prompt written notice of the final decision to the program participant.

(c) *Ability to provide further assistance.* Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same family or individual.

#### § 576.403 Shelter and housing standards.

(a) *Lead-based paint remediation and disclosure.* 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 in 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to all shelters assisted under ESG program and all housing occupied by program participants.

(b) *Minimum standards for emergency shelters.* Any building for which Emergency Solutions Grant (ESG) funds are used for conversion, major rehabilitation, or other renovation, must meet state or local government safety and sanitation standards, as applicable, and the following minimum safety, sanitation, and privacy standards. Any emergency shelter that receives assistance for shelter operations must also meet the following minimum safety, sanitation, and privacy standards. The recipient may also establish standards that exceed or add to these minimum standards.

(1) *Structure and materials.* The shelter building must be structurally sound to protect residents from the elements and not pose any threat to health and safety of the residents. Any renovation (including major rehabilitation and conversion) carried out with ESG assistance must use Energy Star and WaterSense products and appliances.

(2) *Access.* The shelter must be accessible in accordance with Section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3601 *et seq.*) and implementing regulations at 24 CFR part 100; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131 *et seq.*) and 28 CFR part 35; where applicable.

(3) *Space and security.* Except where the shelter is intended for day use only,

the shelter must provide each program participant in the shelter with an acceptable place to sleep and adequate space and security for themselves and their belongings.

(4) *Interior air quality.* Each room or space within the shelter must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(5) *Water supply.* The shelter's water supply must be free of contamination.

(6) *Sanitary facilities.* Each program participant in the shelter must have access to sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.

(7) *Thermal environment.* The shelter must have any necessary heating/cooling facilities in proper operating condition.

(8) *Illumination and electricity.* The shelter must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the shelter.

(9) *Food preparation.* Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(10) *Sanitary conditions.* The shelter must be maintained in a sanitary condition.

(11) *Fire safety.* There must be at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors must be located near sleeping areas. The fire alarm system must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector. There must also be a second means of exiting the building in the event of fire or other emergency.

(c) *Minimum standards for permanent housing.* The recipient or subrecipient cannot use ESG funds to help a program participant remain or move into housing that does not meet the minimum habitability standards provided in this paragraph (c). The recipient may also establish standards that exceed or add to these minimum standards.

(1) *Structure and materials.* The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.

(2) *Space and security.* Each resident must be provided adequate space and security for themselves and their

belongings. Each resident must be provided an acceptable place to sleep.

(3) *Interior air quality.* Each room or space must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(4) *Water supply.* The water supply must be free from contamination.

(5) *Sanitary facilities.* Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.

(6) *Thermal environment.* The housing must have any necessary heating/cooling facilities in proper operating condition.

(7) *Illumination and electricity.* The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.

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

(9) *Sanitary conditions.* The housing must be maintained in a sanitary condition.

(10) *Fire safety.* (i) There must be a second means of exiting the building in the event of fire or other emergency.

(ii) Each unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

(iii) The public areas of all housing must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

#### § 576.404 Conflicts of interest.

(a) *Organizational conflicts of interest.* The provision of any type or amount of ESG assistance may not be conditioned on an individual's or family's acceptance or occupancy of emergency shelter or housing owned by the recipient, the subrecipient, or a parent or subsidiary of the subrecipient. No

subrecipient may, with respect to individuals or families occupying housing owned by the subrecipient, or any parent or subsidiary of the subrecipient, carry out the initial evaluation required under § 576.401 or administer homelessness prevention assistance under § 576.103.

(b) *Individual conflicts of interest.* For the procurement of goods and services, the recipient and its subrecipients must comply with the codes of conduct and conflict of interest requirements under 24 CFR 85.36 (for governments) and 24 CFR 84.42 (for private nonprofit organizations). For all other transactions and activities, the following restrictions apply:

(1) *Conflicts prohibited.* No person described in paragraph (b)(2) of this section who exercises or has exercised any functions or responsibilities with respect to activities assisted under the ESG program, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under the program, may obtain a financial interest or benefit from an assisted activity; have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity; or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or during the one-year period following his or her tenure.

(2) *Persons covered.* The conflict-of-interest provisions of paragraph (b)(1) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients.

(3) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of this subsection on a case-by-case basis, taking into account the cumulative effects of the criteria in paragraph (b)(3)(ii) of this section, provided that the recipient has satisfactorily met the threshold requirements of paragraph (b)(3)(i) of this section.

(i) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(A) If the recipient or subrecipient is a government, 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

(B) An opinion of the recipient's attorney that the interest for which the

exception is sought would not violate state or local law.

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (b)(3)(i) of this section, HUD must conclude that the exception will serve to further the purposes of the ESG program and the effective and efficient administration of the recipient's or subrecipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

(A) 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;

(B) Whether an opportunity was provided for open competitive bidding or negotiation;

(C) Whether the affected person has withdrawn from his or her functions, responsibilities or the decision-making process with respect to the specific activity in question;

(D) Whether the interest or benefit was present before the affected person was in the position described in paragraph (b)(1) of this section;

(E) Whether undue hardship results to the recipient, the subrecipient, or the person affected, when weighed against the public interest served by avoiding the prohibited conflict; and

(F) Any other relevant considerations.

(c) *Contractors.* All contractors of the recipient or subrecipient must comply with the same requirements that apply to subrecipients under this section.

#### § 576.405 Homeless participation.

(a) Unless the recipient is a State, the recipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policy-making entity of the recipient, to the extent that the entity considers and makes policies and decisions regarding any facilities, services, or other assistance that receive funding under Emergency Solutions Grant (ESG).

(b) If the recipient is unable to meet requirement under paragraph (a), it must instead develop and implement a plan to consult with homeless or formerly homeless individuals in considering and making policies and decisions regarding any facilities, services, or other assistance that receive funding under Emergency Solutions Grant (ESG). The plan must be included in the annual action plan required under 24 CFR 91.220.

(c) To the maximum extent practicable, the recipient or subrecipient must involve homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under ESG, in providing services assisted under ESG, and in providing services for occupants of facilities assisted under ESG. This involvement may include employment or volunteer services.

#### § 576.406 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to receive ESG funds. Neither the Federal Government nor a State or local government receiving funds under ESG shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the ESG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under ESG. If an organization conducts these activities, the activities must be offered separately, in time or location, from the programs or services funded under ESG, and participation must be voluntary for program participants.

(c) Any religious organization that receives ESG funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that the religious organization does not use direct ESG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide ESG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an ESG-funded religious organization retains its authority over its internal governance, and the organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that receives ESG funds shall not, in providing ESG assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(e) ESG funds may not be used for the rehabilitation of structures to the extent

that those structures are used for inherently religious activities. Solutions ESG funds may be used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the ESG program. Where a structure is used for both eligible and inherently religious activities, ESG funds may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to ESG funds. Sanctuaries, chapels, or other rooms that an ESG-funded religious congregation uses as its principal place of worship, however, are ineligible for funded improvements under the program. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(f) If the recipient or a subrecipient that is a local government voluntarily contributes its own funds to supplement federally funded activities, the recipient or subrecipient has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

#### § 576.407 Other Federal requirements.

(a) *General.* The requirements in 24 CFR part 5, subpart A are applicable, including the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a). Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR part 135 apply, except that homeless individuals have priority over other Section 3 residents in accordance with § 576.405(c).

(b) *Affirmative outreach.* The recipient or subrecipient must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. If it is unlikely that the procedures that the recipient or subrecipient intends to use to make known the availability of the facilities, assistance, and services will reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the recipient or subrecipient must establish additional procedures that ensure that those persons are made aware of the facilities, assistance, and services. The recipient and its subrecipients must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures

that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Consistent with Title VI and Executive Order 13166, recipients and subrecipients are also required to take reasonable steps to ensure meaningful access to programs and activities for limited English proficiency (LEP) persons.

(c) *Uniform Administrative Requirements.* The requirements of 24 CFR part 85 apply to the recipient and subrecipients that are units of general purpose local government, except that 24 CFR 85.24 and 85.42 do not apply, and program income is to be used as match under 24 CFR 85.25(g). The requirements of 24 CFR part 84 apply to subrecipients that are private nonprofit organizations, except that 24 CFR 84.23 and 84.53 do not apply, and program income is to be used as the nonfederal share under 24 CFR 84.24(b). These regulations include allowable costs and non-Federal audit requirements.

(d) *Environmental review responsibilities.* (1) Activities under this part are subject to environmental review by HUD under 24 CFR part 50. The recipient shall supply all available, relevant information necessary for HUD to perform for each property any environmental review required by 24 CFR part 50. The recipient also shall carry out mitigating measures required by HUD or select alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement (EIS).

(2) The recipient or subrecipient, or any contractor of the recipient or subrecipient, 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 eligible activities under this part, until HUD has performed an environmental review under 24 CFR part 50 and the recipient has received HUD approval of the property.

(e) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a-5) do not apply to the ESG program.

(f) *Procurement of Recovered Materials.* The recipient and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered

materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**§ 576.408 Displacement, relocation, and acquisition.**

(a) *Minimizing displacement.* Consistent with the other goals and objectives of Emergency Solutions Grant (ESG), the recipient and its subrecipients 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 Emergency Solutions Grant (ESG).

(b) *Temporary relocation not permitted.* No tenant-occupant of housing (a dwelling unit) that is converted into an emergency shelter may be required to relocate temporarily for a project assisted with ESG funds, or be required to move to another unit in the same building/complex. When a tenant moves for a project assisted with ESG funds under conditions that trigger the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601-4655, as described in paragraph (c) of this section, the tenant should be treated as permanently displaced and offered relocation assistance and payments consistent with that paragraph.

(c) *Relocation assistance for displaced persons.* (1) *In general.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with, the URA and 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601 *et seq.*). Whenever possible, minority persons shall be given reasonable opportunities to relocate to comparable and suitable decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require providing a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (See 49 CFR 24.205(c)(2)(ii)(D).) As required by Section 504 of the Rehabilitation Act (29 U.S.C. 794) and

49 CFR part 24, replacement dwellings must also contain the accessibility features needed by displaced persons with disabilities.

(2) *Displaced Person.* (i) For purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm, including any corporation, partnership, or association) 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 the ESG program. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(A) After the owner (or person in control of the site) issues a notice to move permanently from the property or refuses to renew an expiring lease, if the move occurs on or after:

(I) The date of the submission by the recipient (or subrecipient, as applicable) of an application for assistance to HUD (or the recipient, as applicable) that is later approved and funded if the recipient (or subrecipient, as applicable) has site control as evidenced by a deed, sales contract, or option contract to acquire the property; or

(II) The date on which the recipient (or subrecipient, as applicable) selects the applicable site, if the recipient (or subrecipient, as applicable) does not have site control at the time of the application, provided that the recipient (or subrecipient, as applicable) eventually obtains control over the site;

(B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(C) By a tenant-occupant of a dwelling unit and the tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project.

(ii) Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a displaced person if:

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

(B) The person moved into the property after the submission of the

application but, 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), and the fact that the person would not qualify as a "displaced person" (or for any assistance under this section) as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(a)(9)(ii); or

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

(iii) The recipient or subrecipient may, at any time, request that HUD to determine whether a displacement is or would be covered by this rule.

(3) *Initiation of negotiations.* For purposes of determining the type of replacement housing payment assistance to be provided to a displaced person pursuant to this section:

(i) If the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, "initiation of negotiations" means the execution of the agreement between the recipient and the subrecipient or the agreement between the recipient (or subrecipient, as applicable) and the person owning or controlling the property;

(ii) If site control is only evidenced by an option contract to acquire the property, the "initiation of negotiations" does not become effective until the execution of a written agreement that creates a legally enforceable commitment to proceed with the purchase, such as a sales contract.

(d) *Real property acquisition requirements.* The acquisition of real property, whether funded privately or publicly, for a project assisted with Emergency Solutions Grant (ESG) funds is subject to the URA and Federal governmentwide regulations at 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the recipient's (or subrecipient's, if applicable) determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the recipient under 49 CFR 24.10. A low-income person who disagrees with the recipient's determination may submit a written request for review of that determination by the appropriate HUD field office.

## Subpart F—Grant Administration

### § 576.500 Recordkeeping and reporting requirements.

(a) *In general.* The recipient must have policies and procedures to ensure the requirements of this part are met. The policies and procedures must be established in writing and implemented by the recipient and its subrecipients to ensure that ESG funds are used in accordance with the requirements. In addition, sufficient records must be established and maintained to enable the recipient and HUD to determine whether ESG requirements are being met.

(b) *Homeless status.* The recipient must maintain and follow written intake procedures to ensure compliance with the homeless definition in § 576.2. The procedures must require documentation at intake of the evidence relied upon to establish and verify homeless status. The procedures must establish the order of priority for obtaining evidence as third-party documentation first, intake worker observations second, and certification from the person seeking assistance third. However, lack of third-party documentation must not prevent an individual or family from being immediately admitted to emergency shelter, receiving street outreach services, or being immediately admitted to shelter or receiving services provided by a victim service provider. Records contained in an HMIS or comparable database used by victim service or legal service providers are acceptable evidence of third-party documentation and intake worker observations if the HMIS retains an auditable history of all entries, including the person who entered the data, the date of entry, and the change made; and if the HMIS prevents overrides or changes of the dates on which entries are made.

(1) If the individual or family qualifies as homeless under paragraph (1)(i) or (ii) of the homeless definition in § 576.2, acceptable evidence includes a written observation by an outreach worker of the conditions where the individual or family was living, a written referral by another housing or service provider, or a certification by the individual or head of household seeking assistance.

(2) If the individual qualifies as homeless under paragraph (1)(iii) of the homeless definition in § 576.2, because he or she resided in an emergency shelter or place not meant for human habitation and is exiting an institution where he or she resided for 90 days or less, acceptable evidence includes the evidence described in paragraph (b)(1) of this section and one of the following:

(i) Discharge paperwork or a written or oral referral from a social worker, case manager, or other appropriate official of the institution, stating the beginning and end dates of the time residing in the institution. All oral statements must be recorded by the intake worker; or

(ii) Where the evidence in paragraph (b)(2)(i) of this section is not obtainable, a written record of the intake worker's due diligence in attempting to obtain the evidence described in paragraph (b)(2)(i) and a certification by the individual seeking assistance that states he or she is exiting or has just exited an institution where he or she resided for 90 days or less.

(3) If the individual or family qualifies as homeless under paragraph (2) of the homeless definition in § 576.2, because the individual or family will imminently lose their housing, the evidence must include:

(i)(A) A court order resulting from an eviction action that requires the individual or family to leave their residence within 14 days after the date of their application for homeless assistance; or the equivalent notice under applicable state law, a Notice to Quit, or a Notice to Terminate issued under state law;

(B) For individuals and families whose primary nighttime residence is a hotel or motel room not paid for by charitable organizations or federal, state, or local government programs for low-income individuals, evidence that the individual or family lacks the resources necessary to reside there for more than 14 days after the date of application for homeless assistance; or

(C) An oral statement by the individual or head of household that the owner or renter of the housing in which they currently reside will not allow them to stay for more than 14 days after the date of application for homeless assistance. The intake worker must record the statement and certify that it was found credible. To be found credible, the oral statement must either: (I) be verified by the owner or renter of the housing in which the individual or family resides at the time of application for homeless assistance and documented by a written certification by the owner or renter or by the intake worker's recording of the owner or renter's oral statement; or (II) if the intake worker is unable to contact the owner or renter, be documented by a written certification by the intake worker of his or her due diligence in attempting to obtain the owner or renter's verification and the written certification by the individual or head of



household seeking assistance that his or her statement was true and complete;

(ii) Certification by the individual or head of household that no subsequent residence has been identified; and

(iii) Certification or other written documentation that the individual or family lacks the resources and support networks needed to obtain other permanent housing.

(4) If the individual or family qualifies as homeless under paragraph (3) of the homeless definition in § 576.2, because the individual or family does not otherwise qualify as homeless under the homeless definition but is an unaccompanied youth under 25 years of age, or homeless family with one or more children or youth, and is defined as homeless under another Federal statute or section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), the evidence must include:

(i) For paragraph (3)(i) of the homeless definition in § 576.2, certification of homeless status by the local private nonprofit organization or state or local governmental entity responsible for administering assistance under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*), the Head Start Act (42 U.S.C. 9831 *et seq.*), subtitle N of the Violence Against Women Act of 1994 (42 U.S.C. 14043e *et seq.*), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*), section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*), as applicable;

(ii) For paragraph (3)(ii) of the homeless definition in § 576.2, referral by a housing or service provider, written observation by an outreach worker, or certification by the homeless individual or head of household seeking assistance;

(iii) For paragraph (3)(iii) of the homeless definition in § 576.2, certification by the individual or head of household and any available supporting documentation that the individual or family moved two or more times during the 60-day period immediately preceding the date of application for homeless assistance, including: recorded statements or records obtained from each owner or renter of housing, provider of shelter or housing, or social worker, case worker, or other appropriate official of a hospital or institution in which the individual or family resided; or, where these statements or records are unobtainable, a written record of the intake worker's due diligence in attempting to obtain these statements or records. Where a

move was due to the individual or family fleeing domestic violence, dating violence, sexual assault, or stalking, then the intake worker may alternatively obtain a written certification from the individual or head of household seeking assistance that they were fleeing that situation and that they resided at that address; and

(iv) For paragraph (3)(iv) of the homeless definition in § 576.2, written diagnosis from a professional who is licensed by the state to diagnose and treat that condition (or intake staff-recorded observation of disability that within 45 days of date of the application for assistance is confirmed by a professional who is licensed by the state to diagnose and treat that condition); employment records; department of corrections records; literacy, English proficiency tests; or other reasonable documentation of the conditions required under paragraph (3)(iv) of the homeless definition.

(5) If the individual or family qualifies under paragraph (4) of the homeless definition in § 576.2, because the individual or family is fleeing domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions related to violence, then acceptable evidence includes an oral statement by the individual or head of household seeking assistance that they are fleeing that situation, that no subsequent residence has been identified and that they lack the resources or support networks, *e.g.*, family, friends, faith-based or other social networks, needed to obtain other housing. If the individual or family is receiving shelter or services provided by a victim service provider, the oral statement must be documented by either a certification by the individual or head of household; or a certification by the intake worker. Otherwise, the oral statement that the individual or head of household seeking assistance has not identified a subsequent residence and lacks the resources or support networks, *e.g.*, family, friends, faith-based or other social networks, needed to obtain housing must be documented by a certification by the individual or head of household that the oral statement is true and complete, and, where the safety of the individual or family would not be jeopardized, the domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening condition must be verified by a written observation by the intake worker or a written referral by a housing or service provider, social worker, legal assistance provider, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or any

other organization from whom the individual or head of household has sought assistance for domestic violence, dating violence, sexual assault, or stalking. The written referral or observation need only include the minimum amount of information necessary to document that the individual or family is fleeing, or attempting to flee domestic violence, dating violence, sexual assault, and stalking.

(c) *At risk of homelessness status.* For each individual or family who receives Emergency Solutions Grant (ESG) homelessness prevention assistance, the records must include the evidence relied upon to establish and verify the individual or family's "at risk of homelessness" status. This evidence must include an intake and certification form that meets HUD specifications and is completed by the recipient or subrecipient. The evidence must also include:

(1) If the program participant meets the criteria under paragraph (1) of the "at risk of homelessness" definition in § 576.2:

(i) The documentation specified under this section for determining annual income;

(ii) The program participant's certification on a form specified by HUD that the program participant has insufficient financial resources and support networks; *e.g.*, family, friends, faith-based or other social networks, immediately available to attain housing stability and meets one or more of the conditions under paragraph (1)(iii) of the definition of "at risk of homelessness" in § 576.2;

(iii) The most reliable evidence available to show that the program participant does not have sufficient resources or support networks; *e.g.*, family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the "homeless" definition. Acceptable evidence includes:

(A) Source documents (*e.g.*, notice of termination from employment, unemployment compensation statement, bank statement, health-care bill showing arrears, utility bill showing arrears);

(B) To the extent that source documents are unobtainable, a written statement by the relevant third party (*e.g.*, former employer, public administrator, relative) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party that the applicant meets one or both of

the criteria under paragraph (1)(ii) of the definition of "at risk of homelessness" in § 576.2; or

(C) To the extent that source documents and third-party verification are unobtainable, a written statement by the recipient's or subrecipient's intake staff describing the efforts taken to obtain the required evidence; and

(iv) The most reliable evidence available to show that the program participant meets one or more of the conditions under paragraph (1)(iii) of the definition of "at risk of homelessness" in § 576.2. Acceptable evidence includes:

(A) Source documents that evidence one or more of the conditions under paragraph (1)(iii) of the definition (e.g., eviction notice, notice of termination from employment, bank statement);

(B) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., former employer, owner, primary leaseholder, public administrator, hotel or motel manager) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party that the applicant meets one or more of the criteria under paragraph (1)(iii) of the definition of "at risk of homelessness"; or

(C) To the extent that source documents and third-party verification are unobtainable, a written statement by the recipient's or subrecipient's intake staff that the staff person has visited the applicant's residence and determined that the applicant meets one or more of the criteria under paragraph (1)(iii) of the definition or, if a visit is not practicable or relevant to the determination, a written statement by the recipient's or subrecipient's intake staff describing the efforts taken to obtain the required evidence; or

(2) If the program participant meets the criteria under paragraph (2) or (3) of the "at risk of homelessness" definition in § 576.2, certification of the child or youth's homeless status by the agency or organization responsible for administering assistance under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*), the Head Start Act (42 U.S.C. 9831 *et seq.*), subtitle N of the Violence Against Women Act of 1994 (42 U.S.C. 14043e *et seq.*), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*), section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*), as applicable.

(d) *Determinations of ineligibility.* For each individual and family determined ineligible to receive Emergency Solutions Grant (ESG) assistance, the record must include documentation of the reason for that determination.

(e) *Annual income.* For each program participant who receives homelessness prevention assistance, or who receives rapid re-housing assistance longer than one year, the following documentation of annual income must be maintained:

(1) Income evaluation form containing the minimum requirements specified by HUD and completed by the recipient or subrecipient; and

(2) Source documents for the assets held by the program participant and income received over the most recent period for which representative data is available before the date of the evaluation (e.g., wage statement, unemployment compensation statement, public benefits statement, bank statement);

(3) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period for which representative data is available; or

(4) To the extent that source documents and third party verification are unobtainable, the written certification by the program participant of the amount of income the program participant received for the most recent period representative of the income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.

(f) *Program participant records.* In addition to evidence of homeless status or "at risk of homelessness" status, as applicable, records must be kept for each program participant that document:

(1) The services and assistance provided to that program participant, including, as applicable, the security deposit, rental assistance, and utility payments made on behalf of the program participant;

(2) Compliance with the applicable requirements for providing services and assistance to that program participant under the program components and eligible activities provisions at § 576.101 through § 576.106, the provision on determining eligibility and amount and type of assistance at § 576.401(a) and (b), and the provision on using

appropriate assistance and services at § 576.401(d) and (e); and

(3) Where applicable, compliance with the termination of assistance requirement in § 576.402.

(g) *Centralized or coordinated assessment systems and procedures.* The recipient and its subrecipients must keep documentation evidencing the use of, and written intake procedures for, the centralized or coordinated assessment system(s) developed by the Continuum of Care(s) in accordance with the requirements established by HUD.

(h) *Rental assistance agreements and payments.* The records must include copies of all leases and rental assistance agreements for the provision of rental assistance, documentation of payments made to owners for the provision of rental assistance, and supporting documentation for these payments, including dates of occupancy by program participants.

(i) *Utility allowance.* The records must document the monthly allowance for utilities (excluding telephone) used to determine compliance with the rent restriction.

(j) *Shelter and housing standards.* The records must include documentation of compliance with the shelter and housing standards in § 576.403, including inspection reports.

(k) *Emergency shelter facilities.* The recipient must keep records of the emergency shelters assisted under the ESG program, including the amount and type of assistance provided to each emergency shelter. As applicable, the recipient's records must also include documentation of the value of the building before the rehabilitation of an existing emergency shelter or after the conversion of a building into an emergency shelter and copies of the recorded deed or use restrictions.

(l) *Services and assistance provided.* The recipient must keep records of the types of essential services, rental assistance, and housing stabilization and relocation services provided under the recipient's program and the amounts spent on these services and assistance. The recipient and its subrecipients that are units of general purpose local government must keep records to demonstrate compliance with the maintenance of effort requirement, including records of the unit of the general purpose local government's annual budgets and sources of funding for street outreach and emergency shelter services.

(m) *Coordination with Continuum(s) of Care and other programs.* The recipient and its subrecipients must document their compliance with the

requirements of § 576.400 for consulting with the Continuum(s) of Care and coordinating and integrating ESG assistance with programs targeted toward homeless people and mainstream service and assistance programs.

(n) *HMIS*. The recipient must keep records of the participation in HMIS or a comparable database by all projects of the recipient and its subrecipients.

(o) *Matching*. The recipient must keep records of the source and use of contributions made to satisfy the matching requirement in § 576.201. The records must indicate the particular fiscal year grant for which each matching contribution is counted. The records must show how the value placed on third-party, noncash contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocation of regular personnel costs.

(p) *Conflicts of interest*. The recipient and its subrecipients must keep records to show compliance with the organizational conflicts-of-interest requirements in § 576.404(a), a copy of the personal conflicts of interest policy or codes of conduct developed and implemented to comply with the requirements in § 576.404(b), and records supporting exceptions to the personal conflicts of interest prohibitions.

(q) *Homeless participation*. The recipient must document its compliance with the homeless participation requirements under § 576.405.

(r) *Faith-based activities*. The recipient and its subrecipients must document their compliance with the faith-based activities requirements under § 576.406.

(s) *Other Federal requirements*. The recipient and its subrecipients must document their compliance with the Federal requirements in § 576.407, as applicable, including:

(1) Records demonstrating compliance with the nondiscrimination and equal opportunity requirements under § 576.407(a), including data concerning race, ethnicity, disability status, sex, and family characteristics of persons and households who are applicants for, or program participants in, any program or activity funded in whole or in part with ESG funds and the affirmative outreach requirements in § 576.407(b).

(2) Records demonstrating compliance with the uniform administrative requirements in 24 CFR part 85 (for governments) and 24 CFR part 84 (for nonprofit organizations).

(3) Records demonstrating compliance with the environmental review

requirements, including flood insurance requirements.

(4) Certifications and disclosure forms required under the lobbying and disclosure requirements in 24 CFR part 87.

(t) *Relocation*. The records must include documentation of compliance with the displacement, relocation, and acquisition requirements in § 576.408.

(u) *Financial records*. (1) The recipient must retain supporting documentation for all costs charged to the ESG grant.

(2) The recipient and its subrecipients must keep documentation showing that ESG grant funds were spent on allowable costs in accordance with the requirements for eligible activities under § 576.101-§ 576.109 and the cost principles in OMB Circulars A-87 (2 CFR part 225) and A-122 (2 CFR part 230).

(3) The recipient and its subrecipients must retain records of the receipt and use of program income.

(4) The recipient must keep documentation of compliance with the expenditure limits in § 576.100 and the expenditure deadline in § 576.203.

(v) *Subrecipients and contractors*. (1) The recipient must retain copies of all solicitations of and agreements with subrecipients, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable. If the recipient is a State, the recipient must keep records of each recapture and distribution of recaptured funds under § 576.501.

(2) The recipient and its subrecipients must retain copies of all procurement contracts and documentation of compliance with the procurement requirements in 24 CFR 85.36 and 24 CFR 84.40-84.48.

(3) The recipient must ensure that its subrecipients comply with the recordkeeping requirements specified by the recipient and HUD notice or regulations.

(w) *Other records specified by HUD*. The recipient must keep other records specified by HUD.

(x) *Confidentiality*. (1) The recipient and its subrecipients must develop and implement written procedures to ensure:

(i) All records containing personally identifying information (as defined in HUD's standards for participation, data collection, and reporting in a local HMIS) of any individual or family who applies for and/or receives ESG assistance will be kept secure and confidential;

(ii) The address or location of any domestic violence, dating violence, sexual assault, or stalking shelter project assisted under the ESG will not be made public, except with written authorization of the person responsible for the operation of the shelter; and

(iii) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of the recipient or subrecipient and consistent with state and local laws regarding privacy and obligations of confidentiality.

(2) The confidentiality procedures of the recipient and its subrecipients must be in writing and must be maintained in accordance with this section.

(y) *Period of record retention*. All records pertaining to each fiscal year of ESG funds must be retained for the greater of 5 years or the period specified below. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(1) Documentation of each program participant's qualification as a family or individual at risk of homelessness or as a homeless family or individual and other program participant records must be retained for 5 years after the expenditure of all funds from the grant under which the program participant was served;

(2) Where ESG funds are used for the renovation of an emergency shelter involves costs charged to the ESG grant that exceed 75 percent of the value of the building before renovation, records must be retained until 10 years after the date that ESG funds are first obligated for the renovation; and

(3) Where ESG funds are used to convert a building into an emergency shelter and the costs charged to the ESG grant for the conversion exceed 75 percent of the value of the building after conversion, records must be retained until 10 years after the date that ESG funds are first obligated for the conversion.

(z) *Access to records*. (1) *Federal government rights*. Notwithstanding the confidentiality procedures established under paragraph (w) of this section, HUD, the HUD Office of the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to all books, documents, papers, or other records of the recipient and its subrecipients that are pertinent to the ESG grant, in order to make audits, examinations, excerpts, and transcripts. These rights of access are not limited to the required retention period but last as long as the records are retained.

(2) *Public rights.* The recipient must provide citizens, public agencies, and other interested parties with reasonable access (consistent with state and local laws regarding privacy and obligations of confidentiality and the confidentiality requirements in this part) to records regarding any uses of ESG funds the recipient received during the preceding 5 years.

(aa) *Reports.* The recipient must collect and report data on its use of ESG funds in the Integrated Disbursement and Information System (IDIS) and other reporting systems, as specified by HUD. The recipient must also comply with the reporting requirements in 24 CFR parts 85 and 91 and the reporting requirements under the Federal Funding Accountability and Transparency Act of 2006, (31 U.S.C. 6101 note), which are set forth in Appendix A to 2 CFR part 170.

#### § 576.501 Enforcement.

##### (a) *Performance reviews.*

(1) HUD will review the performance of each recipient in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and, when appropriate, its subrecipients, as well as information from onsite monitoring, audit reports, and information from IDIS and HMIS. Where applicable, HUD may also consider relevant information pertaining to the recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the recipient.

(2) If HUD determines preliminarily that the recipient or one of its subrecipients has not complied with an ESG program requirement, HUD will give the recipient notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD and on the basis of substantial facts and data, that the recipient has complied with Emergency Solutions Grant (ESG) requirements. HUD may change the method of payment to require the recipient to obtain HUD's prior approval each time the recipient draws down Emergency Solutions Grant (ESG) funds. To obtain prior approval, the recipient may be required to manually submit its payment requests and supporting documentation to HUD in order to show that the funds to be drawn down will be expended on

eligible activities in accordance with all ESG program requirements.

(3) If the recipient fails to demonstrate to HUD's satisfaction that the activities were carried out in compliance with ESG program requirements, HUD will take one or more of the remedial actions or sanctions specified in paragraph (b) of this section.

(b) *Remedial actions and sanctions.* Remedial actions and sanctions for a failure to meet an ESG program requirement will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may instruct the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with ESG requirements, including:

(i) Preparing and following a schedule of actions for carrying out activities affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities likely to be affected by the noncompliance, before expending ESG funds for the activities;

(iv) Reprogramming ESG funds that have not yet been expended from affected activities to other eligible activities;

(v) Suspending disbursement of ESG funds for some or all activities;

(vi) Reducing or terminating the remaining grant of a subrecipient and reallocating those funds to other subrecipients; and

(vii) Making matching contributions before or as draws are made from the recipient's ESG grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD deems it necessary to preclude the further expenditure of funds for affected activities.

(4) HUD may remove the recipient from participation in reallocations of funds under subpart D of this part.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse its line of credit in an amount equal to the funds used for the affected activities.

(7) HUD may reduce or terminate the remaining grant of a recipient and

reallocate those funds to other recipients in accordance with subpart D of this part.

(8) HUD may condition a future grant.

(9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with an ESG program requirement or its subgrant agreement, the recipient must take appropriate actions, as prescribed for HUD in paragraphs (a) and (b) of this section. If the recipient is a State and funds become available as a result of an action under this section, the recipient must reallocate those funds to other subrecipients as soon as practicable. If the recipient is a unit of general purpose local government of territory, it must either reallocate those funds to other subrecipients or reprogram the funds for other activities to be carried out by the recipient as soon as practicable. The recipient must amend its Consolidated Plan in accordance with its citizenship participation plan if funds become available and are reallocated or reprogrammed under this section. The reallocated or reprogrammed funds must be used by the expenditure deadline in § 576.203.

Dated: November 9, 2011.

**Mercedes Márquez,**

*Assistant Secretary for Community Planning and Development.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 91, 582, and 583

[Docket No. FR-5333-F-02]

RIN 2506-AC26

### Homeless Emergency Assistance and Rapid Transition to Housing: Defining "Homeless"

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Final rule.

**SUMMARY:** The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), enacted into law on May 20, 2009, consolidates three of the separate homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act into a single grant program, revises the Emergency Shelter Grants program and renames the program the Emergency Solutions Grants program,

**Department of Housing and Community Development**  
**Emergency Solutions Grants Program**  
**State Regulations**  
**California Code of Regulations Title 25, Division 1, Chapter 7,**  
**Subchapter 20**

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## **§ 8400. Purpose and Scope.**

(a) These regulations establish procedures for the State of California ("State") administration of federal funds from the Emergency Solutions Grants Program (the "ESG" or "ESG program") and establish policies and procedures for use of these funds to meet the purposes contained in Title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. sections 11371-11378) as amended by S.896 The Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009 (sections 103-105 and 401-418) (the "Act").

(b) The Act, and any amendments thereto, provide for State administration of the ESG program. These regulations set forth policies and procedures governing the administration of these funds within the California Department of Housing and Community Development (the "Department"). In addition to these regulations, ESG program participants will comply with the regulations applicable to the ESG program as indicated below and as set forth in 24 C.F.R. Part 58, and 24 C.F.R. Part 576. Additionally, nonprofit organizations funded by the ESG program shall comply with the requirements of 24 C.F.R. Part 84 as though they were subrecipients pursuant to 24 C.F.R. Part 84. Also, Units of general local government funded by the ESG program shall comply with the requirements of 24 C.F.R. Part 85. In the event that any federal or state laws or regulations, including without limitation regulations by the Department of Housing and Urban Development ("HUD") add, delete, modify, or otherwise change any statutory or regulatory requirements concerning the use or administration of these funds, ESG program participants shall comply with such requirements, as amended.

(c) References to section numbers in the 8400 series in the following sections are references to these Emergency Solutions Grants Program Regulations beginning at 24 Cal Code Regulations, title 25, section 8400 et seq.

(d) In the event of a conflict between the State ESG Regulations and 24 C.F.R. Part 58, 24 C.F.R. Part 84, 24 C.F.R. Part 85, or the ESG regulations at 24 C.F.R. Part 576, the federal regulations shall prevail.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 42 U.S.C. Sections 11371-11378 (sections 103-105 and 401-418); 24 C.F.R. Part 58; 24 C.F.R. Part 84; 24 C.F.R. Part 85; and 24 C.F.R. Part 576.

## **§ 8401. Definitions.**

In addition to the definitions found in 42 U.S.C. section 11371 (section 411), and 24 C.F.R. section 576.3, the following definitions shall apply to this subchapter

"Action Plan" means the annual plan required by HUD pursuant to 24 CFR Part 91 governing the distribution and use of ESG funds allocated by HUD to states and local governments.

“Administrative activities” is defined at 24 CFR 576.108.

“Administrative Entity” means a Unit of general purpose local government approved by the Department pursuant to section 8403 to administer State ESG funds.

“Balance of State Allocation” means funds allocated pursuant to the requirements of sections 8404 through 8407.

“City” is defined at 42 U.S.C. section 5302(a)(5).

“Continuum of Care” is defined at 24 CFR 576.2.

“Continuum of Care Allocation” means the ESG funds pursuant to the requirements of section 8403.

“Continuum of Care Service Area” means the entire geographic area within the boundaries of an Eligible Continuum of Care.

“Coordinated Entry” means the system of program access, needs assessment and prioritization developed by a Continuum of Care pursuant to 24 CFR 576.400 (d), and associated HUD requirements and guidance. This term is also known as “Coordinated Entry System”, “Coordinated Assessment” or “Centralized Assessment”.

“Core Practices” means the practices and protocols of delivering ESG Eligible activities as specified in section 8409.

“Department” means the California Department of Housing and Community Development.

“ESG” is the acronym for the Emergency Solutions Grants program.

“Eligible activities” mean those activities upon which ESG funds may be expended as described in section 8408.

“Eligible Continuum of Care” means a Continuum of Care in the State that has within its Service Area at least one Nonentitlement area. These entities must also meet the requirements of sections 8403 (d) or 8404 (a).

“Eligible organization” means a Private nonprofit organization or a Unit of general purpose local government that provides, or contracts with Private nonprofit organizations to provide, Eligible activities.

“Emergency shelter” is defined under 24 CFR 576.2.

"ESG Entitlement" means a Unit of general purpose local government that meets one of the following: (1) is a Metropolitan City or Urban County as defined under 42 USC 5302 that receives an allocation of ESG funds directly from HUD; (2) is in a Nonentitlement area that has entered into an agreement with an Urban County to participate in that locality's ESG program, or (3) is a Metropolitan City or Urban County that have entered into a joint agreement with one another to receive and administer a combined direct allocation of ESG funds from HUD.

"ESG Entitlement Area" or "Entitlement Area" means the geography within an ESG Entitlement's boundaries.

"ESG Nonentitlement" means a Unit of general purpose local government that does not receive ESG funding directly from HUD and is not participating as an ESG Entitlement.

"ESG Nonentitlement Area" means the geography within an ESG Nonentitlement's boundaries.

"Governing Board" - for nonprofit applicants this term includes board of directors; for county local government applicants this term includes county board of supervisors; for City local government applicants this term includes City council.

"HMIS" means Homeless Management Information System as defined under 24 CFR 576.2. Use of the term "HMIS" within these regulations shall also include use of a comparable database, as permitted by HUD under 24 CFR Part 576.

"Homeless" is defined at 24 CFR 576.2.

"Homelessness prevention activities" means activities or programs described in 24 CFR 576.103.

"HUD" means the United States Department of Housing and Urban Development.

"NOFA" is the acronym for a "Notice of Funding Availability" described in section 8405.

"Nonentitlement area" is defined at 42 U.S.C. 5302.

"Operations" means the category of FESG activities that includes shelter maintenance, operation, rent, repairs, security, fuel, equipment, insurance, utilities, food and furnishings.

"Private nonprofit organization" is defined at 24 CFR 576.2.

"Rapid Re-housing" means the activities set forth in 24 CFR 576.104.

"Rank" means the order of eligible applications for funding based only on the rating established pursuant to the applicable grant selection criteria.



“Rating” means the process by which eligible applications are evaluated and given an overall numerical or relative value based on the numerical or relative value(s) assigned to each of the identified selection criteria described in the NOFA to which the applicant is responding.

“Service Area” has the same meaning as the term “Continuum of Care Service Area”.

“Site” means one or more facilities where the program(s) is being carried out.

“Site Control” means the legal right to occupy and use the Site, as evidenced by such things as:

- (1) a deed demonstrating ownership in fee title;
- (2) a lease demonstrating a leasehold interest in the Site and its improvements for at least the term of the ESG grant,
- (3) an enforceable option to purchase or lease a site provided that such option will be for at least the term of the ESG grant or
- (4) For rotating shelter programs, site control may include other evidence provided by the applicant granting permission to use the site(s). Such evidence must be approved by the Department in writing prior to the deadline for submission of the ESG application stated in the applicable NOFA.

“Standard Agreement” means the contract entered into by the Department and the ESG Subrecipient setting forth the basic terms and conditions governing the award of ESG funds.

“Subrecipient” means an entity that enters into a Standard Agreement with the Department for ESG funds.

“Subrecipient of the Administrative Entity” means an entity that enters into a written agreement with the Administrative Entity to implement Eligible activities with ESG funds.

“Unit of general purpose local government” is defined at 24 CFR section 576.2.

“Written Standards” means the standards, policies, and procedures adopted by a Continuum of Care for providing ESG-eligible activities pursuant to the requirements of 24 CFR 576.400 (e).

Authority cited: Section 50406(n), Health and Safety Code. Reference: 42 U.S.C. 5302, 42 U.S.C. 11302, 42 U.S.C. 11371, 42 U.S.C. 11373, 24 C.F.R. 576.3 and 24 C.F.R. 576.400.

## **§ 8402. Allocation of Funds**

(a) The Department will accept and use an amount of the State's annual allocation of ESG funds for Administrative activities not to exceed the amount permitted under 24 CFR 576.100(c). Pursuant to 24 CFR 576.108 (b), a portion of this amount will be shared with ESG Subrecipients that are Units of general purpose local government. The amounts available for Administrative activities will be announced in the Action Plan and annual NOFA.

(b) After deducting for State Administrative activities, the remaining ESG funds will be made available for Eligible activities through two allocations according to the formula set forth in subsection (c):

(1) the Continuum of Care Allocation to be administered in accordance with section 8403; and

(2) the Balance of State Allocation to be administered in accordance with sections 8404 through 8407.

(c) The amount of funds available to Service Areas within the Continuum of Care Allocation and the Balance of State Allocation will be based on the amount of ESG funds available in any given year using the following formula factors adjusted biannually using the most recent data available.

(1) The point-in-time count published by HUD which includes both sheltered and unsheltered homeless persons prorated to reflect the total population of the ESG Nonentitlement Areas within each Continuum of Care Service Area as published by the Census Bureau;

(2) The number of extremely low-income renter households within the ESG Nonentitlement Areas of each Continuum of Care Service Area that are paying more than 50 percent of their income for rent using HUD's Comprehensive Housing Affordability Strategy dataset;

(3) The number of persons below the federal poverty line within the ESG Nonentitlement Areas of each Continuum of Care Service Area divided by the total population within the ESG Nonentitlement Areas of each Continuum of Care Service Area. This factor will be double-weighted. Data for these factors will be obtained from the Census Bureau.

(4) Notwithstanding subsections (1) through (3) above, the Department may occasionally adjust the weighting of these factors and sources of information to reflect changes in the availability of data sources and to use the best information available. Any changes to the factors or weighting of the formula will be proposed in the Action Plan.

(d) The amount of funds available to a Service Area under the formula may be capped in order to achieve a greater geographic balance of the funds among all eligible Continuums of Care of the State. Any cap on amounts available under the formula will be proposed in the Action Plan.

(e) In any year where the Department is issuing a NOFA, by January 31st, the Department will notify Eligible Continuums of Care and ESG Entitlement Areas within an Eligible Continuum of Care of the following:

(1) Service Areas and preliminary funding amounts within the Continuum of Care Allocation and the Balance of State Allocation

(2) In determining the Continuum of Care Allocation, the Department will issue the following:

(A) A solicitation of interest for Administrative Entities, pursuant to the requirements of section 8403, which includes timeframes for applications and approval and a solicitation of interest to administer funds for geographically contiguous Continuums of Care that are eligible to receive funds under the Balance of State Allocation; and

(B) Where there is no intent to apply to be an Administrative Entity, a solicitation of interest to apply for Rapid Re-housing activities pursuant to 8403(a) (2).

(3) In determining the Balance of State Allocation, the Department will issue the following:

(A) A solicitation of interest from Continuums of Care to participate in Balance of State Allocation regional competition pursuant to section 8404(a(4)), and

(B) A solicitation of interest in applying for Rapid Rehousing activities pursuant to 8404(a) (2).

Authority cited: Section 50406(n), Health and Safety Code.

Reference: 24 C.F.R. Section 576.100 and 24 C.F.R. 576.108.

**§ 8403. Continuum of Care Allocation**

(a) Funding for a Service Area in the Continuum of Care Allocation shall be administered by an approved Administrative Entity in the Service Area in which it is located pursuant to the requirements of this subdivision.

(1) Notwithstanding the location requirement in subdivision (a) above, an approved Administrative Entity shall also be eligible to administer funds for geographically contiguous Continuums of Care that are eligible to receive funds under the Balance of State Allocation and that agree to administration of their allocation by the Administrative Entity. One hundred percent of both allocations shall be used for Rapid Rehousing activities pursuant to the requirements of sections 8408 and 8409.

(2) In the absence of an approved Administrative Entity for a Service Area otherwise eligible under the Continuum of Care Allocation, a Continuum of Care may recommend a provider to apply for Rapid Rehousing activities

(A) In making this recommendation, the Continuum of Care shall use a process which is

1. Fair and open and avoids conflicts of interest in project selection, implementation, and the administration of funds;
2. Considers selection criteria reasonably consistent with the criteria used by the Department in section 8407;
3. Complies with the requirements of sections 8408 and 8409;
4. Incorporates reasonable performance standards as set forth in the Action Plan based on HUD requirements and guidance. If the applicant has not implemented the proposed activity or similar activity within the past three years, the Continuum of Care shall work with the funded applicant to ensure it meets reasonable performance standards specified in the Action Plan in the contract year.
5. Complies with federal ESG requirements
6. Considers any other practices promoted or required by HUD.

(B) If recommending a Private nonprofit organization for these funds, the nonprofit organization must submit a Certification of Local Government Approval to undertake ESG-funded activities from each Unit of Local Government where the activity is carried out pursuant to section 414 [42 U.S.C. section 11373(c)];

(C) Documentation of matching contributions must be maintained pursuant to the requirements of 24 CFR 576.201.

(D) The Department may request information from the Continuum of Care or Subrecipient which demonstrates compliance with the above requirements, and the Continuum of Care or Subrecipient shall provide such information.

(E) The provider shall enter into a Standard Agreement with the Department for Rapid Re-housing funds awarded pursuant to Subdivision (a) (2) above;

(F) The Action Plan will propose minimum and maximum percentages of a Service Area allocation that shall be designated for a Rapid Rehousing application.

(b) The Department will use the formula in section 8402 to reallocate any remaining funds that have not been conditionally reserved or allocated pursuant to the requirements of subdivision (a) to participating Service Areas in the Continuum of Care and Balance of State Allocations.

(c) The Department will evaluate applications from Units of general purpose local government in ESG Entitlement Areas recommended by Continuums of Care to determine eligibility and approve the designation of qualified Administrative Entities on a bi-annual basis.

(1) The application must demonstrate eligibility of the Continuum of Care and Administrative Entity pursuant to the requirements of this section and describe the collaboration among the two entities and the process for allocating funds to activities, and selecting providers.

(A) If proposing to also administer funds in a geographically contiguous Continuum of Care Service Area pursuant to subdivision (a) (1) above, the application shall also include evidence of agreement between geographically contiguous Continuums of Care to administer Rapid Re-Housing with 100 percent of both allocations.

(B) Applications from a continuing Administrative Entity shall include HMIS project-level and system-level performance data for the prior two years. After the initial award period, this data will be set forth in the State's Action Plan for the prior fiscal year. If performance remains in the lowest quartile compared to all participating Service Areas in the Continuum of Care allocation, the Department will work collaboratively with the Administrative Entity to develop performance improvement plans which will be incorporated into the written agreements required under subdivisions (f) and (j).

(d) To be eligible to participate in the Continuum of Care Allocation, the Service Area shall have an Eligible Continuum of Care that meets all of the following criteria:

- (1) It has received Continuum of Care funding from HUD in at least one of the past two federal competitions or has registered with HUD to apply for funding in the next competition;
- (2) It has conflict of interest policies in place that meet HUD requirements;
- (3) It has adopted Written Standards for all Eligible activities proposed to be carried out with ESG funds; and
- (4) It operates, or causes to be operated, an HMIS system that meets HUD requirements.

(e) To be eligible to participate in the Continuum of Care Allocation, the Continuum of Care shall recommend an Administrative Entity that meets the following criteria set forth in subsections (1) through (3) below. Where there is more than one eligible ESG Entitlement in a Continuum of Care Service Area willing to perform the functions of an Administrative Entity the Continuum of Care shall recommend a single Administrative Entity for approval by the Department.

- (1) Is a Unit of general purpose local government that has administered ESG funds for an Entitlement Area during at least one of the past five years. Where a city is the only unit of general purpose local government that has administered ESG funds for the Entitlement Area within the Continuum of Care Service Area, the Administrative Entity may be a county agency with experience administering another federal homelessness, housing, community development, or human services program in at least one of the past five years;
- (2) Has no unresolved ESG monitoring findings with HUD or the Department that the Department determines poses a substantial risk to the Department if the Administrative Entity is approved; and
- (3) Demonstrates the ability and willingness to perform the functions of an Administrative Entity pursuant to federal and State ESG requirements.

(f) The Continuum of Care and the Administrative Entity shall enter into a written agreement that specifies the roles and responsibilities of each entity to ensure compliance with federal and State ESG requirements. The Continuum of Care and the Administrative Entity shall collaborate in determining Eligible activities, selecting providers, and administering the ESG funds.

(g) The Administrative Entity shall select providers qualified to deliver Eligible activities in the Service Area through a process that is consistent with (1) through (8) below, and

inform the Department of selected providers and activities. The Administrative Entity shall:

- (1) Conduct fair and open competitions which avoid conflict of interest;
- (2) Follow procurement requirements of 24 CFR Part 84;
- (3) Evaluate provider capacity and experience, including the ability to deliver services in Nonentitlement areas;
- (4) Evaluate eligibility and quality of services, including adherence to Core Practices pursuant to section 8409;
- (5) Utilize data and consider community input to identify unmet needs;
- (6) Prioritize activities that address the highest unmet need, considering other available funding and system-wide performance measures;
- (7) Consider project-level performance measures when evaluating proposals; and
- (8) Collaborate with the Continuum of Care pursuant to subdivision (f) above.

(h) The Action Plan will set forth proposed limits on any or all of the following: the number or type of contracts, subcontracts, or activities per contract between the Administrative Entity and the Subrecipient of the Administrative Entity.

(i) The Administrative Entity shall ensure that:

(1) Not including the funding administered for a geographically contiguous Continuum of Care Service Area pursuant to subdivision (a)(1) above, not less than 40 percent of the funds awarded on an annual basis shall be used for Rapid Re-Housing activities; and

(2) Through the use of Coordinated Entry and other means, all funded activities are available to Nonentitlement areas of the Service Area consistent with section 414 [42 U.S.C. section 11373(c)].

(A) The Administrative Entity shall facilitate outreach and access to reach populations in the Nonentitlement areas and shall evaluate participation from these areas at least annually. The Department may condition future funding to ensure access to funded activities by Nonentitlement areas.

(B) Funded activities may also serve households located in ESG Entitlement Areas.

(j) In accordance with section 8411, the Administrative Entity shall enter into a Standard Agreement with the Department to do the following:

- (1) Receive and administer up to two allocations of annual federal ESG funding per application cycle, conditioned on availability of federal funds;
- (2) Carry out identified Eligible activities through selected providers;
- (3) Provide for matching funds as required by 24 CFR 576.201;
- (4) Enter into a written agreement with providers of funded activities governing the implementation of activities, including but not limited to eligible use of funds, funds disbursement, activity reporting, performance evaluation, monitoring, and termination;
- (5) Monitor the performance of all contractors, including selected providers, and those they subcontract with to carry out ESG-eligible activities, to ensure compliance with federal and State ESG requirements;
- (6) Provide timely reports to the Department; and
- (7) In all other ways administer ESG funding to ensure compliance with federal and State ESG requirements, and the Standard Agreement.

(k) The Department may deny or revoke the designation of an approved Administrative Entity under any of the following circumstances:

- (1) The Administrative Entity or one or more of the Subrecipients of the Administrative Entity has engaged in, or is responsible for violations of federal or State ESG requirements;
- (2) The Administrative Entity fails to utilize project-level or system-wide performance data in its project selection, renewal, or monitoring process; or
- (3) The Administrative Entity or the Service Areas for which it has been approved does not meet the requirements of this section.

(l) The Department may request information from the Administrative Entity or the Continuum of Care, which demonstrates compliance with any or all of the above requirements. The Administrative Entity or Continuum of Care shall provide such information when requested.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. Section 91.320 and 24 C.F.R. 576.400.



**§ 8404. Balance of State Allocation.**Error! Bookmark not defined.

(a) The Department will administer the Balance of State Allocation for a Service Area without an ESG Entitlement consistent with the requirements of this section as follows:

(1) To be eligible to participate in the Balance of State Allocation, a Service Area shall have a Continuum of Care that meets all of the following requirements:

(A) It has not opted to have funds for the Service Area administered under the Continuum of Care Allocation pursuant to 8403 (a) (1).

(B) It has received Continuum of Care funding from HUD in at least one of the past two federal competitions or has registered with HUD to apply for funding in the next competition;

(C) It has conflict of interest policies in place that meet HUD requirements;

(D) It has adopted Written Standards that meet HUD requirements for all Eligible activities proposed to be carried out with ESG funds;

(E) It operates, or causes to be operated, an HMIS system that meets HUD requirements

(2) An Eligible Continuum of Care may recommend a provider for Rapid Re-housing activities.

(A) In making this recommendation, the Continuum of Care shall use a process which is

1. Fair and open and avoids conflicts of interest in project selection, implementation, and the administration of funds;

2. Considers selection criteria reasonably consistent with the criteria used by the Department in section 8407;

3. Complies with the requirements of sections 8408 and 8409;

4. Incorporates reasonable performance standards as set forth in the Action Plan based on HUD requirements and guidance. If the applicant has not implemented the proposed activity or similar activity within the past three years, the Continuum of Care shall work with the funded applicant to ensure it meets reasonable performance standards specified in the Action Plan in the contract year;

5. Complies with federal ESG requirements;

6. Considers any other practices promoted or required by HUD.

(B) If recommending a Private nonprofit organization for these funds, the nonprofit organization must submit a Certification of Local Government Approval to undertake ESG-funded activities from each Unit of Local Government where the activity is carried out pursuant to section 414 [42 U.S.C. section 11373(c)];

(C) Documentation of satisfactory match must be maintained pursuant to the requirements of 24 CFR 576.201.

(D) The Department may request information from the Continuum of Care or Subrecipient which demonstrates compliance with the above requirements. Such information shall be provided upon request.

(E) The Action Plan will propose minimum and maximum percentages of the Service Area allocation that shall be designated for these activities

(3) Funds remaining after allocating for Rapid Re-housing activities pursuant to section 8404 (a) (2) will be made available within three regional allocations as follows.

(A) Northern Region comprised of the Service Areas for the Continuums of Care covering the counties of Amador, Butte, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Tuolumne, Yuba;

(B) Bay Area Region comprised of the Service Areas for the Continuums of Care covering the counties of Marin, Napa, Santa Cruz, and Solano;

(C) Central and Imperial Valley Region comprised of the Service Areas for the Continuums of Care covering the counties of Alpine, El Dorado Imperial, Inyo, Kings, Mariposa, Merced, Mono, Nevada Placer, Tulare, Yolo,

(D) The configuration of Service Areas within each region may change subject to individual Continuum of Care or ESG Entitlement Area designations made by HUD. The counties belonging to each region will be announced in the NOFA.

(4) As requested in the NOFA, each Continuum of Care shall recommend to the Department an Eligible organization or organizations proposing Eligible activities within the Continuum of Care Service Area for funds available under the applicable regional allocation. In making recommendations, the Continuum of Care shall use a process which meets the following requirements:

(A) Is Fair and open, and avoids conflicts of interest in project selection, implementation, and the administration of funds

(B) considers State application eligibility and rating criteria in sections 8406 and 8407

(C) complies with the requirements of sections 8408 and 8409

(5) All applications for funds available under the regional allocations will be evaluated by the Department pursuant to the requirements of sections 8406, 8408, and 8409. Depending on whether the regional allocations are oversubscribed, applications submitted for funds within a regional allocation may be rated and ranked pursuant to the requirements of 8407.

(b) The Action Plan will set forth proposed limits on any or all of the following: the number of applications submitted within a Continuum of Care Service Area, and any limits on the number or type of activities, contracts, or subcontracts within an application.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. Section 91.320.

**§ 8405. Notice of Funding Availability.**

(a) The Department will issue a NOFA soliciting applications for Eligible activities within the regional allocations pursuant to 8404(a) (4) and 8404 (a) (5).

(b) The NOFA will notify all interested persons of the following:

(1) That the Department has been allocated ESG funds or expects to be allocated such funds;

(2) Identification of Continuum of Care Service Areas and allocation amounts under the Balance of State and Continuum of Care Allocations;

(3) Regional allocation amounts and identification of Continuum of Care Service Areas eligible to submit applications under the regional allocations pursuant to 8404 (a) (4) and 8404 (a) (5);

(4) Range of Eligible activities as adopted in the Action Plan, and any prohibitions on uses of funds;

- (5) As adopted in the Action Plan, the maximum number of applications from a Continuum of Care Service Area, and the maximum number and type of Eligible activities, contracts, and subcontracts within an application;
- (6) Role of Continuum of Care in the application process;
- (7) Application or other documentation requirements pursuant to activities to be funded under the regional allocations pursuant to 8404 (a) (4) and 8404 (a) (5);
- (8) Deadline for filing of applications to be reviewed and approved by the Department, timeframes for review and funding of all applications; and
- (9) General terms and conditions of funding allocations.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. Section 91.320.

**§ 8406. NOFA Application Process.**

(a) Applications submitted pursuant to the NOFA for the regional competition pursuant to 8404(a) (4) and 8404 (a) (5) shall meet the following requirements.

- (1) The applicant is an Eligible organization and is recommended by the Continuum of Care as described in the NOFA pursuant to section 8404(a)(4);
- (2) The Continuum of Care meets the requirements of section 8404 (a) (1)
- (3) The application proposes an Eligible activity in the Continuum of Care Service Area consistent with section 8408;
- (4) The application is received by the deadline stated in the NOFA;
- (5) Except as provided in subdivision (b), the application is complete and includes the following:
  - (A) Authorizing resolution by the applicant's Governing Board;
  - (B) For applications requesting funds for Emergency shelter, evidence of site control;
  - (C) For Private nonprofit organizations, a Certification of Local Government Approval to undertake ESG-funded activities from each Unit of Local Government where the activity is carried out pursuant to section 414 [42 U.S.C. section 11373(c)];

(D) Response to all of the application selection criteria as set forth in section 8407;

(E) Written Standards for the proposed program activity from the Continuum of Care that is recommending this application for funding which meet the requirements of section 8409, as well as federal requirements;

(F) Documentation of satisfactory match pursuant to the requirements of section 8410;

(G) Completed application accompanied by all applicable attachments, certifications, and any additional information requested in the applicable NOFA;

(H) Certification by the applicant that all information within the application is true, complete, and accurate; and

(I) Any other information the Department or HUD requires to determine compliance with the requirements of these regulations and all other regulations, statutes, and laws applicable to ESG, and scored based on the criteria in section 8407.

(b) Applications that meet the requirements in subdivision (a) will be evaluated according to the criteria in section 8407. Notwithstanding the above, in the event that information, other than the requirements enumerated in this section, is missing from an application, the application may be scored as submitted.

(c) Notwithstanding subsection (b), if the Department determines that 1) an initial applicant scores sufficiently high pursuant to section 8407 to be awarded funds, 2) the application is deficient with regard to one or more items in (5)(A) through (5)(I) of this section 8406, and 3) all of the deficient items are correctible, the Department may allow the applicant to correct all of the deficiencies on or before 15 calendar days following written notification to the applicant that the applicant will be provided such opportunity. In this written notification, prospective awards will be conditioned upon applicants correcting all deficiencies to the satisfaction of the Department. If all corrections are not made within 15 days following this written notification to the applicant, that funding award is automatically terminated and the attendant funds will be awarded to the next highest scoring applicant, which has submitted a complete application that complies in all respects with the requirements set forth in (5)(A) through (5)(I) of this section.

(d) The Department reserves the right to request clarification of unclear or ambiguous statements made in the application and other supporting documents where doing so will not impact the competitive scoring of the application.

(e) The Department may request that an applicant revise application documents as necessary to establish compliance as long as such revisions do not impact the competitive scoring of the application.

Note: Authority cited: Section 50406(n), Health and Safety Code. Reference: 42 U.S.C. Section 11373.

#### **§ 8407. Selection Criteria for NOFA Applicants.**

(a) All applications made pursuant to section 8404 (a) (5) will be evaluated using the criteria below and ranked according to subdivision (b) below. Where applications requesting funds for more than one program are permitted in the NOFA, each program will receive a separate score for each rating factor, and the point scores will be averaged to calculate a final point score for each rating factor.

##### **(1) Applicant Experience - 20 points**

(A) Length of experience implementing the proposed Eligible activity or activity similar to the proposed activity.

(B) For applicants who have received funding in the State's ESG program in the past three years, a maximum of 20 points will be deducted for the following:

1. Whether the Department has terminated or disencumbered ESG grant funding;
2. Whether the applicant has any unresolved monitoring findings in ESG that pose a substantial risk to the Department;
3. Whether the applicant has submitted annual reports in a timely manner for ESG grants.

##### **(2) Need for Funds - 10 points**

Need for funds based on whether the application activity and subpopulation targeting, if any, meets a high need for the community as identified by the Continuum of Care, in a manner that is consistent with the requirements of section 8409. The Continuum of Care shall provide data and analysis to support the need, including but not limited to HMIS data and data from the most recent point-in-time count published by HUD.

(3) Program Design - 20 points

Quality of the proposed program in delivering Eligible activities to participants consistent with the Written Standards of the Continuum of Care, and Core Practices as set forth under section 8409. In making determinations under this rating factor, the Department may examine such things as Continuum of Care Written Standards for the activity; provider guidelines governing activity operations; program rules for clients; and the reasonableness of program staffing patterns and the activity budget relative to program design, target population, and local conditions.

(4) Impact and Effectiveness - 30 points

Using HMIS data from the most recent ESG contract year, applications will be evaluated based on an evaluation of project and system-wide impact and effectiveness utilizing project level and system-wide performance outcomes for ESG Eligible activities or similar activities implemented within the past three years, based on data which is reasonably available. Performance measures for each ESG activity and for each Continuum of Care Service Area will be identified in the Action Plan and based on the metrics used by HUD in programs such as ESG and the Continuum of Care. The Department may require documentation to verify the accuracy of the data provided by the applicant. Such documentation shall be provided upon the request of the Department.

(5) Cost Efficiency - 10 points

Using HMIS data from the most recent ESG contract year, applications will be evaluated based on the average cost per exit to permanent housing based on the total ESG project budget and the number of exits to permanent housing. The Department may require documentation to verify the accuracy of the information provided by the applicant. Such documentation shall be provided upon the request of the Department.

(6) State Objectives - 10 Points

The Department may award each application up to 10 points for addressing one or more State Objectives as identified in the Action Plan and NOFA. The Department's selection of State Objectives will be based on one or more of the following:

- (A) Federal funding priorities, as publicly announced by HUD;
- (B) State funding priorities as publicly announced by the Governor or Department Director; and
- (C) Housing and community development needs or objectives as identified in the Action Plan.

(b) Applications evaluated under subdivision (a) will be ranked as follows:

(1) Within each regional allocation, applications will be ranked in descending order and awarded the amount requested in the application or a revised amount if necessary to conform to funding limits in the NOFA. In the event of a tie between applicants within a regional allocation, funds will be awarded to the applicant who scored the most points in the Impact and Effectiveness rating factor.

(2) ESG funds remaining in a regional allocation may be made available for the highest ranked unfunded applications in the other regional set-asides, according to their total application score. Remaining funds may also be set-aside for distribution in the next NOFA.

(3) When there are insufficient funds to fully fund the next highest ranked unfunded application, this application may be partially funded if the funded activities can be adequately performed with the remaining ESG allocation.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. 576.202.

#### **§ 8408. Eligible Activities.**

(a) State ESG funds awarded by an Administrative Entity or by the Department shall be used for Eligible activities as permitted by HUD pursuant to 24 CFR Part 576 in accordance with this section.

(b) Pursuant to 24 CFR 91.320 (d), to address the State's priority needs and objectives pursuant to the Action Plan, the Department may limit the types of activities that may be funded in a particular NOFA.

(c) A maximum of ten percent of an individual formula allocation under section 8402 may be used for HMIS activities.

(d) State ESG funds shall not be used for Renovation, Conversion, or Major Rehabilitation activities pursuant to 576.102. Minor repairs to an ESG-funded Emergency shelter that do not qualify as Renovation, Conversion, or Major Rehabilitation are an eligible use of State ESG funds.

(e) For Rapid Rehousing and Homelessness prevention activities, no subpopulation targeting will be permitted except if documentation of all of the following is provided to the Department prior to the award of funds for these activities: (1) that there is an unmet need for these activities for the subpopulation proposed for targeting, and (2) that there is existing funding in the Continuum of Care Service Area for programs that address the needs of the excluded populations for these activities.



Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. 92.320 and 24 C.F.R. Part 576.

**§ 8409. Core Practices**

(a) Unless exempted by federal rules, all ESG-funded activities shall utilize a Coordinated Entry system established by and consistent with the protocols of the Continuum of Care for the Service Area in which that program operates. Participation in Coordinated Entry shall occur in a manner that promotes the following, as reflected in the Continuum of Care Written Standards:

(1) Comprehensive and coordinated access to assistance regardless of where an individual or family is located in the Continuum of Care Service Area. Local systems should be easy to navigate and have protocols in place to ensure immediate access to assistance for people who are homeless or most at-risk;

(2) Prioritized access to assistance for people with the most urgent and severe needs, including, but not limited to, survivors of domestic violence. ESG-funded activities shall seek to prioritize people who:

(A) Are unsheltered and living in places not designed for human habitation, such as cars, parks, bus stations, and abandoned buildings;

(B) Have experienced the longest amount of time homeless;

(C) Have multiple and severe service needs that inhibit their ability to quickly identify and secure housing on their own; and

(D) For Homelessness prevention activities, people who are at greatest risk of becoming literally homeless without an intervention and are at greatest risk of experiencing a longer time in shelter or on the street should they become homeless.

(b) All ESG-assisted projects shall operate in a manner consistent with housing first practices as reflected in the Continuum of Care Written Standards, (consistent with subsections (1) through (5) below), and progressive engagement and assistance practices, including the following:

(1) Ensuring low-barrier, easily accessible assistance to all people, including, but not limited to, people with no income or income history, and people with active substance abuse or mental health issues;

(2) Helping participants quickly identify and resolve barriers to obtaining and maintaining housing;

- (3) Seeking to quickly resolve the housing crisis before focusing on other non-housing related services;
- (4) Allowing participants to choose the services and housing that meets their needs, within practical and funding limitations;
- (5) Connecting participants to appropriate support and services available in the community that foster long-term housing stability;
- (6) Offering financial assistance and supportive services in a manner which offers a minimum amount of assistance initially, adding more assistance over time if needed to quickly resolve the housing crisis by either ending homelessness, or avoiding an immediate return to literal homelessness or the imminent risk of literal homelessness. The type, duration, and amount of assistance offered shall be based on an individual assessment of the household, and the availability of other resources or support systems to resolve their housing crisis and stabilize them in housing; and
- (7) Notwithstanding subdivision (6) above:
  - (A) Rapid Rehousing activities funded within the same Continuum of Care Service Area shall follow the same program requirements for type, duration, and amount of assistance provided, unless sufficient written justification for any differences is provided by the Continuum of Care and approved by the Department; and
  - (B) Homeless prevention activities funded within the same Continuum of Care Service Area shall follow the same program requirements for type, duration, and amount of assistance provided, unless sufficient written justification for any differences is provided by the Continuum of Care and approved by the Department.
- (8) Any other practices promoted or required by HUD.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. Sections 576.400 and 576.401.

**§ 8410. Match Requirements.**

- (a) Pursuant to 24 CFR 576.201, the Department will provide HUD with annual documentation of the sources and amounts of matching funds required of the Department as a recipient of ESG funds.

(b) Pursuant to subdivision (a), the Department may satisfy HUD's matching requirement, by submitting documentation to HUD of available State funding for programs serving persons experiencing homelessness.

(c) Pursuant to subdivision (a), the Department will set forth in the applicable ESG Action Plan and NOFA any requirement of ESG Subrecipients and Subrecipients of the Administrative Entity to provide documentation of matching funds.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 42 U.S.C. Section 11375; and 24 C.F.R. 576.201.

### **§ 8411. Standard Agreement.**

(a) The Department shall enter into a written contract, known as the "Standard Agreement" directly with the Subrecipient.

(1) For the Administrative Entity, the Standard Agreement will follow receipt of funding recommendations from an Administrative Entity and certification by the Administrative Entity that the proposed activities meet federal and State requirements pursuant to sections 8403, 8408, and 8409. The Department may require documentation to verify the accuracy of the information provided.

(2) For funding recommendations made pursuant to sections 8403(a)(2) and 8404(a)(2), the Standard Agreement will follow after receipt of these recommendations from the Continuum of Care, and verification by the Department that the requirements of these sections have been met.

(3) For applications funded pursuant to the NOFA, the Standard Agreement will follow the funding award by the Department.

(b) The Standard Agreement will require the Subrecipient to comply with the requirements and provisions of the Act, 24 CFR Part 576, these regulations, and generally applicable State contracting rules and requirements.

(c) The Standard Agreement will include the items specified in this section:

(1) A clear and accurate identification of the Subrecipient under contract with the Department;

(2) The geographic area in which the activity or activities are to be provided.

(3) The amount of the Grant, including budget detail sufficient for the Department to enter into HUD's financial management system ("IDIS"), and to ensure eligibility of expenses; the basis upon which payment is to be made; and the process by which the Subrecipient must request payment;

(4) A clear and complete statement of the activities and services the Subrecipient will perform and provide or, for an Administrative Entity, cause to be performed and provided. For an Administrative Entity, the information on activity, services, and budget will be reflected for each of its selected providers;

(5) Timeframes for the performance of approved Eligible activities as required pursuant to 24 CFR 576.203.

(d) The Department may approve modifications to the Standard Agreement as described below.

(1) The Administrative Entity may propose to change the funded provider or Eligible activity consistent with section 8403 if necessary to meet the requirements of this Chapter or to expend its funding allocation. Any change must still comply with the requirements in sections 8408 and 8409.

(2) A Subrecipient shall notify the Department of any line item changes to the budget needed for the Department to update IDIS. For line item changes representing more than 25 percent of the overall budget, a contract amendment is required. Changes must still comply with the requirements in sections 8408 and 8409.

(e) The following performance requirements shall appear in each Standard Agreement and shall include additional provisions specific to each Subrecipient:

(1) Reporting requirements pursuant to section 8413; and

(2) Requirements for fiscal management in accordance with generally accepted accounting standards and federal fiscal requirements.

Note: Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. 576.203.

#### **§ 8412. Disbursement Procedures.**

(a) ESG funds shall be disbursed pursuant to the terms of the Standard Agreement.

(b) The Department may rely on the Subrecipient's certification that expenditures claimed in a request for disbursement are eligible and necessary, provided that the Subrecipient also certifies that detailed supporting documentation verifying each expenditure is available and shall be retained by the Subrecipient for six years after the execution of the Standard Agreement.

(c) Subrecipients may request an advance of 30 days working capital or \$5,000, whichever is greater, after the Standard Agreement is fully executed.

(d) The Department shall establish minimum disbursement amounts or other related procedures necessary for the efficient administration of the ESG program. Requests for disbursement must be made at least quarterly.

(e) If a Subrecipient uses ESG funds for the costs of ineligible activities, the Subrecipient shall be required to reimburse these funds to the Department, and shall be prohibited from applying to the Department for subsequent ESG funds until the Department is fully repaid.

(f) Notwithstanding section subdivision (c), above only costs incurred after full execution of the Standard Agreement, and after all environmental review requirements have been met, will be paid by the Department. Environmental review compliance shall include compliance with 24 C.F.R. Part 50.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. Part 50.

#### **§ 8413. Recordkeeping and Reporting.**

(a) In addition to the recordkeeping requirements of 24 C.F.R. Parts 84 and 85, the Subrecipient shall retain all program records pertaining to the Standard Agreement for a period of five years from the date of expenditure of all funds under the Standard Agreement.

(b) The Subrecipient shall submit the following reports.

(1) Annual performance reports during the period of the grant;

(2) A written completion report must be submitted within 60 days after expiration of the Standard Agreement;

(3) Additional reports may be requested by the Department to meet other applicable federal reporting requirements.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. Parts 84 and 85.

#### **§ 8414. Monitoring Grant Activities.**

(a) Administrative Entities shall monitor the activities selected and awarded by them to ensure compliance with federal and State ESG requirements. An onsite monitoring visit of selected providers shall occur whenever determined necessary by the Administrative Entity, but at least once during the grant period.

(b) The Department will monitor the performance of the Subrecipient based on a risk assessment and according to the terms of the Standard Agreement. The Department may also monitor the Subrecipient of the Administrative Entity as the Department deems appropriate based on a risk assessment.

(c) The Department will monitor the performance of Administrative Entity and funded projects based on the performance measures used by HUD in ESG or the Continuum of Care program. In the event that project-level or system-wide performance consistently remains in the lowest quartile compared to all participating Service Areas in the Continuum of Care allocation, the Department will work collaboratively with the Administrative Entity to develop performance improvement plans which will be incorporated into the Standard Agreement and other agreements required under section 8403.

(d) If it is determined that a Subrecipient falsified any certification, application information, financial, or contract report, the Subrecipient shall be required to reimburse the full amount of the ESG award to the Department, and may be prohibited from any further participation in the ESG program. The Department may also impose any other actions permitted under 24 CFR 576.501 (c).

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. 576.50.

#### **§ 8415. Audit Requirements.**

(a) Private nonprofit organizations must submit audits to the Department for review and approval. These audits must comply with all applicable federal laws, including without limitation applicable OMB Circulars. See 24 C.F.R. 576.407 (c).

(b) Units of general local government must submit audits to the Department for review and approval. These audits must comply with all applicable federal and other laws.

(c) The Department may also periodically request that a Subrecipient be audited at the expense of the Subrecipient and the Subrecipient shall comply.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. 576.407.

#### **§ 8416. Sanctions.**

The Department may impose sanctions, as well as any other remedies available to it under law, on a Subrecipient for failure to abide by any State and federal laws and regulations applicable to the ESG program. As the Department deems appropriate or necessary, sanctions include, without limitation, any or all of the following:

- (a) Conditioning a future ESG grant on compliance with specific laws or regulations;
- (b) Directing a Subrecipient to stop incurring costs under the current grant;
- (c) Requiring that some or all of the grant amount be remitted to the Department;
- (d) Reducing the amount of grant funds a Subrecipient would otherwise be entitled to receive;
- (e) Electing not to award future grant funds to a Subrecipient and prohibiting an Administrative Entity from awarding to a particular Subrecipient of the Administrative Entity until appropriate actions are taken to ensure compliance with ESG requirements; and/or;
- (f) Taking any other actions permitted pursuant to 24 CFR 576.501.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. 576.50(c).

#### **§ 8417. Other Federal Requirements.**

Subrecipients and Subrecipients of the Administrative Entity shall abide by all applicable local, state, and federal laws pertaining to the ESG program, including, but not limited to, all other applicable federal laws cited in 42 U.S.C. sections 11371-11378 and 24 C.F.R. Part 576.

Note: Authority cited: Section 50406(n), Health and Safety Code. Reference: 42 U.S.C. Sections 11371-11378; and 24 C.F.R. 576.



County of Riverside Continuum of Care

# **WRITTEN STANDARDS**

ADOPTED OCTOBER 28, 2015

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## **Riverside Continuum of Care (CoC) Written Standards for Providing Continuum of Care Assistance**

The Riverside County CoC is responsible coordinating and implementing a system-wide approach to meet the needs of the population and subpopulation experiencing homelessness within the geographic area of Riverside County. Both the Emergency Solution Grant Rules and Regulations (ESG) and the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Continuum of Care Program Interim Rules state that the CoC, in consultation with recipients of ESG program funds within the geographic area,

- (1) Establish and consistently follow written standards for providing CoC assistance.
- (2) Establish performance targets appropriate for population and program type.
- (3) Monitor recipient and sub-recipient performance.

In accordance with Title 24 of the Code of Federal Regulations (24 CFR) Part 578, the Riverside County CoC has developed the following written standards. In conjunction with 24 CFR Part 578, these standards will apply to all projects that receive HUD and ESG funding.

The goal of these standards is to synthesize key elements of the HUD regulations with the processes and priorities of the Riverside County CoC to ensure that the CoC programs are administered fairly and methodically. The goals of the written standards are to:

- Assist with the coordination of service delivery across the geographic area and will be the foundation of the county-wide coordinated entry system.
- Assist in assessing individuals and families consistently to determine program eligibility.
- Assist in administering programs fairly and methodically.
- Establish common performance measurements for all CoC components.
- Provide the basis for the monitoring of all CoC and ESG funded projects.

These written standards include policies and procedures for evaluating individuals' and families' eligibility for assistance for

1. Permanent Supportive Housing (PSH)
2. Rapid Re-Housing (RRH)
3. Transitional Housing (TH)
4. Emergency Shelter (in-development)
5. Street Outreach (in-development)

All programs that receive ESG or CoC funding are required to abide by these written standards. The CoC strongly encourages programs that do not receive either of these sources of funds to accept and utilize these standards.

## **CoC and ESG Coordination**

These written standards have been developed in conjunction with ESG recipients (Riverside County Economic Development Agency (EDA), City of Riverside, and the City of Moreno Valley), the CoC Collaborative Applicant and with service providers to allow for input on standards, performance measures and the process for full implementation of the standards throughout the CoC from the perspective of those organization that are directly providing homeless and housing services, Permanent Supportive Housing (PSH), Rapid Re-Housing (RRH), Emergency Shelter (ES), and Transitional Housing (TH). The CoC Written Standards have been approved by the CoC, the County and City ESG recipients.

These written standards will be reviewed and revised at least annually. Revisions that would affect the Coordinated Entry process would be made as soon as possible. The Riverside County CoC will continue to build upon and refine this document.

## **Housing First Model**

Irrespective of the program type, all HUD and ESG funded programs are required to utilize a housing first approach to housing assistance. The housing first approach incorporates a model of housing assistance that prioritizes rapid placement and stabilization in permanent housing that does not have service participation requirements or preconditions (such as sobriety or a minimum income threshold). Emergency Shelter, Transitional housing and supportive service only projects may be considered to be using a housing first model if they operate with low-barriers, work to quickly move people into permanent housing, do not require participation in supportive services, and, for transitional housing projects, do not require any preconditions for moving into the transitional housing (2015 HUD CoC NOFA).

## **Coordinated Entry System**

To minimize barriers to housing access and ensure timely placement, all CoC and ESG subrecipients are required to participate in and receive referrals through Riverside County's Coordinated Entry System (CES). The CES uses a no-wrong door approach in which homeless individuals who engage with any agency within the Riverside County CoC are entered into the system. This system ensures that every homeless individual is known by name, provides assistance based on individual's unique needs, and ensure that housing matches are the right fit. See Appendix B, Riverside County CoC Coordinated Entry System (CES) Policies & Procedures.

## Universal Assessment

All individuals will be assessed using a comprehensive, universal assessment tool called the Vulnerability Index Service Prioritization Decision Assistance Tool (VI-SPDAT) which is useful for initial triage and entry assessment. This tool guarantees that individuals' levels of need and eligibility determinations are made in an informed and objective manner.

## Homeless Management Information System

All subrecipients are required to participate in the Homeless Management Information System (HMIS) per the ESG and CoC Interim Rule (24 CFR 576 and 578). HMIS provides an opportunity to document homelessness and helps to ensure coordination between service providers while avoiding duplication of services and client data.

## Written Standards for Permanent Supportive Housing

The Riverside County CoC-PSH program provides permanent housing and supportive services to individuals and families with a disability, prioritizing those who are chronically homeless. The program is designed to reintegrate this highly vulnerable population into the community by addressing their basic needs for housing and providing ongoing support. There are two key components of the Riverside County CoC-PSH program: permanent housing and supportive services.

Using a housing first approach, program participants are provided with rapid access to permanent housing with minimal preconditions. Good credit or rental history are not required to receive housing. Tenants can remain in their homes as long as the basic requirements of tenancy are met—paying the rent (as applicable), not interfering with other tenants' use of their homes, not causing property damage, etc. This ensures participants have a private and secure place to make their home, just like other members of the community, and provides them with a stable foundation from which they can pursue their goals.

## Chronically Homeless Definition

A chronically homeless individual or head of household as defined in 24 CFR 578.3 for whom both of the following are true:

- i. The chronically homeless individual or head of household of a family has been homeless and living in a place not meant for human habitation, a safe haven, or in an emergency shelter for at least 12 months either continuously or on at least four separate occasions in the **last 3 years**, where the cumulative **total length of the**

**four occasions equals at least 12 months;** Each period separating the occasions must include at least 7 nights of living in a situation other than a place not meant for human habitation, in an emergency shelter, or in a safe haven.

- ii. If the individual has been living in the facility for fewer than 90 days and had been living in a place not meant for human habitation, a safe haven, or in an emergency shelter immediately before entering the institutional care facility.

## **PSH Performance Benchmarks**

All PSH providers should meet or exceed project quality goals established by HUD and CoC guidelines which include the following:

- At least 80 percent of project participants either remained in permanent housing or exited to permanent housing;
- At least 20 percent or more of project participants have employment income (or other sources such as SSI and/or SSDI, for those who are not employable);
- At least 54 percent of project participants increased their income from sources other than employment in a given operating year;
- At least 56 percent of project participants obtained mainstream benefits; and
- 100 percent of the project participants came from the street or other locations not meant for human habitation, emergency shelters, or safe havens.

In addition, PSH providers must:

- Implement a housing first approach.
- Fill vacant beds with only chronically homeless persons.

## **Eligible Clients**

Eligible clients must also meet eligibility criteria as defined in the NOFA under which the program was funded.

For dedicated permanent supportive housing beds, when a participant exits the program, the bed must be filled by another chronically homeless participant unless there are no chronically homeless persons located within the CoC's geographic area. This concept only applies to permanent supportive housing projects. (24 CFR 578.3, 2015 HUD CoC NOFA).

For permanent supportive housing beds within a CoC's geographic area that are not currently dedicated specifically for use by the chronically homeless, CoCs and projects are strongly encouraged to prioritize the chronically homeless in non-dedicated permanent

supportive housing beds as they become available through turnover. This concept only pertains to permanent supportive housing projects (24 CFR 578.3, 2015 HUD CoC NOFA).

### **Prioritizing Chronically Homeless**

PSH is not a one-size-fits-all approach and should only be offered to those households that truly need that level of support. Thus, in order to use our limited resources in the most effective means possible, the Riverside County CoC is committed to prioritizing those most in need through an established order of priority. Within that order of priority, all CoC-PSH funded programs are required ensure compliance with the “chronically homeless” definition and to fill vacant beds with chronically homeless individuals (CPD-14-012 (7/28/14)).

The Riverside County CoC has developed an order of priority to establish a uniform process for prioritizing placement into PSH through the CES. The overarching intent of this order of priority is to ensure that chronically homeless persons with the longest lengths of time homeless and the most severe service needs are prioritized for housing.

- 1) First Priority–Chronically Homeless Individuals and Families with the Longest History of Homelessness and with the Most Severe Service Needs.
- 2) Second Priority–Chronically Homeless Individuals and Families with the Longest History of Homelessness.
- 3) Third Priority–Chronically Homeless Individuals and Families with the Most Severe Service Needs.
- 4) Fourth Priority–All Other Chronically Homeless Individuals and Families.

**In compliance with HUD’s “Order of Priority in CoC Program-funded Permanent Supportive Housing”, the Riverside County CoC prioritizes as follows:**

- 1** Chronically Homeless Individuals and Families with the Longest History of Homelessness and with the Most Severe Service Needs.
- 2** Chronically Homeless Individuals and Families with the Longest History of Homelessness.
- 3** Chronically Homeless Individuals and Families with the Most Severe Service Needs.
- 4** All Other Chronically Homeless Individuals and Families.

### **CoC Records**

In addition to the records required in 24 CFR 578.103, Riverside County CoC documents and maintains the following documentation:

1. Evidence of written standards that incorporate the priorities in Section III. of this Notice, as adopted by the CoC;
2. Evidence of a standardized assessment tool; The use of a standardized assessment tool may be evidenced by written policies and procedures referencing a single standardized assessment tool that is used by all CoC Program-funded PSH recipients within the geographic area.
3. Evidence that the written standards were incorporated into the coordinated assessment policies and procedures.

### **Recipient Recordkeeping Requirements**

In addition to the records required in 24 CFR 578.103, recipients of Riverside County CoC Program-funded PSH that is required by grant agreement to document chronically homeless status of program participants in some or all of its PSH beds must maintain the following records:

1. Written Intake Procedures
2. Evidence of Chronically Homeless Status

## Leasing Requirements

Leasing projects involve the leasing of property or portions of property (including single units) not owned by the recipient for use in providing PSH or supportive services. With leasing projects, the lease is between the subrecipient and the landowner while the occupancy agreement or sublease is between the subrecipient and program participant. Leasing funds may be used to pay up to 100% of the costs of leasing a structure. When electricity, gas, and water are included in the rent, these utilities may be paid from leasing funds. If the landlord does not provide utilities, these utility costs are an operating cost, except for supportive service facilities. Leasing funds cannot be used to lease units or structures owned by the recipient, sub-recipient, or their parent, subsidiary, or affiliated organization. HUD has the authority, however, to grant an exception to the ownership clause for good cause.

### PSH Written Standards #1 – No Designated Length of Stay

**Program participants are provided housing without a designated length of stay that permits them to live as independently as possible.**

Consistent with the definition of permanent housing in section 401 of the McKinney-Vento Act and § 578.3 of this interim rule, the permanent housing component is community-based housing without a designated length of stay that permits formerly homeless individuals and families to live as independently as possible. The interim rule clarifies that Continuum of Care funds may be spent on two types of permanent housing: permanent supportive housing for persons with disabilities (PSH) and rapid rehousing that provides temporary assistance (i.e., rental assistance and/or supportive services) to program participants in a unit that the program participant retains after the assistance ends.

## Leasing and Occupancy Agreements

A key component in CoC leasing and rental assistance is leasing and occupancy agreements. All participants must have a signed agreement outlining the terms of their housing. Two individuals in a shared housing situation must have their own lease and their own bedroom unless the two individuals are presented together as a household.

## PSH Written Standards #2 – Lease Agreement

**The program participant must be the tenant on a lease for a term of at least one year that is renewable and is terminable only for cause. The lease must be renewable for terms that are a minimum of one month long.**

HUD clarifies that to be permanent housing, “the program participant must be the tenant on a lease for a term of at least one year that is renewable and is terminable only for cause. The lease must be renewable for terms that are a minimum of one month long.” HUD has determined that requiring a lease for a term of at least one year that is renewable and terminable only for cause, assists program participants in obtaining stability in housing, even when the rental assistance is temporary (CFR 578.77).

### Rental Assistance & Restrictions

Rental assistance grants are differentiated from leasing grants in that these grants provide rental assistance to eligible persons for permanent housing. For rental assistance grants, the lease is between the program participant and the landowner or sub lessor. Grant funds may be used for permanent supportive housing rental assistance. Rental assistance cannot be provided to a program participant who is already receiving rental assistance, or living in a housing unit receiving rental assistance or operating assistance through other federal, State, or local sources.

## PSH Written Standards #3 – Restricted Assistance and Disabilities

**Permanent supportive housing can only provide assistance to individuals with disabilities and families in which one adult or child has a disability.**

### Supportive Services

Once in housing, program participants have access to the support services that they need and want to live as independently as possible. Although PSH is designed for people who need supportive services, accepting these services is not a condition of housing. A person’s home is a place to live rather than a treatment setting. As such, supportive services are voluntary, but can and should be used to persistently engage tenants and ensure housing stability. Tenants receive assistance in defining their needs and preferences through annual assessments of service needs and individualized support plans that reflect those preferences. On-site residential supervision is provided as needed to facilitate the adequate provision of supportive services to the residents (CFR 578.37).



#### **PSH Written Standards #4 – Supportive Services**

**Supportive services designed to meet the needs of program participants must be made available to the program participants.**

#### **PSH Written Standards #5 – Duration of Supportive Services Assistance**

**Supportive services to enable program participants to live as independently as possible must be provided throughout the duration of their residence.**

Recipients and subrecipients may require the program participants to take part in supportive services that are not disability-related services provided through the project as a condition of continued participation in the program. Examples of disability-related services include, but are not limited to, mental health services, outpatient health services, and provision of medication, which are provided to a person with a disability to address a condition caused by the disability. Notwithstanding this provision, if the purpose of the project is to provide substance abuse treatment services, recipients and subrecipients may require program participants to take part in such services as a condition of continued participation in the program (CFR 578.75).

***Supportive services are voluntary, but can and should be used to persistently engage tenants to ensure housing stability*** - Supportive services are proactively offered to help tenants achieve and maintain housing stability, but tenants are not required to participate in services as a condition of tenancy. Techniques such as harm reduction and motivational interviewing may be useful. Harm reduction techniques can confront and mitigate the harms of drug and alcohol use through non-judgmental communication while motivational interviewing may be useful in helping households acquire and utilize new skills and information.

#### **PSH Written Standards #6 – Supportive Services Agreement**

**Program participants may be required to take part in supportive services that are not disability-related services (including substance abuse treatment services) provided through the project as a condition of continued participation in the program. However, HUD tends to believe that these kind of requirements can be barriers and should be rare and minimal if used as all.**

## Housing Quality Standards (HQS)

Under the CoC Program, all housing that is leased with Continuum of Care program funds, or for which rental assistance payments are made with Continuum of Care program funds, must meet the applicable Housing Quality Standards (HQS) under 24 CFR 982.401 of this title, except that 24 CFR 982.401(j) applies only to housing occupied by program participants receiving tenant-based rental assistance.

HQS dictates that, at a minimum, the unit must have a living room, a kitchen, and a bathroom. HQS requirements also dictate that the bathroom must be contained within the unit, afford privacy (usually meaning a door, although no lock is required), and be for the exclusive use of the occupants. Additionally, the unit must have suitable space and equipment to store, prepare, and serve food in a sanitary manner. This includes a requirement for an oven and stove or range, a refrigerator of appropriate size for the family, and a kitchen sink with hot and cold running water. Hot plates are not acceptable substitutes for stoves or ranges. However, a microwave oven may be used in place of a conventional oven, stove, or range if the oven/stove/range are tenant supplied or if microwaves are furnished in both subsidized and unsubsidized units in the building or premises.

The CoC Program also allows for shared housing/roommate situations in projects with leasing or rental assistance funds. **Each household must have the bedroom size that fits their household size. In other words, 2 individuals in a shared housing situation must have their own lease, and their own bedroom. The only situation where 2 people would be sharing one bedroom would be if they presented together as a household.**

### PSH Written Standards #7 – One Person per Bedroom

**Two individuals in a shared housing situation must have their own lease and their own bedroom unless the two individuals are presented together as a household.**

## Program Income

Program income includes the following (CFR 578.97):

- (a) Defined. Program income is the income received by the recipient or subrecipient directly generated by a grant-supported activity.
- (b) Use. Program income earned during the grant term shall be retained by the recipient, and added to funds committed to the project by HUD and the recipient, used for eligible activities in accordance with the requirements of this part. Costs incident to the generation of program income may be deducted from gross

income to calculate program income, provided that the costs have not been charged to grant funds.

(c) Rent and occupancy charges. Rents and occupancy charges collected from program participants are program income. In addition, rents and occupancy charges collected from residents of transitional housing may be reserved, in whole or in part, to assist the residents from whom they are collected to move to permanent housing.

### **PSH Written Standards #8 – Program Income**

**Program income generated from rent and occupancy charges may be collected from program participants and added to funds committed to the project by HUD and used for eligible program activities.**

### **Calculating Occupancy Charges and Rent**

Calculating occupancy charges and rent (b) (1) (2) (3) notes the following about occupancy agreements (CFR 578.77):

(b) Calculation of occupancy charges. Recipients and subrecipients are not required to impose occupancy charges on program participants as a condition of residing in the housing. However, if occupancy charges are imposed, they may not exceed the highest of:

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child-care expenses);

(2) 10 percent of the family's monthly income; or

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

### **PSH Written Standards #9 – Calculating Occupancy Charges and Rent**

**If occupancy charges are imposed, they may not exceed the highest of: 1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child-care expenses); 2) 10 percent of the family's monthly income; or 3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments (adjusted in accordance with the family's actual housing costs) is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated for housing costs.**

Recipients or subrecipients must examine a program participant's income initially, and at least annually thereafter, to determine the amount of the contribution toward rent payable by the program participant. Adjustments to a program participant's contribution toward the rental payment must be made as changes in income are identified (CFR 578.77).

### **PSH Written Standards #10 – Examining Program Participant's Initial Income**

**A program participant's initial income must be examined at least annually to determine the amount of the contribution toward rent payable by the program participant and adjustments to a program participant's contribution toward the rental payment must be made as changes in income are identified.**

As a condition of participation in the program, each program participant must agree to supply the information or documentation necessary to verify the program participant's income. Program participants must provide the recipient or subrecipient with information at any time regarding changes in income or other circumstances that may result in changes to a program participant's contribution toward the rental payment (CFR 578.77).

### **Recordkeeping Requirements**

In order to use our limited resources in the most effective means possible, the Riverside County CoC has established uniform recordkeeping requirements for all PSH grant recipients. These requirements ensure compliance with HUD's definition of homelessness, chronic homelessness, and the recordkeeping requirements set forth in CFR 578.103 and Notice CPD-14-012. The following documentation of annual income must be kept by recipient or subrecipient:

- (i) Income evaluation form specified by HUD and completed by the recipient or subrecipient; and
- (ii) Source documents (e.g., most recent wage statement, unemployment compensation statement, public benefits statement, bank statement) for the assets held by the program participant and income received before the date of the evaluation;
- (iii) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period; or
- (iv) To the extent that source documents and third-party verification are unobtainable, the written certification by the program participant of the amount of

income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.

### **PSH Written Standards #11 – Verifying Program Participant’s Initial Income**

**Each program participant must agree to supply the information or documentation necessary to verify the program participant’s income.**

### **Recalculating Occupancy Charges and Rent**

In order to use the resources of the Riverside County CoC in the most effective means possible, the Riverside County CoC has established uniform recordkeeping requirements for all PSH grant recipients. These requirements ensure compliance with HUD’s definition of homelessness, chronic homelessness, and the recordkeeping requirements set forth in 24 CFR 578.103 and Notice CPD-14-012. All records must be retained for the greater of 5 years.

Income must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a). Recipients and subrecipients must examine a program participant’s income initially, and if there is a change in family composition (e.g., birth of a child) or a decrease in the resident’s income during the year, the resident may request an interim reexamination, and the occupancy charge will be adjusted accordingly.”

### **PSH Written Standards #12 – Recalculating Occupancy Charges and Rent**

**If there is a change in family composition (e.g., birth of a child) or a decrease in the resident’s income during the year, the resident may request an interim reexamination, and the occupancy charge will be adjusted accordingly.**

### **Termination of Assistance**

PSH program recipients may terminate assistance to a participant who violates program requirements or conditions of occupancy utilizing a formal process that recognizes the due process of law. Recipients may resume assistance to a participant whose assistance has been terminated.

Recipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all circumstances in determining whether termination is appropriate in the most severe cases.

### **PSH Written Standards #13 – Termination of Assistance**

Assistance may be terminated to a program participant who violates program requirements or conditions of occupancy by providing a formal process that recognizes the due process of law.

## **Determining Written Standards for Rapid Rehousing**

Rapid rehousing is considered permanent housing. Rapid Re-housing is an intervention designed to move homeless individuals and families into permanent housing as quickly as possible. Rapid Re-housing programs focus on eliminating barriers to moving individuals and families quickly into permanent housing by providing housing location services and financial assistance for housing related expenses (e.g. rent arrears, ongoing rental assistance, moving costs). Rapid Re-housing services are designed with a housing first approach to get individuals and families in permanent housing and keep them stable once they are there.

In Riverside County, Rapid Re-Housing is a critical strategy for ending homelessness for households with children due to the shortage of affordable housing. It is also a high priority for single adults who assess as self-sufficient and can address affordability through a combination of shared housing and increasing income.

Types of rapid rehousing assistance include:

- Rental assistance;
- Case management;
- Supportive services; and
- Security deposits.

### **Eligible Clients**

Eligible clients must meet HUD's Category 1 definition of homelessness which is:  
Individuals and families who lack a fixed, regular, and adequate nighttime residence:

- An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, etc.
- An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low income individuals);
- An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution; or
- An individual fleeing or attempting to flee domestic violence if also literally homeless;

Eligible clients must also meet eligibility criteria as defined in the NOFA under which the program was funded.

## RRH Performance Benchmarks

All RRH providers should meet or exceed project quality goals established by HUD and CoC guidelines which include the following:

- At least 80 percent of project participants either remained in permanent housing or exited to permanent housing;
- At least 20 percent or more of project participants have employment income (or other sources such as SSI and/or SSDI, for those who are not employable);
- At least 54 percent of project participants increased their income from sources other than employment in a given operating year;
- At least 56 percent of project participants obtained mainstream benefits; and
- 100 percent of the project participants came from the street or other locations not meant for human habitation, emergency shelters, or safe havens.

In addition, RRH providers must:

- Implement a housing first approach.

## Prioritizing Rapid Rehousing

Recently, HUD provided guidance for rapid rehousing in terms of prioritizing subpopulations. HUD noted in a SNAPS In Focus: Rapid Re-Housing As a Model and Best Practice, August 6, 2014, that

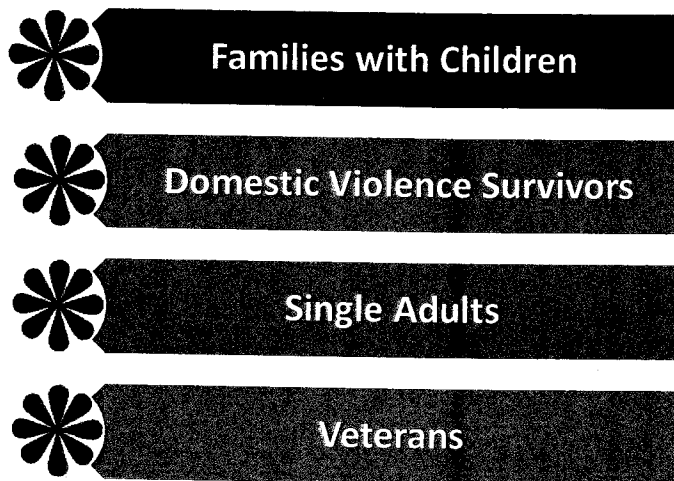
Rapid re-housing can be effective for many populations, such as families with children, youth aging out of foster care, domestic violence survivors, single adults, and veterans, but should be targeted to those households that would not be able to get out of homelessness without the assistance. It is particularly a key strategy for achieving the Opening Doors goal of ending family, youth, and child homelessness by 2020 (*SNAPS In Focus: Rapid Re-Housing As a Model and Best Practice, 8/6/14*).

Rapid re-housing should prioritize people with more challenges, including those with no income, poor employment prospects, troubled rental histories, and criminal records. Providers should link participants with community resources that will help them achieve longer-term stability and well-being. Now is the time for communities to be working together to establish written standards for administering rapid re-housing and thinking strategically about how this type of assistance will be used most effectively within the CoC (*SNAPS In Focus: Rapid Re-Housing As a Model and Best Practice, 8/6/14*)."

Rapid re-housing is an effective intervention for many different types of households experiencing homelessness, including those with no income, with disabilities, and with poor



rental history. The majority of households experiencing homelessness are good candidates for rapid re-housing. The only exceptions are households that can exit homelessness with little or no assistance, those who experience chronic homelessness and who need permanent supportive housing, and households who are seeking a therapeutic residential environment, including those recovering from addiction.



The Riverside County CoC will prioritize the following subpopulations:

- 1) families with children
- 2) domestic violence survivors
- 3) single adults
- 4) veterans that can exit homelessness with little or no assistance, those who experience chronic homelessness and who need permanent supportive housing, and households who are seeking a therapeutic residential environment, including those recovering from addiction.

### **Lease Requirements**

In compliance with HUD requirements, Riverside County CoC clarifies that to be permanent housing, the program participant must be the tenant on a lease for a term of at least one year that is renewable and is terminable only for cause. The lease must be renewable for terms that are a minimum of one month long. HUD has determined that requiring a lease for a term of at least one year that is renewable and terminable only for cause, assists program participants in obtaining stability in housing, even when the rental assistance is temporary.

## **RRH Written Standards #1 – Lease Agreement**

**The program participant must be the tenant on a lease for a term of at least one year that is renewable and is terminable only for cause. The lease must be renewable for terms that are a minimum of one month long.**

## **Rental Assistance**

The Riverside County CoC and ESG funds may provide supportive services and/or short-term (up to 3 months) and/or medium-term (for 3 to 24 months) tenant-based rental assistance, as necessary to help a homeless individual or family, with or without disabilities, move as quickly as possible into permanent housing and achieve stability in that housing (CFR 578.51, 578.53).

## **RRH Written Standards #2 – Rental Assistance**

**Program participants may receive short-term (up to 3 months) and/or medium-term (for 3 to 24 months) tenant-based rental assistance.**

Riverside County CoC and ESG programs may set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, and/or a maximum number of times that a program participant may receive rental assistance. The recipient or subrecipient may also require program participants to share in the costs of rent. For the purposes of calculating rent for rapid rehousing, the rent shall equal the sum of the total monthly rent for the unit and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located (CFR 578.37).

### **RRH Written Standards #3 – Amount of Rental Assistance**

Standards for determining the share of rent and utilities costs that each program participant must pay, if any, will be based on the following guidelines:

- The maximum amount of rent that a participant will pay can be up to 100% of the rental amount;
- The maximum percentage of income paid by participants towards rent at program completion shall be no more than 50%. However, in certain circumstances, on a case-by-case basis, there may be participants whose rental share may exceed 50% of the rent based on their financial circumstances. In general, the goal will be that participants pay generally no more than 50% of their income in rent;
- 100% of the cost of rent in rental assistance may be provided to program participants. However to maximize the number of households that can be served with rapid re-housing resources, it is expected that the level of need will be based on the goal of providing only what is necessary for each household to be stably housed for the long term;
- 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.

### **RRH Written Standards #4 – Duration of Assistance**

Program participants may receive up to 24 months of rental assistance. However, it is expected that program participants will only receive the level of assistance necessary to be stably housed for the long-term.

Grant funds may be used for rental assistance for homeless individuals and families. Rental assistance cannot be provided to a program participant who is already receiving rental assistance, or living in a housing unit receiving rental assistance or operating assistance through other federal, State, or local sources (CFR 578.51).

### **RRH Written Standards #5 – Receiving Rental Assistance through Other Sources**

Rental assistance cannot be provided to a program participant who is already receiving rental assistance, or living in a housing unit receiving rental assistance or operating assistance through other federal, State, or local sources.

## Security Deposits

Grant funds may be used for security deposits in an amount not to exceed 2 months of rent. An advance payment of the last month's rent may be provided to the landlord, in addition to the security deposit and payment of first month's rent (CFR 578.51).

### **RRH Written Standards #6 – Security Deposits including Last Month's Rent**

**Program participants may receive funds for security deposits in an amount not to exceed 2 months of rent.**

## Case Management

The Riverside County CoC has defined case management as a collaborative process that assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet the client's health and human service needs. It is characterized by advocacy, communication, and resource management and promotes quality and cost-effective interventions and outcomes. Case management focuses on housing stability and placement, with an emphasis on the arrangement, coordination, monitoring, and delivery of services related to housing needs and improving housing stability.

A meeting with a case manager is required in order to receive RRH assistance, although it is not necessarily the first step. Some communities might have a screening, intake, assessment and eligibility determination process that precedes assignment to a case manager, while other communities will have case managers performing the eligibility task. Regardless of the arrangement, the meeting with the case manager should be regarded not only as a program requirement, but also as an early opportunity to help a household improve its housing stability during and beyond the period of RRH assistance.

### **RRH Written Standards #7 – Case Management**

**Program participants must meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability.**

## Supportive Services

Continuum of Care funds may provide **supportive services**, as set forth in § CFR 578.53, and/or short-term (up to 3 months) and/or medium-term (for 3 to 24 months) tenant-based rental assistance, as set forth in § CFR 578.51(c), as necessary to help a homeless individual or family, with or without disabilities, move as quickly as possible into permanent housing and achieve stability in that housing.

#### **RRH Written Standards #8 – Supportive Services**

**Program participants may receive supportive services as set forth in § 578.53 (see Appendix B)**

#### **RRH Written Standards #9 – Duration of Supportive Services**

**Program participants may receive supportive services for no longer than 6 months after rental assistance stops.**

### **Re-evaluating Participants**

In compliance with HUD requirements, CoC and ESG programs must re-evaluate, not less than once annually, that the program participant lacks sufficient resources and support networks necessary to retain housing without Continuum of Care assistance and the types and amounts of assistance that the program participant needs to retain housing. The recipient or subrecipient may require each program participant receiving assistance to notify the recipient or subrecipient of changes in the program participant's income or other circumstances (e.g., changes in household composition) that affect the program participant's need for assistance. When notified of a relevant change, the recipient or subrecipient must reevaluate the program participant's eligibility and the amount and types of assistance that the program participant needs (CFR 578.37).

#### **RRH Written Standards #10 – Re-evaluation**

**Program participants must be re-evaluated, not less than once annually, in order to determine whether program participants lack sufficient resources and support networks necessary to retain housing without Continuum of Care assistance and the types and amounts of assistance that the program participant needs to retain housing.**

## **Determining Written Standards for Transitional Housing**

Transitional housing means housing, where all program participants have signed a lease or occupancy agreement, the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within 24 months or such longer period as HUD determines necessary. The program participant must have a lease or occupancy agreement for a term of at least one month that ends in 24 months and cannot be extended (CFR 578.3).

Riverside County CoC understands that there are families and individuals who need more assistance than rapid re-housing offers but who do not qualify for permanent supportive housing. Transitional housing should be reserved for those populations that most need that type of intervention – programs that serve domestic violence survivors and youth and those that provide substance abuse treatment come to mind first – rather than being used either as a holding pattern for those that really need permanent supportive housing or those that need less intensive interventions (*SNAPS Weekly Focus (9/18/2013)*).

## **TH Performance Benchmarks**

The Riverside County CoC strongly encourages sub-recipients to carefully review the transitional housing projects for cost-effectiveness, performance, and for the number and type of eligibility criteria to determine if rapid re-housing might be a better model for the CoC's geographic area.

All TH providers should meet or exceed project quality goals established by HUD and CoC guidelines which include the following:

- At least 80 percent of project participants exited from transitional housing to permanent housing;
- At least 20 percent or more of project participants have employment income (or other sources such as SSI and/or SSDI, for those who are not employable);
- At least 54 percent of project participants increased their income from sources other than employment in a given operating year; and
- At least 56 percent of project participants obtained mainstream benefits.

In addition, TH providers are required to answer “yes” as to whether the program implements a housing first approach.

## **Eligible Clients**

Individuals and families defined as Homeless under the following categories are eligible for assistance in TH projects:

- Category 1 – Literally Homeless
- Category 2 – Imminent Risk of Homelessness
- Category 4 – Fleeting/Attempting to Flee Domestic Violence

HUD's Category 1 definition of homelessness is:

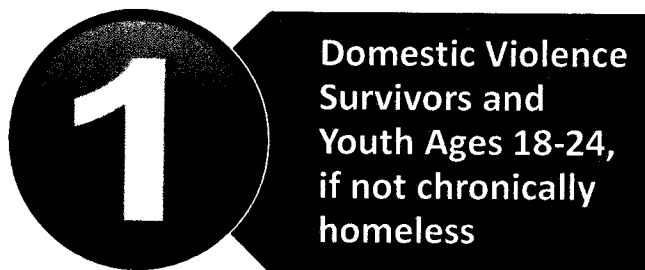
Individuals and families who lack a fixed, regular, and adequate nighttime residence:

- An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, etc.;
- An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low income individuals); or
- An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.

Eligible clients must also meet eligibility criteria as defined in the NOFA under which the program was funded. The 2015 HUD CoC NOFA states that recent research shows that transitional housing is generally more expensive than other housing models serving similar populations with similar outcomes. HUD also recognizes that transitional housing may be an effective tool for addressing certain needs such as:

- housing for underage homeless youth;
- safety for persons fleeing domestic violence; and
- assistance with recovery from addiction.

## Prioritizing Transitional Housing



The Riverside County CoC prioritizes TH as follows (2015 HUD CoC NOFA):

- 1) Domestic violence survivors and youth ages 18 – 24 will be prioritized for transitional housing if they are not assessed as chronically homeless.<sup>1</sup>
- 2) All chronically homeless individuals and families will not be served through transitional housing unless other housing is not available (Coordinated Entry Brief, pg. 5).<sup>2</sup> Such households will be served by permanent supportive housing through a Housing First approach.

### **Leasing Requirements**

Riverside County program participants in transitional housing must enter into a lease agreement for a term of at least one month. The lease must be automatically renewable upon expiration, except on prior notice by either party, up to a maximum term of 24 months (CFR 578.51).

#### **TH Written Standards #1 – Lease Agreement**

**The program participant must have a lease or occupancy agreement for a term of at least one month that ends in 24 months and cannot be extended.**

Transitional housing facilitates the movement of homeless individuals and families to PH within 24 months of entering TH. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services (CFR 578.37).

#### **TH Written Standards #2 –Duration of Leasing Agreement**

**The lease with program participant “must be automatically renewable upon expiration, except on prior notice by either party, up to a maximum term of 24 months.”**



EXHIBIT F

**Board of Governance Charter**  
County of Riverside Continuum of Care

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**ADOPTED APRIL 22, 2015**

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**BOARD OF GOVERNANCE CHARTER (BOG)  
OF THE COUNTY OF RIVERSIDE CONTINUUM OF CARE**

**Article I. NAME**

The name of this organization shall be "The County of Riverside Continuum of Care" and shall hereinafter be referred to in this charter as the "CoC."

**Article II. CONTINUUM OF CARE**

**Section 2.01 Mission**

The CoC is comprised of public and private agencies along with community residents including homeless and formerly homeless individuals. The CoC was designed to assess the need for homeless and affordable housing services and to develop and implement a Continuum of Care Plan for the region on behalf of individuals and families who are currently living in homelessness or at risk of becoming homeless.

**Section 2.02 Specific Purpose of the CoC**

The County of Riverside CoC is the planning body that coordinates the community's policies, strategies and activities toward ending homelessness.

In addition to the purposes of the CoC as stated in 24 Code of Federal Regulations 578.1, the CoC shall endeavor to:

- a. Make possible for homeless, at-risk for homelessness, very low, low and moderate-income individuals and families the ability to attain and maintain safe, decent, affordable housing and supportive services.
- b. Review and make recommendations regarding proposed homeless services projects through the U.S. Department of Housing and Urban Development (HUD) NOFA process.
- c. Be responsible for the coordination of the census of homeless persons in the County as required by the U.S. Department of Housing and Urban Development (HUD) or as defined by the CoC to meet the needs of the county.

**Section 2.03 Limitations**

No substantial part of the activities of this CoC shall consist of lobbying or propaganda, or shall otherwise attempt to influence legislation, except as provided in section 501(h) of the Internal Revenue Code of 1986. This CoC shall not participate in or intervene in (including publishing or distributing statements) any political campaign on behalf of or in opposition to any candidate for public office.

**Article III. PRINCIPAL OFFICE**

The principal office of the CoC shall be located in the State of California, County of Riverside in the City of Riverside.

**Article IV. ORGANIZATIONAL STRUCTURE**

The CoC shall be composed of three main bodies – the CoC membership, the Board of Governance (BOG) and HMIS Administrators' Council– as well as subcommittees and workgroups as created by the CoC.

## **Article V. THE CONTINUUM OF CARE**

### **Section 5.01 CoC Roles**

The CoC will address housing and supportive services issues for individuals and families who are currently living in homelessness or at risk of becoming homeless within the County of Riverside on a regional level. The CoC will be responsible to:

- a. Administer CoC directives;
- b. Implement U.S. Department of Housing and Urban Development (HUD) and CoC program rules and regulations;
- c. Implement CoC projects and activities;
- d. Advance activities and concerns relative to identified housing and supportive service needs of individuals and families who are currently living in homelessness or at risk of becoming homeless within the County of Riverside;
- e. Develop and coordinate a regional CoC service network;
- f. Provide a forum for the full CoC membership to discuss issues and propose resolutions relative to the advancement of homeless issues.

### **Section 5.02 CoC Composition**

The CoC shall consist of members of the public who reside in Riverside County and/or representatives from relevant organizations within the County of Riverside ("County") organized to carry out the duties provided for pursuant to rules and regulations promulgated by HUD. Relevant organizations include, but are not limited to: nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals.

### **Section 5.03 Becoming a Member of the CoC**

Any interested stakeholder within the County of Riverside may request to become a member of the CoC. All membership shall be voted on by the CoC. There are two forms of membership, membership of an organization or agency and membership as an individual. CoC members obtain and retain voting privileges through attendance and participation in accord with established policies.

To become a member of the Riverside County CoC, either as an agency/organization or an individual the following is required:

- Complete a membership application;
- Attend three consecutive meetings, and on the fourth meeting the membership request will be placed on the meeting agenda as a consent item for a vote.

In order to maintain membership in good standing, members are required to attend fifty percent plus one (50% +1) meetings per year. Paid employees/volunteers of a voting agency, who are the designated representative for that agency, are not allowed to also join the CoC as an individual member. Each agency or individual must select a delegate that will vote for the organization. An individual identified as the delegate for an agency cannot hold a dual membership as a public member. Each agency or organization shall also select an alternate delegate who will vote in the absence of the assigned voting delegate. The designation of the delegate and alternate for an agency/organization should be submitted in writing to the CoC Chair on agency letterhead.

## Section 5.04 Duties of the CoC

The CoC is required to perform the following duties:

### V.04.01 Operation of the CoC

- a. Designate and monitor a collaborative applicant, which shall include review of the MOU at least bi-annually;
- b. Conduct meetings of the CoC membership at a frequency agreed to by CoC membership but no less than semiannually;
- c. Issue public invitations at least annually for new members within the geographic area to join;
- d. Appoint committees, subcommittees, or workgroups;
- e. Update this charter to ensure compliance with federal regulations at least annually;
- f. Establish performance targets of the CoC, monitor the performance of recipients, evaluate outcomes of programs, and take appropriate action to achieve the goals of the CoC;
- g. Evaluate outcomes of projects funded under the Emergency Solutions Grants ("ESG") program and the CoC program, and report to HUD;
- h. Establish written standards and policies for providing assistance to the homeless population, including policies to determine who is eligible for assistance from the CoC funded programs.
- i. Provide direction and oversight to the regional working groups and standing committees of the CoC;
- j. Develop guidelines and provide oversight to the annual HUD application process;
- k. Responsible for all matters pertaining to CoC membership;
- l. Conduct an annual planning process that fulfills the vision and mission of the CoC;
- m. Ensure that annual election of BOG members is undertaken;
- n. Educate the community on homeless issues;
- o. Provide advice and input on the operations of homeless services.

### V.04.02 Operation of the HMIS

The CoC is accountable for the County of Riverside's Homeless Management Information System (HMIS), even if another organization is designated to operate it. The CoC is responsible for the following HMIS functions:

- a. Designate a single HMIS vendor for its geographic area.
- b. Designate and monitor a single eligible applicant to serve as the HMIS lead to manage HMIS, which shall include a review of the MOU at least bi-annually. Eligible applicants include nonprofits, state or local governments, or instrumentalities of State or Local governments.
- c. Ensure that HMIS is administered in compliance with requirements prescribed by HUD.
- d. Review, revise, and approve an HMIS privacy plan, security plan, and data quality plan.
- e. Ensure the consistent participation of recipients and sub recipients in HMIS.

### V.04.03 CoC Planning

- a. Coordinate the implementation of housing and service systems within the County containing outreach, shelter and support services, and prevention strategies;
- b. Conduct a point-in-time count of individuals and families who are currently living in homelessness or at risk of becoming within the County as required by HUD;
- c. Conduct an annual gaps analysis of the homeless needs and services available within the County
- d. Research, identify and develop additional sources of funding;
- e. Provide information required to complete the Consolidated Plan(s);
- f. Consult with ESG recipients within the County regarding the allocation of ESG funds.
- g. Develop annual goals and work plans for the CoC, including the evaluation of those goals, objectives, and programs (work plans).

## Section 5.05 CoC Officers

The CoC Officers should be comprised of a chairperson, a vice-chairperson, and a secretary.

### V.05.01 Chairperson

The Chairperson shall be elected by the CoC membership and shall serve for a term of two years. The Chairperson shall have the following responsibilities:

- Conduct all CoC meetings;
- Ensure the actions of the CoC/BOG are consistent with this Charter, the laws of the State of California and HUD rules and regulations;
- Review and protect the mission of the CoC;
- Speak or assign someone to speak on behalf of the CoC, as requested;
- Ensures that individual standing committees' performance is regularly reviewed and identifies the process for CoC renewal through recruitment of new members for the CoC and for standing committees;
- Sets the CoC meeting schedule and agenda with assistance of the collaborative applicant;
- Guides the CoC to move forward in addressing or implementing activities, issues, regulations, etc. that address issues of individuals and families who are currently living in homelessness or at risk of becoming homeless;
- Guides the CoC in short- and long-range planning;
- Ensures all CoC members are involved in the decision making process;
- Advocates for the mission of the CoC;
- Acts as liaison to the BOG by serving as an ex-officio BOG member;
- Ensures the CoC is in compliance with the Brown Act (California Government Code section 54950 et seq.).

### V.05.02 Vice-Chairperson

The Vice Chairperson shall be elected by the CoC membership and shall serve for a term of two years. The Vice Chair shall act when the Chairperson is unavailable to act.

### V.05.03 Secretary:

The Secretary shall be responsible for ensuring the records and minutes of the membership meetings are properly recorded, reviewed, and distributed in a timely manner. He/she will ensure maintenance of records of meeting attendance and performs other such duties as may be delegated.

## Section 5.06 Voting

Each member of the CoC is a voting member and is able to vote on any actionable item that is presented to the CoC for a vote. Each member shall designate a delegate and an alternate delegate who would be present to cast the member's vote.

Any member who has a financial interest in any outcome of any voting issue must declare a conflict and not cast a vote.

## Article VI. THE BOARD OF GOVERNANCE

A Board of Governance will be comprised of elected members who will advocate for and provide information and/or recommendations to the County of Riverside Board of Supervisors, local government and other elected officials will monitor the overall effectiveness of the CoC planning processes and activities.

### Section 6.01 BOG Membership

BOG Members are public and private entities, cities, agencies, non-profits, etc. who have been voted into office by the full CoC.

## **Section 6.06 Duties of the BOG**

The CoC delegates the following duties to the BOG:

- Advocates for and monitors the implementation of the 10-Year Plan to End Homelessness and any subordinate plans as appropriate;
- Monitors the overall effectiveness of the CoC planning processes and activities and provides guidance, feedback and advocacy as appropriate;
- Approves the annual HUD Consolidated Application Review Work Group recommendation on behalf of the CoC;
- Communicates concerns and recommendations to the County of Riverside Board of Supervisors regarding countywide homeless policies and issues;
- Provides information and/or recommendations to local governments and elected officials about regional affordable housing and homeless policies and issues;
- Performs other duties as established by the CoC.

## **Section 6.07 BOG Officers**

The BOG officers shall be comprised of a Chairperson, a Vice-Chairperson and a Secretary.

### **VI.07.01 Chairperson**

The Chairperson shall be elected by the BOG membership and shall serve for a term of two years. The Chairperson shall have the following responsibilities:

- Conduct all BOG meetings;
- Ensure the actions of the CoC/BOG are consistent with this Charter, the laws of the State of California and HUD rules and regulations;
- Review and protect the mission of the CoC;
- Speak or assign someone to speak on behalf of the CoC/BOG, as requested;
- Set the BOG meeting agendas;
- Guides the BOG to move forward in addressing activities, issues, regulations, etc. that address issues of individuals and families who are currently living in homelessness or at risk of becoming homeless;
- Advocate for the mission of the CoC;
- Ensure the BOG is in compliance with the Brown Act (California Government Code section 54950 et seq.).

### **VI.07.02 Vice-Chairperson**

The Vice Chairperson shall be elected by the BOG membership and shall serve for a term of two years. The Vice Chair shall act when the Chairperson is unavailable to act.

### **VI.07.03 Secretary**

The Secretary shall be an Ex-Officio, non-voting officer represented by the Collaborative Applicant. The Secretary shall be responsible for keeping the BOG records, all correspondence, and other documents/papers as may be related to the business of the BOG.

## **Section 6.08 CoC Board of Governance Attendance/Absence**

- BOG members shall not miss more than two (2) meetings during any calendar year.
- If unusual circumstances occur that may require a member to miss more than the two (2) meetings, a vote of the BOG shall be required to determine whether or not a member may retain their position on the Board.
- Vacancies shall be filled in accordance with Riverside County Board of Supervisors Policy A-21, Section 5(e)

## **Section 6.09 CoC Board of Governance Meetings**

The BOG shall meet at least four (4) times a year (preferably once a quarter).

Unless otherwise noted, BOG meetings shall take place at a location to be determined by the BOG members.



## **Section 6.02 BOG Membership Structure and Election of members**

The CoC BOG will be made up of 15 members of the BOG, with two members as Ex-Officio members: the CoC Chair and Secretary represented by the Collaborative Applicant. The Board will maintain an odd number of members and/or representatives from various groups or organizations as outlined below:

### **Private Sector: 7 Seats**

- 3 seats representing the private sector (For example: Banking, Health Care, and Housing)
- 3 seats representing the non-profit sector
- 1 seat representing an individual currently living in homelessness or who has formerly experienced being homeless.

### **Public Sector: 6 Seats**

- 5 seats representing government agencies (For example: Public Housing Authority, Dept. of Mental Health, Veterans' Affairs, law enforcement, and probation)
- 1 seat representing the County of Riverside Board of Supervisors

### **Ex-officio: 2 seats (non-voting)**

- 1 seat representing the CoC membership Chairperson
- 1 seat is the Collaborative Applicant, which serves as Secretary

## **Section 6.03 Term and Election of BOG members**

Each BOG member will hold office for a term of three (3) years from date of election to office. Consistent with the Riverside County Board of Supervisors Board Policy A-21, elections shall take place so that new board members will take office beginning on July 1 of the calendar year, with terms expiring on June 30th.

With the exception of election of BOG members in 2015, the CoC will hold elections for approximately 1/3 of the BOG members annually, so that every year 3 or 4 new BOG members are appointed.

Due to the fact that in 2015, the BOG will be all new appointees, the initial terms of the members shall be staggered so that four (4) members shall serve a one year term for the initial appointments and four (4) members will serve a two year term for the first appointments. Subsequent elections to fill each of those member's seats shall be for the full three-year term.

## **Section 6.04 Nomination Work Group**

The CoC Chair shall call for volunteers to form a nominating work group for BOG members. The role of this work group shall be:

- Select a chair
- Vet out the nominees
- Educate nominees on their roles and responsibilities as a BOG member
- Present their work to the CoC
- Create a ballot for BOG nominees
- Present ballot for CoC approval
- Identify possible dates for the vote

## **Section 6.05 Resignation from BOG and elections to fill vacancies**

A BOG member who desires to resign from office must submit a letter of resignation. Upon acceptance of a letter of resignation, a call for nomination through the full CoC membership will be undertaken through the normal election process, as outlined below, to fill the vacant position. Any BOG member who is appointed to fill a vacant seat shall serve out the term of the member who vacated.

## **Article VII. HMIS ADMINISTRATORS COUNCIL**

A Council of HMIS Agency Administrators, HMIS lead staff and others gathered to provide oversight, guidance and data quality assurance within the chosen HMIS system, on behalf of the County of Riverside CoC.

### **Section 7.01 Membership is comprised of**

- Designated HMIS Administrators of CoC programs (required participation)
- HMIS Lead Agency Staff
- Participating Agency staff
- Others as deemed appropriate by Council/CoC

### **Section 7.02 Council Essential Functions on behalf of the CoC**

- Holds regularly scheduled meetings;
- Determines of policies/procedures governing the HMIS system for CoC;
- Provides oversight to HMIS lead agency;
- Governs and oversight of HMIS planning, participation, coordination of resources, coordination of data and data integration;
- Oversees of the security policies which supports and protects the rights and privacy of clients;
- Oversees of development and maintenance of a coordinated data system;
- Oversees of determination of the software application used in HMIS system;
- Reviews HMIS data for accuracy, reporting and compliance on a regular basis;
- Ensures HMIS lead agency provides regular training on ethics and client confidentiality;
- Ensures HMIS is governed in accordance with CoC and HUD expectations;
- Monitors HMIS lead agency on a regular basis;
- Ensures monitoring is conducted by lead agency of participating agencies for compliance;
- Ensures agencies are collecting all necessary data to produce required reporting;
- Ensures agency participation;
- Ensures accuracy of CoC NOFA and AHAR reporting;
- Develops and regular updating the HMIS charter;
- Assists in the CoC Lead agency planning of the Point-in-Time count;
- Provides education about the HMIS system to the COC and others as needed;

## **Article VIII. STANDING COMMITTEES**

### **Section 8.01 Standing Committee Structure**

**VIII.01.01** The purpose of the Standing Committees are to:

- Follow the goals and mission of the CoC
- Establish a work plan
- Make recommendations to the CoC
- Carry out approved work plan
- Provide an annual report of outcomes to the CoC

**VIII.01.02** The following Standing Committees are hereby established:

- a. Housing Committee
- b. Planning Committee
- c. Membership Committee
- d. Funding/Finance Committee
- e. Discharge Planning Committee
- f. Standards/Evaluation Committee
- g. Employment and Self-Sufficiency Committee

**VIII.01.03 The roles of the Standing Committees are as follows:**

- a. **Housing Committee:** To address the various housing needs and barriers of individuals and families who are currently living in homelessness or at risk of becoming homeless within the County of Riverside.
  - b. **Planning Committee:** Develop and recommend plans, goals and strategies that will achieve the mission and goals of the CoC. Implement, assign strategies, plans and goals.
  - c. **Membership Committee:**
    - Recommend and carry out a strategy to recruit new members and expand CoC capacity.
    - Recommend outreach strategies and develop membership recruitment tools.
    - Develop an orientation packet that includes material relevant to the Continuum of Care and the responsibilities for all members to review.
  - d. **Funding/Finance Committee:**
    - Develop a funding strategy that would expand on existing resources currently used for assisting individuals and families who are currently living in homelessness or at risk of becoming homeless.
    - Identify various funding sources that include, but are not limited to private, federal and state grants that would support the provision of homeless services in the County of Riverside.
  - e. **Discharge Planning Committee:** Develop and implement a strategy to successfully reintegrate persons leaving institutional care to community based living and self-sufficiency through effective use of community services.
  - f. **Standards/Evaluation Committee:**
    - Recommend baseline/performance standards for CoC in compliance with or in addition to funding guidelines/thresholds.
    - Develop a process to evaluate performance of CoC and Emergency Solutions Grant (ESG) projects.
    - Establish, train and support an annual funding application work group that consists of non-conflicted individuals.
  - g. **Employment and Self-Sufficiency Committee:** The committee shall address the employment and self-sufficiency aspects related to the individuals and families who are currently living in homelessness or at risk of becoming homeless within the County of Riverside.
- 1) Each Standing Committee shall elect a Chair, Vice Chair, and Secretary to serve on the respective Committee.
  - 2) The Chair of each Committee shall be responsible for reporting activities, programs, projects, concerns, etc. of their respective Committee to the CoC.
  - 3) The respective Standing Committee members shall undertake vacancy of all other Standing Committee officers through election.
  - 4) No term of office, membership, or attendance criteria shall be established by the CoC or the BOG for the committees. It shall be the responsibility of the members of the respective committees to establish these guidelines in accordance with the Brown Act.

**Section 8.02 Standing Committee Meeting Criteria**

All Standing Committees shall meet on a quarterly basis at minimum, unless unforeseen circumstances prevent such a meeting schedule. In this instance, documentation must be made as to why the schedule was modified.

Quorum requirements shall apply.

## **Article IX. GENERAL ITEMS PERTAINING TO THE CoC**

### **Section 9.01 Compensation**

There shall be no compensation from the CoC for any CoC member, BOG member, HMIS Administrators Council member or Standing Committee members as a result of their services provided in association with the CoC.

### **Section 9.02 Location of Meetings**

Unless otherwise stated in this charter, meetings of the CoC membership, BOG, HMIS Administrator's Council, and any Standing Committee meetings shall be held at a location determined by the members of those respective committees; the Collaborative Applicant representative shall assist, if needed, in acquiring adequate meeting locations.

### **Section 9.03 Special and Emergency Meetings:**

Special and/or Emergency Meetings of the CoC membership, BOG, HMIS Administrator's Council, and Standing Committees may be called at any time, subject to compliance with the Brown Act, as needed. Quorum requirements shall apply.

### **Section 9.04 Meeting Notices and Agenda Packets**

All notices and agenda packets for any regular, special or emergency meeting of the CoC, the BOG, the HMIS Administrator's Council and/or Standing Committees shall comply with the Brown Act.

## **Article X. CODE OF CONDUCT**

- 1) The solicitation and acceptance of gifts or gratuities by officers, members and collaborative applicants for personal benefit is strictly prohibited. Gifts or donations, for the benefit of the CoC, and used to accomplish the mission and objectives of the CoC, are acceptable as per CoC and/or Collaborative Applicant policy.
- 2) Gifts or donations made to the CoC, BOG, HMIS Administrators Council, and Standing Committees shall be forwarded to the Collaborative Applicant for accounting and management (control).
- 3) Violations of this article will be remedied by appropriate administrative and/or disciplinary action(s) as defined herein. Administrative/disciplinary actions include suspension or termination of voting privileges. Administrative/disciplinary actions may be applied to a person, an agency or both and shall be determined by a CoC vote.
- 4) The CoC Secretary shall provide a copy of the Charter to existing and new members of the CoC and BOG. Revision of this Charter shall require that a copy of the approved Amended Charter be distributed to all CoC members by first-class and/or electronic mail. Members are bound by the Code of Conduct by virtue of having received a copy of the Charter.
- 5) The CoC Secretary shall certify in a written certification on CoC letterhead that a copy of the Charter and any Amendments have been provided to all CoC members and retained on file.