

STATE OF TEXAS }
 }
COUNTY OF HIDALGO }

2014 – YR 27
EMERGENCY SOLUTIONS GRANTS PROGRAM

SUBRECIPIENT AGREEMENT

This Agreement is made and entered into on this the 10th day of NOVEMBER, 2014 by and between the COUNTY OF HIDALGO, Urban County Program, a political subdivision of the State of Texas, hereinafter referred to as "ENTITY", and THE SALVATION ARMY, a neighborhood based not-for-profit organization, hereinafter referred to as "SUBRECIPIENT".

WITNESSETH

WHEREAS, SUBRECIPIENT desires to carry out eligible activities as described in the Statement of Work attached hereto as Exhibit A (the "Statement of Work"), to this Agreement and permitted by the Federal Register/Vol. 76, No. 233/Rules and Regulations pursuant to the U. S. Department of Housing and Urban Development Emergency Solutions Grant Program Entitlement Grant Regulations and covered in 24 CFR Parts 91 and 576.

WHEREAS, the ENTITY proposes to contract with SUBRECIPIENT in order that the eligible activities described in Exhibit A (the "Statement of Work") can be carried out for the benefit of residents in the ENTITY'S jurisdiction.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration the receipt of which is hereby acknowledged, the ENTITY and the SUBRECIPIENT do mutually agree as follows:

SECTION I
Rules and Regulations

The SUBRECIPIENT agrees to cooperate with the ENTITY in respect to the implementation of Emergency Solutions Grants Program ("ESG") activities CFDA No. 14.231 to be carried out by SUBRECIPIENT pursuant to 24 CFR Parts 91 and 576 and other requirements, regulations and decisions as may be made by the Department of Housing and Urban Development (HUD) or any other federal or state ENTITY that may legally exercise its jurisdiction over expenditures of ESG funds.

SECTION II
Statement of Work

SUBRECIPIENT agrees to perform services as outlined in Exhibit A: Statement of Work, of this Agreement for and in consideration of ESG funding in the amount of \$ 167,630.20 enumerated in Exhibit B-1 (the "Grant Budget") and Exhibit B-2 (the "Payment Schedule").

SUBRECIPIENT agrees to notify ENTITY, in writing, prior to any changes in its Statement of Work, the Grant Budget, the Payment Schedule and the Schedule of Activity attached hereto as Exhibit C (the "Schedule of Activity"). SUBRECIPIENT shall obtain approval, in writing, from ENTITY prior to commencing work on any changes made to the Statement of Work, the Grant Budget, the Payment Schedule and the Schedule of Activity.

ENTITY shall not be liable for costs incurred or performances rendered by SUBRECIPIENT before commencement of this Agreement or after termination of this Agreement.

SUBRECIPIENT agrees to follow the schedule outlined in the Schedule of Activity of this Agreement, and shall notify ENTITY, in writing, prior to any changes, delays or departures from the Schedule of Activity. If SUBRECIPIENT demonstrates that delays or departure from the Schedule of Activity is due to circumstances beyond its control, ENTITY and SUBRECIPIENT may (but Entity shall not be required) to amend the Schedule of Activity.

Initials _____

SECTION III

Records and Reports

SUBRECIPIENT agrees to establish and maintain records and reports as outlined in the Records and Reports attached hereto as Exhibit D (the "Records and Reports") and agrees to make the Records and Reports available to the **ENTITY**, HUD, and any other local, state or federal entity or authority that may exercise jurisdiction over ESG funds. Monthly performance reports must be submitted on or before the 15th of every month.

SECTION IV

Monitoring Visits

SUBRECIPIENT agrees that **ENTITY** shall conduct on-site monitoring visits to assure compliance with applicable Federal requirements and that performance goals are being achieved, if applicable, as per 24 CFR Part 85.40 (a) and 24 CFR Part 84.51(a).

SUBRECIPIENT shall attend an orientation prior to the award of funds and prior to the first draw of funds. After each monitoring visit, **ENTITY** shall provide **SUBRECIPIENT** with a written report of the monitor's findings.

If the monitoring reports note deficiencies in **SUBRECIPIENT**'s performance under the terms of this Agreement, the monitoring report shall include requirements for the timely correction of such deficiencies by **SUBRECIPIENT**.

Failure by **SUBRECIPIENT** to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, as provided in Section XII of this Agreement.

In addition, **SUBRECIPIENT** shall give HUD, the Comptroller General of the United States, **ENTITY**, and any of their duly authorized representatives, unobstructed and full access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by **SUBRECIPIENT** pertaining to this Agreement.

SECTION V

Payment Requests and Program Income

SUBRECIPIENT agrees to follow administrative directions from the **ENTITY** regarding documenting and processing payment requests as defined in the Requests for Payments attached hereto as Exhibit E (the "Requests for Payments") of this Agreement.

SUBRECIPIENT shall submit final reimbursement request to **ENTITY** within fifteen (15) days (by DECEMBER 2015) of the Agreement termination date.

SUBRECIPIENT and **ENTITY** agree that if applicable, program income generated from the use of ESG funds shall be retained by the **SUBRECIPIENT**. If the activity is partially assisted with ESG funds, the **SUBRECIPIENT** agrees to pro-rate the gross income to reflect the percent of ESG funds assisted in the activity.

The **SUBRECIPIENT** is to provide to the **ENTITY** by the third Wednesday of each month an accounting of program income through Monthly Performance Reports outlined in the Records and Reports. The **ENTITY** is then required to report all ESG program income earned, retained, and expended.

The **SUBRECIPIENT** shall be allowed to use program income for the same or similar eligible activities that generated the program income. Failure of the **SUBRECIPIENT** to report program income as required shall cause the **ENTITY** to require all program income to be recovered by the **ENTITY**.

SUBRECIPIENT and **ENTITY** agree that all unused ESG funds at the end or termination of this agreement will be reallocated or reprogrammed by **ENTITY**.

Initials _____

SECTION VI Matching Funds

SUBRECIPIENT shall match the funds provided in this agreement as set forth in 24 CFR § 576.201. Eligibility of matching fund sources shall be subject to review and approval by the **ENTITY**.

In the event the **ENTITY** determines that the **SUBRECIPIENT**'s match funds are not in compliance with HUD regulations, policies, or directives, the **ENTITY** may, in its sole discretion, reduce the total funding amount set forth in an amount proportionate to the ineligible match funds.

SECTION VII Lead Based Paint

Lead Based Paint regulations require that all owners, perspective owners, and tenants of properties constructed prior to 1978 be properly noticed that such properties may contain lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment, and precautions that should be taken when dealing with lead-based paint poisoning.

Lead-based Paint Remediation and Disclosure. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C 4821-4826), the residential lead-Based Paint Hazard reduction Act of 2993 (42 U.S.C. 4851-4856), and implementing regulations at 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.

The **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 24 CFR § 576.403 (b), (c), (1-10).

SECTION VIII Religious Activities

The **SUBRECIPIENT** and **ENTITY** both agree that none of the funds expended or activities undertaken shall be used in support of any sectarian or religious activity, nor shall any building or structure funded under this Agreement be used for sectarian or religious activities. If an entity 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 as described in 24 CFR 576.406.

SECTION IX Other Program Requirements

SUBRECIPIENT agrees to comply with "Other Program Requirements" as listed in 24 CFR 576.407 except for those environmental review requirements listed as 24 CFR 576 and initiation of review process under the provisions of 24 CFR Part 50.

SECTION X Uniform Administrative Requirements

Subrecipients, except subrecipients that are governmental entities, shall comply with the requirements and standards OMB Circular No. A-122 implemented in 2 CFR Part 230, "Cost Principles for Non-profit Organizations and OMB Circular A-133 implemented in 2 CFR Part 200, "Audits of Institutions of Higher Education and Other Nonprofit Institutions".

Audits shall be conducted annually.

Such subrecipients shall also comply with the provisions of the Uniform Administrative requirements of OMB Circular A-110 implemented in 24 CFR part 84, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations" or the related ESG provisions, as specified in the other Applicable Provisions attached hereto as Exhibit F (the "Applicable Provisions") and any subsequent amendments thereto.

Initials _____

SECTION XI Audit Requirements

SUBRECIPIENT agrees to comply with the applicable requirements and standards as set forth in OMB Circular A-133 implemented in 2 CFR Part 200, Audits of States, Local Governments and Non-Profit organizations.

If the **SUBRECIPIENT** expends less than Five Hundred Thousand Dollars (\$500,000.00) a year in federal awards, then they are exempt from the OMB Circular A-133 audit requirements for that year; however, records must be available for review or audit by appropriate officials of the federal agency, pass-through entity and the General Accounting Office

However, if **SUBRECIPIENT** expends Five Hundred Thousand Dollars (\$500,000.00) or more in federal funds, **SUBRECIPIENT** must, within nine (9) months from the end of its fiscal year, supply **ENTITY** with an audit of revenues and expenditures conducted by a certified public accountant. Grant funds will automatically be forfeited if the **SUBRECIPIENT** fails to submit an audit within the allotted time.

SUBRECIPIENT agrees to furnish **ENTITY** with a current Financial Management Letter (financial statements) within six (6) months from the end of its fiscal year covering the period of this Agreement that includes detailed receipts and disbursement of payments to **SUBRECIPIENT** hereunder. Grant funds will automatically be forfeited if the **SUBRECIPIENT** fails to submit a Financial Management Letter.

SUBRECIPIENT is required to submit a 990 Tax Return (Return of Organization Exempt from Income Tax) for the most recent fiscal year within six (6) months if submitting a Financial Management Letter or within nine (9) months if submitting a Financial Audit. If the subrecipient is not classified as an exempt entity, the subrecipient will not be awarded grant funds.

SUBRECIPIENT is required to submit 941 Employer's QUARTERLY Federal Tax Return reports.

If applicable, **SUBRECIPIENT** agrees to cooperate with **ENTITY** relating to any inquiries regarding the Financial Audit or Financial Management Letter and **SUBRECIPIENT** acknowledges that a Financial Audit or Financial Management Letter shall be provided to **ENTITY** at the expense of the **SUBRECIPIENT**.

Financial Audit or Financial Management Letter shall be available to **ENTITY** staff, and any and all applicable federal agencies, and be of unrestricted access, as listed in 24 CFR Part 84.

SECTION XII Suspension and Termination

SUBRECIPIENT understands that this Agreement may be suspended or terminated, in accordance with 24 CFR 84.86, if applicable, and 24 CFR 84.61, if the **SUBRECIPIENT** materially fails to comply with the provisions of this Agreement or the provisions so listed in the Statement of Work attached hereto as Exhibit A (the "Statement of Work"), the Grant Budget attached hereto as Exhibit B-1 (the "Grant Budget"), the Payment Schedule attached hereto as Exhibit B-2 (the "Payment Schedule"), the Schedule of Activity attached hereto as Exhibit C (the "Schedule of Activity"), the Records & Reports attached hereto as Exhibit D (the "Records & Reports"), the Request for Payments attached hereto as Exhibit E (the "Request for Payments"), Other Applicable Provisions attached hereto as Exhibit F (the "Applicable Provisions"), and the Applicable Provisions - 24 CFR Part 84 attached hereto as Exhibit G (the "Other Applicable Provisions - 24 CFR Part 84").

SUBRECIPIENT agrees to follow all the requirements under §567.402 when terminating assistance on a program participant. 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 the individuals affected.

SUBRECIPIENT must document the determination of ineligibility for each individual or family determined ineligible as required in §576.500. The record must include documentation of the reason for that determination.

It is expressly agreed that this Agreement may not be amended except upon the joint action of both the **Entity and Women Together Foundation, Inc.**

Initials _____

SECTION XIII

Assets

SUBRECIPIENT shall not purchase any asset unless so permitted by the **ENTITY** and such procurement shall be done in the form and manner so prescribed by the **ENTITY**.

Any asset acquired or improved in part or in whole with ESG funds must be used in an activity that meets one of the national objectives listed in 24 CFR Part 91 and 576.

The disposition of any asset improved or acquired in part or in whole with ESG funds by the **SUBRECIPIENT** must be done with prior written approval of the **ENTITY** and the **ENTITY** shall be reimbursed for the asset, if sold, in the full amount of the disposed value of the asset. The **ENTITY** may, at its option, request that such asset be transferred to **ENTITY** if the asset is no longer being used to meet one of the national objectives or in any case where the **SUBRECIPIENT** no longer provides services shown on the Statement of Work.

SECTION XIV

Use of Emergency Shelter

SUBRECIPIENT agrees to operate and maintain an emergency shelter for a period of three (3) or ten (10) years depending on the type of renovation and value of the building as required on §576.102. Renovation other than major rehabilitation or conversion, in all other cases where ESG funds were used for renovation, the minimum period of use is three (3) years.

If the **SUBRECIPIENT** uses ESG funds for operation and maintenance costs, **SUBRECIPIENT** hereby agrees to maintain the shelter for the homeless for the period for which assistance is being provided for the same targeted population. For the purposes of this Agreement, such time period shall be from the date the Agreement is executed to its expiration, as identified in Section XXI.

SECTION XV

Indemnity Clause

SUBRECIPIENT agrees to hold **ENTITY** harmless from, and indemnify **ENTITY** from and defend **ENTITY** against any and all claims brought against **ENTITY** by employees or officers of **SUBRECIPIENT** or brought by any third person arising in any manner directly or indirectly from **SUBRECIPIENT** programs, activities or events conducted pursuant to this Agreement.

SUBRECIPIENT shall acquire, maintain and furnish to **ENTITY** a Certificate of Insurance as proof that it has secured and paid for policies of public liability and automobile insurance to cover all operations and services under this Agreement with limits of not less than \$300,000.00 per occurrence, \$300,000.00 aggregate, covering all risks incident to or in connection with the execution, performance, attempted performance or non-performance of this Agreement.

SECTION XVI

Procurement

SUBRECIPIENT agrees to follow the statutes and rules governing the **ENTITY** in the procurement of services, supplies or non-real property in relation to **ENTITY**-funded projects. The legal standards that will apply include the procurement standards of the HIDALGO COUNTY Urban County Program, which includes 24 CFR Part 84.46, and the TEXAS COUNTY PURCHASING ACT.

Initials _____

SECTION XVII

Conflict of Interest

SUBRECIPIENT covenants that members of its organization or staff members who exercise influence on the decision-making process will not have any interest, direct or indirect, with any person, corporation, company or association that is hired to carry out any of the activities so listed in the Statement of Work (Exhibit A), 24 CFR Part 576.404, 24 CFR Part 84.40-48.

SUBRECIPIENT agrees that no person who is an elected official, officer, director, employee, consultant, or agent of the **SUBRECIPIENT's** organization or the **ENTITY's** organization shall gain any interest in any corporation, company, or association that is hired to carry out any of the activities so listed in Statement of Work during their tenure or for a period of one year thereafter.

SUBRECIPIENT is responsible for repayment of funds associated with any conflict of interest that may occur either knowingly or unknowingly.

No **ENTITY** employee, elected official, consultant and/or agent shall solicit nor accept gratuities, favors, or anything of monetary value from any person, corporation, company, or association that has been hired or expects to be hired to perform any of the activities so described in the Statement of Work.

SECTION XVIII

Legal Action and Venue

SUBRECIPIENT agrees to notify the **ENTITY** when a problem arises that may lead to legal action or claim against the **SUBRECIPIENT**. The **SUBRECIPIENT** agrees to furnish to the **ENTITY** any and all information with respect to such action or claim. The **SUBRECIPIENT** agrees not to take any action with respect to any legal action or claim sought against the **SUBRECIPIENT** without the advice and written consent of the **ENTITY**.

Venue and jurisdiction of any suit, right or cause of action arising under or in connection with this Agreement shall lie exclusively in HIDALGO COUNTY

SECTION XIX

Miscellaneous Provisions

Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

No Waiver. No waiver by **ENTITY** of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

Entire Agreement. This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by **ENTITY** and **SUBRECIPIENT**, and not otherwise.

Texas Law to Apply. THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN HIDALGO COUNTY, TEXAS. THE PARTIES HEREBY CONSENT TO PERSONAL JURISDICTION IN HIDALGO COUNTY, TEXAS.

Notice. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by electronic mail, or (iii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or (iv) sent by facsimile or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

Initials _____

If to ENTITY:

COUNTY OF HIDALGO
Urban County Program
427 E. Duranta Ave., Suite 107
Alamo, TX 78516
Email: ucp@ucp.co.hidalgo.tx.us
Phone # (956) 787-8127
Fax # (956) 318-2988

If to SUBRECIPIENT:

THE SALVATION ARMY
c/o Luis Melendez, Captain
1600 North 23rd St.
McAllen, Texas 78501-6737
Phone #: (956) 682-1468
Fax #: (956) 682-9693
Email: luis_melendez@uss.salvationarmy.org

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

Additional Documents. The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

Assignment. This Agreement shall not be assignable by SUBRECIPIENT. ENTITY may assign this Agreement without the consent of SUBRECIPIENT.

Headings. The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

Gender and Number. All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

Authority to Execute. The execution and performance of this Agreement by ENTITY and SUBRECIPIENT have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of ENTITY and SUBRECIPIENT in accordance with its terms.

Initials _____

SECTION XX
Participation in HMIS and Coordinated Access System

The **SUBRECIPIENT** agrees that projects receiving funding under Emergency Solutions Grants ("ESG") program will participate in the Homeless Management Information System (HMIS). Section 416 (f) of the McKinney-Vento Act and HEARTH Act (24 CFR Part 580) requires that projects receiving funding under Emergency Solutions Grant (ESG) program participate in HMIS pursuant to 24 CFR 576.107.

The **SUBRECIPIENT** 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 provide to an HMIS.

The **SUBRECIPIENT** shall work with the Continuum of Care to ensure the screening, assessment and referral of program participants are consistent with the written standards required by the ENTITY. A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system as set forth in 24 CFR § 576.400(d).

The **SUBRECIPIENT** shall 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 the area as set forth at 24 CFR § 576.400(b).

System and Program Coordination with Mainstream Resources. The **SUBRECIPIENT** 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 as set forth in 24 CFR § 576.400(c).

Participation of Homeless Persons in Policy-Making and Operations. The **SUBRECIPIENT** understands they are required by federal rule to provide for the participation of at least one homeless or formerly homeless person(s) in a policy-making function within the organization as required in 24 CFR §576.405. This might include, for example, involvement of a homeless or formerly homeless person on the Board of Directors or similar entity that considers and sets policy or makes decisions for the recipient agency.

If the **SUBRECIPIENT** is unable to meet requirement, 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.

The **SUBRECIPIENT** also agrees that to the maximum extent practicable, they will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under this agreement and in providing services for occupants of facilities assisted under this agreement as listed in 24 CFR § 576.405 in accordance with 42 U.S.C. 11375 (d) and 42 U.S.C. 11375 (c) (7)

Initials _____

SECTION XXI
Effective Date

The effective date of this agreement shall be the 10th day of November 2014 such date being the date the HIDALGO COUNTY COMMISSIONERS' COURT approved entering into this Agreement with SUBRECIPIENT and shall terminate on the 31st day of December 2015. *Non-profits funding will be for a period of fourteen (14) months and a two (2) year period for the grantee (UCP). An extension can be granted by the UCP director up to a period of 6 months.

Approved and signed this _____ day of _____, 20__.

Print or Type Name of Authorized Official

Signature of Authorized Official

SUBRECIPIENT Name: The Salvation Army
Address: 1600 North 23rd St.
City/State/Zip: McAllen, Texas 78501-6737
Federal I.D. # or Soc. Sec. #: 58-0660607
DUNS #: 830-704-834

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

_____ personally appeared before me and declared that he/she signed this application in the capacity designated, if any, and further states that, he/she has read the above application, and the statements therein contained are true.

Subscribed and sworn to before me this _____ day of _____, 20__.

(Seal)

Notary - Signature

COUNTY OF HIDALGO – URBAN COUNTY PROGRAM

Witness:

Diana R. Serna, UCP Director

APPROVED AS TO FORM
Atlas & Hall L.L.P.
By: Steve Crain
Date: 10-21-2014

Initials _____

EXHIBIT A

STATEMENT OF WORK

Homeless Prevention: §576.103

Financial assistance includes housing stabilization services (including rental application fees, security deposits, utility deposits or payments, last month's rent and housing search and placement activities). Funds may also be used for short or medium-term rental assistance for those who are at risk of becoming homeless or transitioning to stable housing with a maximum limit on assistance of 24 months.

HMIS -Data Collections: §576.107

Funds may be used to pay the costs for contributing data to the HMIS designated by the Continuum of Care or a comparable database system for client tracking when servicing battered and abused population for the area. Eligible activities include (computer hardware, software, or equipment, technical support, office space, salaries of operators, staff training costs, and participation fees.)

Rapid Re-housing: §576.104

ESG funds may be used to provide housing relocation and stabilization services and short-and 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. Participants must meet the criteria under paragraph (1) of the homeless definition in §576.2

Shelter Operations: §576.102

Funds may be used for costs of providing services to homeless families and individuals in emergency shelters. Funds may be used for renovating shelter and the operating the emergency shelter. This activity is subject to the expenditure limit in §576.100(b)

Initials _____

EXHIBIT B-1
Grant Budget
As identified through the Statement of Work

TYPE OF EXPENDITURES	BUDGETED AMOUNT
Homeless Prevention Financial Assistance (Rental) \$ 18,439.00 Financial Assistance (Dep/Utilities) \$ 0.00 Financial Services (HR Stab. Services) \$ 0.00	\$ 18,439.00
HMIS (Data Collections) Staff Salaries for Data Entry \$ 800.00 Equipment \$ 0.00 Training \$ 0.00	\$ 800.00
Rapid Re-housing Financial Assistance (Rental) \$ 11,735.00 Financial Assistance (Dep/Utilities) \$ 0.00 Financial Services (HR Stab. Services) \$ 0.00	\$11,735.00
Shelter Operations Maintenance & Operations \$ 136,656.20 Essential Services \$ 0.00	\$ 136,656.20
TOTAL GRANT BUDGET:	\$ 167,630.20

Initials _____

EXHIBIT B-2
PAYMENT SCHEDULE

2014 - 2015 For the Months of...	Estimated Amount of Expenditures	Type of Budgeted Expenditures
Jul. 2014		
Aug. 2014		
Sept. 2014		
Oct. 2014		
Nov. 2014	11,973.58	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Dec. 2014	11,973.58	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Jan. 2015	11,973.58	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Feb. 2015	11,973.58	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Mar. 2015	11,973.58	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Apr. 2015	11,973.58	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
May 2015	11,973.59	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Jun. 2015	11,973.59	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Jul. 2015	11,973.59	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Aug. 2015	11,973.59	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Sept. 2015	11,973.59	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Oct. 2015	11,973.59	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Nov. 2015	11,973.59	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Dec. 2015	11,973.59	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
TOTALS	\$ 167,630.20	

Initials _____

EXHIBIT C Schedule of Activity

SUBRECIPIENT hereby agrees to perform services as outlined in Exhibit A.

A proposed monthly schedule of activity should be provided in this space. Schedule should not exceed SUBRECIPIENT contract time frame of 14 months from contract date.

20 <u>14</u> - 2015 For the Months of...	Number of Beneficiaries	Services
Jul. 2014		
Aug. 2014		
Sep. 2014		
Oct. 2014		
Nov. 2014	100	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Dec. 2014	100	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Jan. 2015	100	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Feb. 2015	100	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Mar. 2015	100	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Apr. 2015	100	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
May 2015	100	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Jun. 2015	100	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Jul. 2015	100	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Aug. 2015	100	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Sep. 2015	100	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Oct. 2015	100	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Nov. 2015	100	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Dec. 2015	100	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Total Unduplicated	1,400 persons	

Initials _____

EXHIBIT D RECORDS & REPORTS

A. When requesting payment, attach a cover letter summarizing the expenditures with the following documents:

- Copies of Invoices
- Canceled Checks
- Portion requesting from ESG Program
- Other Supporting Documents
- HMIS Client Enrollment report
- HMIS client reports
- Other comparable data reports when exempt from using HMIS system

Payment requests must be submitted to Urban County by the 15th of each month.

- A Performance report must be submitted to the Urban County Program accompanying each request for payment. Each performance report must have the following items:

- a). Period covered by Performance Report
- b). Type of services provided
- c). Type of Equipment/Supplies Purchased
- d). Amount of fund Expended
- e). Number of Beneficiaries Served & Ethnicity Data

_____ White, non Hispanic
_____ Black, non Hispanic
_____ Native American
_____ Asian or Pacific Islander
_____ Hispanic
_____ Total

- How services provided benefit clientele
- Projection for next disbursement period
- Program Income Report/Blank Statement (when applicable)
- Other significant Information

B. Matching Funds 24 CFR 576 requires that each grantee and/or SUBRECIPIENT must match the funding provided by HUD under 24 CFR 576 with an equal amount of funds from sources other than under Part 576. Therefore, each request for payment must be with either cash, volunteer time, in-kind, office space, or donations.

C. Provide an annual report of activity by July 10th of each year the Agreement is in effect. The annual report shall include the following:

- ☐ **Facility Name:** List name, address (unless confidential) of each shelter/facility receiving HESG assistance.
- ☐ **HESG Amount:** Indicate the amount of ESG assistance allocated to each shelter/facility. It is optional whether the amount of funds for each activity type
- ☐ **Activity Types:** Briefly describe the accomplishments from each eligible activity – Summarize category of services provided.
- ☐ **Homeless Beneficiaries:** For each shelter/facility assisted use the following codes for describing the types of beneficiaries: Please utilize HMIS for other reports such as CAPER Report.

UM -	Unaccompanied Men	TPF -	Two Parent Families
UW -	Unaccompanied Women	AC -	Adult Couples without children
UFY -	Unaccompanied Female Youth under 18 years of age	DK -	Don't Know/Refuse
UMY -	Unaccompanied Male Youth under 18 years of age	SPF -	Single Parent Families

Initials _____

- Note: If there is more than one beneficiary type, list all with the predominant beneficiary type listed first.
- ☐ **Racial and Ethnic Data:** During the past year of operation what was the estimated average number of people each ESG-Shelter/Facility served per day/night? What is the estimated portion of these different racial and ethnic groups?
Estimated average number served per day/night _____.
- ☐ **Racial and Ethnic Data (Continued):**
Portion Served:
- _____ White, non Hispanic
_____ Black, non Hispanic
_____ Native American
_____ Asian or Pacific Islander
_____ Hispanic
_____ Total

SUBRECIPIENT must maintain a file of all records and reports submitted to the Urban County Program.

SUBRECIPIENT must maintain record of beneficiaries being served (i.e. application, membership, clientele profile, etc.).

SUBRECIPIENT must maintain files of all original contract agreements amendments, and correspondence.

SUBRECIPIENT must maintain proper financial records.

SUBRECIPIENT must participate in the Annual Point in time Homeless Count

Initials _____

Exhibit E
REQUEST FOR PAYMENTS

1. Subrecipient must submit **monthly** reimbursement requests as approved on the Schedule of Payment hereto attached as Exhibit B-2 (the "Schedule of Payment") due on or before the 15th of each month.
2. Subrecipient must inform Urban County in writing if the reimbursement request and/or monthly performance report will not be submitted by the due date.
3. Request for reimbursements that are submitted after the last working day of the month will be returned unpaid if the subrecipient did not comply with Request for Payments (2) hereto attached as Exhibit E (the "Request for Payments").
4. Urban County Program will return incorrect and/or incomplete reimbursement requests to the subrecipient as soon as possible in order for corrections to be made.
5. Subrecipient must submit the corrections and/or pending documentation no later than 10 days from notification by UCP. Should the subrecipient fail to submit the corrections within the allotted time, the RFP will be returned, and will NOT qualify for re-submission.
6. Subrecipient must submit *FINAL* reimbursement request and monthly performance report to the Urban County Program on or before December 15th.
7. December expenditures (equipment / supplies) must be invoiced and paid by December 31st to be eligible for reimbursement.
8. Subrecipient must submit all required documentation as stated on the UCP Reimbursement Checklist.
9. Should the Subrecipient fail to comply with timely submittals of monthly reimbursement requests and/or performance reports, the Urban County Program shall consider termination of the Subrecipient Agreement as per Section XII "Suspension and Termination".
10. All reimbursement requests and reports submitted to Urban County must be originals signed with blue ink.
11. As per Section IV of this Agreement, the Urban County Program Monitoring Division will conduct on-site monitoring visits to ensure compliance with applicable Federal requirements and performance goals are being met.
12. Reimbursement requests are processed by Urban County on a first come first serve basis.
13. Payments to Subrecipients will only be mailed. Checks will not be allowed for pickup unless approved by UCP Director.
14. Checks are mailed eleven (11) days from the date the reimbursement request is submitted to the finance division, only after all documentation is reviewed, corrections are made, and all documentation is in order.

Initials _____

Exhibit F
Other Applicable Provisions
As stated in Section IX
24 CFR 576.407

(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.

Initials _____

Exhibit G
Applicable Provisions - 24 CFR Part 84
OMB Circular A-133
As stated in Section X

**PART 84— UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH
INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-
PROFIT ORGANIZATIONS**

Subpart A—General

Sec.

- 84.1 Purpose.
- 84.2 Definitions.
- 84.3 Effect on other issuances.
- 84.4 Deviations.
- 84.5 Subawards.

Subpart B—Pre-Award Requirements

- 84.10 Purpose.
- 84.11 Pre-award policies.
- 84.12 Forms for applying for Federal assistance.
- 84.13 Debarment and suspension; Drug-Free Workplace.
- 84.14 Special award conditions.
- 84.15 Metric system of measurement.
- 84.16 Resource Conservation and Recovery Act.
- 84.17 Certifications and representations.

Subpart C—Post-Award Requirements

Financial and Program Management

- 84.20 Purpose of financial and program management.
- 84.21 Standards for financial management systems.
- 84.22 Payment.
- 84.23 Cost sharing or matching.
- 84.24 Program income.
- 84.25 Revision of budget and program plans.
- 84.26 Non-Federal audits.
- 84.27 Allowable costs.
- 84.28 Period of availability of funds.

Property Standards

- 84.30 Purpose of property standards.
- 84.31 Insurance coverage.
- 84.32 Real property.
- 84.33 Federally-owned and exempt property.
- 84.34 Equipment.
- 84.35 Supplies and other expendable property.
- 84.36 Intangible property.
- 84.37 Property trust relationship.

Procurement Standards

- 84.40 Purpose of procurement standards.

Initials _____

84.41 Recipient responsibilities.

84.42 Codes of conduct.

84.43 Competition.

84.44 Procurement procedures.

84.45 Cost and price analysis.

84.46 Procurement records.

84.47 Contract administration.

84.48 Contract provisions.

Reports and Records

84.50 Purpose of reports and records.

84.51 Monitoring and reporting program performance.

84.52 Financial reporting.

84.53 Retention and access requirements for records.

Termination and Enforcement

84.60 Purpose of termination and enforcement.

84.61 Termination.

84.62 Enforcement.

Subpart D—After-the-Award Requirements

84.70 Purpose.

84.71 Closeout procedures.

84.72 Subsequent adjustments and continuing responsibilities.

84.73 Collection of amounts due.

Subpart E—Use of Lump Sum Grants

84.80 Conditions for use of Lump Sum (fixed price or fixed amount) grants.

84.81 Definition.

84.82 Provisions applicable only to lump sum grants.

84.83 Property standards.

84.84 Procurement standards.

84.85 Reports and records.

84.86 Termination and enforcement.

84.87 Closeout procedures, subsequent adjustments and continuing responsibilities.

**Revised to show changes published in the Federal Registers
of June 27, 2003 and June 26, 2007
Audits of States, Local Governments, and Non-Profit Organizations**

**--AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT
ORGANIZATIONS
OMB Circular A-133**

Subpart A--General

Sec.

___ .100 Purpose.

___ .105 Definitions.

Subpart B--Audits

___ .200 Audit requirements.

___ .205 Basis for determining Federal awards expended.

___ .210 Subrecipient and vendor determinations.

___ .215 Relation to other audit requirements.

___ .220 Frequency of audits.

___ .225 Sanctions.

___ .230 Audit costs.

___ .235 Program-specific audits.

Subpart C--Auditees

___ .300 Auditee responsibilities.

___ .305 Auditor selection.

___ .310 Financial statements.

___ .315 Audit findings follow-up.

___ .320 Report submission.

Subpart D--Federal Agencies and Pass-Through Entities

___ .400 Responsibilities.

Initials _____

___ .405 Management decision.

Subpart E—Auditors

___ .500 Scope of audit.

___ .505 Audit reporting.

___ .510 Audit findings.

___ .515 Audit working papers.

___ .520 Major program determination.

___ .525 Criteria for Federal program risk.

___ .530 Criteria for a low-risk auditee.

Initials _____

STATE OF TEXAS }
 }
COUNTY OF HIDALGO }

2014 – YR 27
EMERGENCY SOLUTIONS GRANTS PROGRAM

SUBRECIPIENT AGREEMENT

This Agreement is made and entered into on this the 10th day of NOVEMBER, 2014 by and between the COUNTY OF HIDALGO, Urban County Program, a political subdivision of the State of Texas, hereinafter referred to as "ENTITY", and CATHOLIC CHARITIES OF THE RIO GRANDE VALLEY, a neighborhood based not-for-profit organization, hereinafter referred to as "SUBRECIPIENT".

WITNESSETH

WHEREAS, SUBRECIPIENT desires to carry out eligible activities as described in the Statement of Work attached hereto as Exhibit A (the "Statement of Work"), to this Agreement and permitted by the Federal Register/Vol. 76, No. 233/Rules and Regulations pursuant to the U. S. Department of Housing and Urban Development Emergency Solutions Grant Program Entitlement Grant Regulations and covered in 24 CFR Parts 91 and 576.

WHEREAS, the ENTITY proposes to contract with SUBRECIPIENT in order that the eligible activities described in Exhibit A (the "Statement of Work") can be carried out for the benefit of residents in the ENTITY'S jurisdiction.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration the receipt of which is hereby acknowledged, the ENTITY and the SUBRECIPIENT do mutually agree as follows:

SECTION I
Rules and Regulations

The SUBRECIPIENT agrees to cooperate with the ENTITY in respect to the implementation of Emergency Solutions Grants Program ("ESG") activities CFDA No. 14.231 to be carried out by SUBRECIPIENT pursuant to 24 CFR Parts 91 and 576 and other requirements, regulations and decisions as may be made by the Department of Housing and Urban Development (HUD) or any other federal or state ENTITY that may legally exercise its jurisdiction over expenditures of ESG funds.

SECTION II
Statement of Work

SUBRECIPIENT agrees to perform services as outlined in Exhibit A: Statement of Work, of this Agreement for and in consideration of ESG funding in the amount of \$ 133,726.00 enumerated in Exhibit B-1 (the "Grant Budget") and Exhibit B-2 (the "Payment Schedule").

SUBRECIPIENT agrees to notify ENTITY, in writing, prior to any changes in its Statement of Work, the Grant Budget, the Payment Schedule and the Schedule of Activity attached hereto as Exhibit C (the "Schedule of Activity"). SUBRECIPIENT shall obtain approval, in writing, from ENTITY prior to commencing work on any changes made to the Statement of Work, the Grant Budget, the Payment Schedule and the Schedule of Activity.

ENTITY shall not be liable for costs incurred or performances rendered by SUBRECIPIENT before commencement of this Agreement or after termination of this Agreement.

SUBRECIPIENT agrees to follow the schedule outlined in the Schedule of Activity of this Agreement, and shall notify ENTITY, in writing, prior to any changes, delays or departures from the Schedule of Activity. If SUBRECIPIENT demonstrates that delays or departure from the Schedule of Activity is due to circumstances beyond its control, ENTITY and SUBRECIPIENT may (but Entity shall not be required) to amend the Schedule of Activity.

Initials _____

SECTION III

Records and Reports

SUBRECIPIENT agrees to establish and maintain records and reports as outlined in the Records and Reports attached hereto as Exhibit D (the "Records and Reports") and agrees to make the Records and Reports available to the **ENTITY**, HUD, and any other local, state or federal entity or authority that may exercise jurisdiction over ESG funds. Monthly performance reports must be submitted on or before the 15th of every month.

SECTION IV

Monitoring Visits

SUBRECIPIENT agrees that **ENTITY** shall conduct on-site monitoring visits to assure compliance with applicable Federal requirements and that performance goals are being achieved, if applicable, as per 24 CFR Part 85.40 (a) and 24 CFR Part 84.51(a).

SUBRECIPIENT shall attend an orientation prior to the award of funds and prior to the first draw of funds. After each monitoring visit, **ENTITY** shall provide **SUBRECIPIENT** with a written report of the monitor's findings.

If the monitoring reports note deficiencies in **SUBRECIPIENT**'s performance under the terms of this Agreement, the monitoring report shall include requirements for the timely correction of such deficiencies by **SUBRECIPIENT**.

Failure by **SUBRECIPIENT** to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, as provided in Section XII of this Agreement.

In addition, **SUBRECIPIENT** shall give HUD, the Comptroller General of the United States, **ENTITY**, and any of their duly authorized representatives, unobstructed and full access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by **SUBRECIPIENT** pertaining to this Agreement.

SECTION V

Payment Requests and Program Income

SUBRECIPIENT agrees to follow administrative directions from the **ENTITY** regarding documenting and processing payment requests as defined in the Requests for Payments attached hereto as Exhibit E (the "Requests for Payments") of this Agreement.

SUBRECIPIENT shall submit final reimbursement request to **ENTITY** within fifteen (15) days (by DECEMBER 2015) of the Agreement termination date.

SUBRECIPIENT and **ENTITY** agree that if applicable, program income generated from the use of ESG funds shall be retained by the **SUBRECIPIENT**. If the activity is partially assisted with ESG funds, the **SUBRECIPIENT** agrees to pro-rate the gross income to reflect the percent of ESG funds assisted in the activity.

The **SUBRECIPIENT** is to provide to the **ENTITY** by the third Wednesday of each month an accounting of program income through Monthly Performance Reports outlined in the Records and Reports. The **ENTITY** is then required to report all ESG program income earned, retained, and expended.

The **SUBRECIPIENT** shall be allowed to use program income for the same or similar eligible activities that generated the program income. Failure of the **SUBRECIPIENT** to report program income as required shall cause the **ENTITY** to require all program income to be recovered by the **ENTITY**.

SUBRECIPIENT and **ENTITY** agree that all unused ESG funds at the end or termination of this agreement will be reallocated or reprogrammed by **ENTITY**.

Initials _____

SECTION VI Matching Funds

SUBRECIPIENT shall match the funds provided in this agreement as set forth in 24 CFR § 576.201. Eligibility of matching fund sources shall be subject to review and approval by the **ENTITY**.

In the event the **ENTITY** determines that the **SUBRECIPIENT**'s match funds are not in compliance with HUD regulations, policies, or directives, the **ENTITY** may, in its sole discretion, reduce the total funding amount set forth in an amount proportionate to the ineligible match funds.

SECTION VII Lead Based Paint

Lead Based Paint regulations require that all owners, perspective owners, and tenants of properties constructed prior to 1978 be properly noticed that such properties may contain lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment, and precautions that should be taken when dealing with lead-based paint poisoning.

Lead-based Paint Remediation and Disclosure. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C 4821-4826), the residential lead-Based Paint Hazard reduction Act of 1993 (42 U.S.C. 4851-4856), and implementing regulations at 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.

The **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 24 CFR § 576.403 (b), (c), (1-10).

SECTION VIII Religious Activities

The **SUBRECIPIENT** and **ENTITY** both agree that none of the funds expended or activities undertaken shall be used in support of any sectarian or religious activity, nor shall any building or structure funded under this Agreement be used for sectarian or religious activities. If an entity 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 as described in 24 CFR 576.406.

SECTION IX Other Program Requirements

SUBRECIPIENT agrees to comply with "Other Program Requirements" as listed in 24 CFR 576.407 except for those environmental review requirements listed as 24 CFR 576 and initiation of review process under the provisions of 24 CFR Part 50.

SECTION X Uniform Administrative Requirements

Subrecipients, except subrecipients that are governmental entities, shall comply with the requirements and standards OMB Circular No. A-122 implemented in 2 CFR Part 230, "Cost Principles for Non-profit Organizations and OMB Circular A-133 implemented in 2 CFR Part 200, "Audits of Institutions of Higher Education and Other Nonprofit Institutions".

Audits shall be conducted annually.

Such subrecipients shall also comply with the provisions of the Uniform Administrative requirements of OMB Circular A-110 implemented in 24 CFR part 84, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations" or the related ESG provisions, as specified in the other Applicable Provisions attached hereto as Exhibit F (the "Applicable Provisions") and any subsequent amendments thereto.

Initials _____

SECTION XI

Audit Requirements

SUBRECIPIENT agrees to comply with the applicable requirements and standards as set forth in OMB Circular A-133 implemented in 2 CFR Part 200, Audits of States, Local Governments and Non-Profit organizations.

If the **SUBRECIPIENT** expends less than Five Hundred Thousand Dollars (\$500,000.00) a year in federal awards, then they are exempt from the OMB Circular A-133 audit requirements for that year; however, records must be available for review or audit by appropriate officials of the federal agency, pass-through entity and the General Accounting Office

However, if **SUBRECIPIENT** expends Five Hundred Thousand Dollars (\$500,000.00) or more in federal funds, **SUBRECIPIENT** must, within nine (9) months from the end of its fiscal year, supply **ENTITY** with an audit of revenues and expenditures conducted by a certified public accountant. **Grant funds will automatically be forfeited if the SUBRECIPIENT fails to submit an audit within the allotted time.**

SUBRECIPIENT agrees to furnish **ENTITY** with a current Financial Management Letter (financial statements) within six (6) months from the end of its fiscal year covering the period of this Agreement that includes detailed receipts and disbursement of payments to **SUBRECIPIENT** hereunder. **Grant funds will automatically be forfeited if the SUBRECIPIENT fails to submit a Financial Management Letter.**

SUBRECIPIENT is required to submit a 990 Tax Return (Return of Organization Exempt from Income Tax) for the most recent fiscal year within six (6) months if submitting a Financial Management Letter or within nine (9) months if submitting a Financial Audit. If the subrecipient is not classified as an exempt entity, the subrecipient will not be awarded grant funds.

SUBRECIPIENT is required to submit 941 Employer's QUARTERLY Federal Tax Return reports.

If applicable, **SUBRECIPIENT** agrees to cooperate with **ENTITY** relating to any inquiries regarding the Financial Audit or Financial Management Letter and **SUBRECIPIENT** acknowledges that a Financial Audit or Financial Management Letter shall be provided to **ENTITY** at the expense of the **SUBRECIPIENT**.

Financial Audit or Financial Management Letter shall be available to **ENTITY** staff, and any and all applicable federal agencies, and be of unrestricted access, as listed in 24 CFR Part 84.

SECTION XII

Suspension and Termination

SUBRECIPIENT understands that this Agreement may be suspended or terminated, in accordance with 24 CFR 84.86, if applicable, and 24 CFR 84.61, if the **SUBRECIPIENT** materially fails to comply with the provisions of this Agreement or the provisions so listed in the Statement of Work attached hereto as Exhibit A (the "Statement of Work"), the Grant Budget attached hereto as Exhibit B-1 (the "Grant Budget), the Payment Schedule attached hereto as Exhibit B-2 (the "Payment Schedule), the Schedule of Activity attached hereto as Exhibit C (the "Schedule of Activity"), the Records & Reports attached hereto as Exhibit D (the "Records & Reports"), the Request for Payments attached hereto as Exhibit E (the "Request for Payments"), Other Applicable Provisions attached hereto as Exhibit F (the "Applicable Provisions"), and the Applicable Provisions - 24 CFR Part 84 attached hereto as Exhibit G (the "Other Applicable Provisions - 24 CFR Part 84").

SUBRECIPIENT agrees to follow all the requirements under §567.402 when terminating assistance on a program participant. 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 the individuals affected.

SUBRECIPIENT must document the determination of ineligibility for each individual or family determined ineligible as required in §576.500. The record must include documentation of the reason for that determination.

It is expressly agreed that this Agreement may not be amended except upon the joint action of both the **Entity and Women Together Foundation, Inc.**

Initials _____

SECTION XIII

Assets

SUBRECIPIENT shall not purchase any asset unless so permitted by the **ENTITY** and such procurement shall be done in the form and manner so prescribed by the **ENTITY**.

Any asset acquired or improved in part or in whole with ESG funds must be used in an activity that meets one of the national objectives listed in 24 CFR Part 91 and 576.

The disposition of any asset improved or acquired in part or in whole with ESG funds by the **SUBRECIPIENT** must be done with prior written approval of the **ENTITY** and the **ENTITY** shall be reimbursed for the asset, if sold, in the full amount of the disposed value of the asset. The **ENTITY** may, at its option, request that such asset be transferred to **ENTITY** if the asset is no longer being used to meet one of the national objectives or in any case where the **SUBRECIPIENT** no longer provides services shown on the Statement of Work.

SECTION XIV

Use of Emergency Shelter

SUBRECIPIENT agrees to operate and maintain an emergency shelter for a period of three (3) or ten (10) years depending on the type of renovation and value of the building as required on §576.102. Renovation other than major rehabilitation or conversion, in all other cases where ESG funds were used for renovation, the minimum period of use is three (3) years.

If the **SUBRECIPIENT** uses ESG funds for operation and maintenance costs, **SUBRECIPIENT** hereby agrees to maintain the shelter for the homeless for the period for which assistance is being provided for the same targeted population. For the purposes of this Agreement, such time period shall be from the date the Agreement is executed to its expiration, as identified in Section XXI.

SECTION XV

Indemnity Clause

SUBRECIPIENT agrees to hold **ENTITY** harmless from, and indemnify **ENTITY** from and defend **ENTITY** against any and all claims brought against **ENTITY** by employees or officers of **SUBRECIPIENT** or brought by any third person arising in any manner directly or indirectly from **SUBRECIPIENT** programs, activities or events conducted pursuant to this Agreement.

SUBRECIPIENT shall acquire, maintain and furnish to **ENTITY** a Certificate of Insurance as proof that it has secured and paid for policies of public liability and automobile insurance to cover all operations and services under this Agreement with limits of not less than \$300,000.00 per occurrence, \$300,000.00 aggregate, covering all risks incident to or in connection with the execution, performance, attempted performance or non-performance of this Agreement.

SECTION XVI

Procurement

SUBRECIPIENT agrees to follow the statutes and rules governing the **ENTITY** in the procurement of services, supplies or non-real property in relation to **ENTITY**-funded projects. The legal standards that will apply include the procurement standards of the HIDALGO COUNTY Urban County Program, which includes 24 CFR Part 84.46, and the TEXAS COUNTY PURCHASING ACT.

Initials _____

SECTION XVII

Conflict of Interest

SUBRECIPIENT covenants that members of its organization or staff members who exercise influence on the decision-making process will not have any interest, direct or indirect, with any person, corporation, company or association that is hired to carry out any of the activities so listed in the Statement of Work (Exhibit A), 24 CFR Part 576.404, 24 CFR Part 84.40-48.

SUBRECIPIENT agrees that no person who is an elected official, officer, director, employee, consultant, or agent of the **SUBRECIPIENT's** organization or the **ENTITY's** organization shall gain any interest in any corporation, company, or association that is hired to carry out any of the activities so listed in Statement of Work during their tenure or for a period of one year thereafter.

SUBRECIPIENT is responsible for repayment of funds associated with any conflict of interest that may occur either knowingly or unknowingly.

No **ENTITY** employee, elected official, consultant and/or agent shall solicit nor accept gratuities, favors, or anything of monetary value from any person, corporation, company, or association that has been hired or expects to be hired to perform any of the activities so described in the Statement of Work.

SECTION XVIII

Legal Action and Venue

SUBRECIPIENT agrees to notify the **ENTITY** when a problem arises that may lead to legal action or claim against the **SUBRECIPIENT**. The **SUBRECIPIENT** agrees to furnish to the **ENTITY** any and all information with respect to such action or claim. The **SUBRECIPIENT** agrees not to take any action with respect to any legal action or claim sought against the **SUBRECIPIENT** without the advice and written consent of the **ENTITY**.

Venue and jurisdiction of any suit, right or cause of action arising under or in connection with this Agreement shall lie exclusively in HIDALGO COUNTY

SECTION XIX

Miscellaneous Provisions

Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

No Waiver. No waiver by **ENTITY** of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

Entire Agreement. This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by **ENTITY** and **SUBRECIPIENT**, and not otherwise.

Texas Law to Apply. THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN HIDALGO COUNTY, TEXAS. THE PARTIES HEREBY CONSENT TO PERSONAL JURISDICTION IN HIDALGO COUNTY, TEXAS.

Notice. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by electronic mail, or (iii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or (iv) sent by facsimile or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

Initials _____

If to ENTITY:

COUNTY OF HIDALGO
Urban County Program
427 E. Duranta Ave., Suite 107
Alamo, TX 78516
Email: ucp@ucp.co.hidalgo.tx.us
Phone # (956) 787-8127
Fax # (956) 318-2988

If to SUBRECIPIENT:

CATHOLIC CHARITIES OF THE RIO GRANDE VALLEY
c/o Sister Norma Pimentel, Executive Director
700 N. Virgen de San Juan Blvd.
San Juan, Texas 78589
Phone #: (956) 702-4088
Fax #: (956) 782-0448
Email: npimentel@cdob.org

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

Additional Documents. The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

Assignment. This Agreement shall not be assignable by SUBRECIPIENT. ENTITY may assign this Agreement without the consent of SUBRECIPIENT.

Headings. The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

Gender and Number. All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

Authority to Execute. The execution and performance of this Agreement by ENTITY and SUBRECIPIENT have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of ENTITY and SUBRECIPIENT in accordance with its terms.

Initials _____

SECTION XX
Participation in HMIS and Coordinated Access System

The **SUBRECIPIENT** agrees that projects receiving funding under Emergency Solutions Grants ("ESG") program will participate in the Homeless Management Information System (HMIS). Section 416 (f) of the McKinney-Vento Act and HEARTH Act (24 CFR Part 580) requires that projects receiving funding under Emergency Solutions Grant (ESG) program participate in HMIS pursuant to 24 CFR 576.107.

The **SUBRECIPIENT** 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 provide to an HMIS.

The **SUBRECIPIENT** shall work with the Continuum of Care to ensure the screening, assessment and referral of program participants are consistent with the written standards required by the ENTITY. A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system as set forth in 24 CFR § 576.400(d).

The **SUBRECIPIENT** shall 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 the area as set forth at 24 CFR § 576.400(b).

System and Program Coordination with Mainstream Resources. The **SUBRECIPIENT** 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 as set forth in 24 CFR § 576.400(c).

Participation of Homeless Persons in Policy-Making and Operations. The **SUBRECIPIENT** understands they are required by federal rule to provide for the participation of at least one homeless or formerly homeless person(s) in a policy-making function within the organization as required in 24 CFR §576.405. This might include, for example, involvement of a homeless or formerly homeless person on the Board of Directors or similar entity that considers and sets policy or makes decisions for the recipient agency.

If the **SUBRECIPIENT** is unable to meet requirement, 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.

The **SUBRECIPIENT** also agrees that to the maximum extent practicable, they will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under this agreement and in providing services for occupants of facilities assisted under this agreement as listed in 24 CFR § 576.405 in accordance with 42 U.S.C. 11375 (d) and 42 U.S.C. 11375 (c) (7)

Initials _____

SECTION XXI
Effective Date

The effective date of this agreement shall be the 10th day of November 2014 such date being the date the HIDALGO COUNTY COMMISSIONERS' COURT approved entering into this Agreement with SUBRECIPIENT and shall terminate on the 31st day of December 2015. *Non-profits funding will be for a period of fourteen (14) months and a two (2) year period for the grantee (UCP). An extension can be granted by the UCP director up to a period of 6 months.

Approved and signed this _____ day of _____, 20__.

Print or Type Name of Authorized Official

Signature of Authorized Official

SUBRECIPIENT Name: Catholic Charities of the RGV
Address: 700 N. Virgen De San Juan Blvd.
City/State/Zip: San Juan, Texas 78589-3030
Federal I.D. # or Soc. Sec. #: 68-0599307
DUNS #: 956-016-075

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

_____ personally appeared before me and declared that he/she signed this application in the capacity designated, if any, and further states that, he/she has read the above application, and the statements therein contained are true.

Subscribed and sworn to before me this _____ day of _____, 20__.

(Seal)

Notary - Signature

COUNTY OF HIDALGO – URBAN COUNTY PROGRAM

Witness:

Diana R. Serna, UCP Director

APPROVED AS TO FORM
Atlas & Hall L.L.P.
By: Steve Crain
Date: 10-21-2014

Initials _____

EXHIBIT A

STATEMENT OF WORK

Homeless Prevention: §576.103

Financial assistance includes housing stabilization services (including rental application fees, security deposits, utility deposits or payments, last month's rent and housing search and placement activities). Funds may also be used for short or medium-term rental assistance for those who are at risk of becoming homeless or transitioning to stable housing with a maximum limit on assistance of 24 months.

HMIS -Data Collections: §576.107

Funds may be used to pay the costs for contributing data to the HMIS designated by the Continuum of Care or a comparable database system for client tracking when servicing battered and abused population for the area. Eligible activities include (computer hardware, software, or equipment, technical support, office space, salaries of operators, staff training costs, and participation fees.)

Initials _____

EXHIBIT B-1
Grant Budget
As identified through the Statement of Work

TYPE OF EXPENDITURES	BUDGETED AMOUNT
Homeless Prevention	\$ 126,639.00
Financial Assistance (Rental) \$ 60,177.00	
Financial Assistance (Dep/Utilities) \$ 10,698.00	
Financial Services (HR Stab. Services) \$ 55,764.00	
HMIS (Data Collections)	\$ 7,087.00
Staff Salaries for Data Entry \$ 7,087.00	
Equipment \$ 0.00	
Training \$ 0.00	
TOTAL GRANT BUDGET:	\$ 133,726.00

Initials _____

EXHIBIT B-2
PAYMENT SCHEDULE

2014 - 2015 For the Months of...	Estimated Amount of Expenditures	Type of Budgeted Expenditures
Jul. 2014		
Aug. 2014		
Sept. 2014		
Oct. 2014		
Nov. 2014	9,551.85	Homeless Prevention, HMIS
Dec. 2014	9,551.85	Homeless Prevention, HMIS
Jan. 2015	9,551.85	Homeless Prevention, HMIS
Feb. 2015	9,551.85	Homeless Prevention, HMIS
Mar. 2015	9,551.86	Homeless Prevention, HMIS
Apr. 2015	9,551.86	Homeless Prevention, HMIS
May 2015	9,551.86	Homeless Prevention, HMIS
Jun. 2015	9,551.86	Homeless Prevention, HMIS
Jul. 2015	9,551.86	Homeless Prevention, HMIS
Aug. 2015	9,551.86	Homeless Prevention, HMIS
Sept. 2015	9,551.86	Homeless Prevention, HMIS
Oct. 2015	9,551.86	Homeless Prevention, HMIS
Nov. 2015	9,551.86	Homeless Prevention, HMIS
Dec. 2015	9,551.86	Homeless Prevention, HMIS
TOTALS	\$ 133,726.00	

Initials _____

EXHIBIT C Schedule of Activity

SUBRECIPIENT hereby agrees to perform services as outlined in Exhibit A.

A proposed monthly schedule of activity should be provided in this space. Schedule should not exceed **SUBRECIPIENT** contract time frame of 14 months from contract date.

20 <u>14</u> - 2015 For the Months of...	Number of Beneficiaries	Services
Jul. 2014		
Aug. 2014		
Sep. 2014		
Oct. 2014		
Nov. 2014	59	Homeless Prevention, HMIS
Dec. 2014	59	Homeless Prevention, HMIS
Jan. 2015	59	Homeless Prevention, HMIS
Feb. 2015	59	Homeless Prevention, HMIS
Mar. 2015	59	Homeless Prevention, HMIS
Apr. 2015	59	Homeless Prevention, HMIS
May 2015	59	Homeless Prevention, HMIS
Jun. 2015	59	Homeless Prevention, HMIS
Jul. 2015	59	Homeless Prevention, HMIS
Aug. 2015	59	Homeless Prevention, HMIS
Sep. 2015	59	Homeless Prevention, HMIS
Oct. 2015	59	Homeless Prevention, HMIS
Nov. 2015	59	Homeless Prevention, HMIS
Dec. 2015	59	Homeless Prevention, HMIS
Total Unduplicated	59 persons	

Initials _____

EXHIBIT D RECORDS & REPORTS

A. When requesting payment, attach a cover letter summarizing the expenditures with the following documents:

- Copies of Invoices
- Canceled Checks
- Portion requesting from ESG Program
- Other Supporting Documents
- HMIS Client Enrollment report
- HMIS client reports
- Other comparable data reports when exempt from using HMIS system

Payment requests must be submitted to Urban County by the 15th of each month.

- A Performance report must be submitted to the Urban County Program accompanying each request for payment. Each performance report must have the following items:
 - a). Period covered by Performance Report
 - b). Type of services provided
 - c). Type of Equipment/Supplies Purchased
 - d). Amount of fund Expended
 - e). Number of Beneficiaries Served & Ethnicity Data

_____ White, non Hispanic
_____ Black, non Hispanic
_____ Native American
_____ Asian or Pacific Islander
_____ Hispanic
_____ Total

- How services provided benefit clientele
- Projection for next disbursement period
- Program Income Report/Blank Statement (when applicable)
- Other significant Information

B. Matching Funds 24 CFR 576 requires that each grantee and/or SUBRECIPIENT must match the funding provided by HUD under 24 CFR 576 with an equal amount of funds from sources other than under Part 576. Therefore, each request for payment must be with either cash, volunteer time, in-kind, office space, or donations.

C. Provide an annual report of activity by July 10th of each year the Agreement is in effect. The annual report shall include the following:

- ☐ **Facility Name:** List name, address (unless confidential) of each shelter/facility receiving HESG assistance.
- ☐ **HESG Amount:** Indicate the amount of ESG assistance allocated to each shelter/facility. It is optional whether the amount of funds for each activity type
- ☐ **Activity Types:** Briefly describe the accomplishments from each eligible activity –
Summarize category of services provided.
- ☐ **Homeless Beneficiaries:** For each shelter/facility assisted use the following codes for describing the types of beneficiaries: Please utilize HMIS for other reports such as CAPER Report.

UM -	Unaccompanied Men	TPF -	Two Parent Families
UW -	Unaccompanied Women	AC -	Adult Couples without children
UFY -	Unaccompanied Female Youth under 18 years of age	DK -	Don't Know/Refuse
UMY -	Unaccompanied Male Youth under 18 years of age	SPF -	Single Parent Families

Initials _____

- Note: If there is more than one beneficiary type, list all with the predominant beneficiary type listed first.
- ☐ **Racial and Ethnic Data:** During the past year of operation what was the estimated average number of people each ESG-Shelter/Facility served per day/night? What is the estimated portion of these different racial and ethnic groups?
Estimated average number served per day/night _____.
- ☐ **Racial and Ethnic Data (Continued):**
Portion Served:
- _____ White, non Hispanic
_____ Black, non Hispanic
_____ Native American
_____ Asian or Pacific Islander
_____ Hispanic
_____ Total

SUBRECIPIENT must maintain a file of all records and reports submitted to the Urban County Program.

SUBRECIPIENT must maintain record of beneficiaries being served (i.e. application, membership, clientele profile, etc.).

SUBRECIPIENT must maintain files of all original contract agreements amendments, and correspondence.

SUBRECIPIENT must maintain proper financial records.

SUBRECIPIENT must participate in the Annual Point in time Homeless Count

Initials _____

Exhibit E
REQUEST FOR PAYMENTS

1. Subrecipient must submit **monthly** reimbursement requests as approved on the Schedule of Payment hereto attached as Exhibit B-2 (the "Schedule of Payment") due on or before the 15th of each month.
2. Subrecipient must inform Urban County in writing if the reimbursement request and/or monthly performance report will not be submitted by the due date.
3. Request for reimbursements that are submitted after the last working day of the month will be returned unpaid if the subrecipient did not comply with Request for Payments (2) hereto attached as Exhibit E (the "Request for Payments").
4. Urban County Program will return incorrect and/or incomplete reimbursement requests to the subrecipient as soon as possible in order for corrections to be made.
5. Subrecipient must submit the corrections and/or pending documentation no later than 10 days from notification by UCP. Should the subrecipient fail to submit the corrections within the allotted time, the RFP will be returned, and will NOT qualify for re-submission.
6. Subrecipient must submit **FINAL** reimbursement request and monthly performance report to the Urban County Program on or before December 15th.
7. December expenditures (equipment / supplies) must be invoiced and paid by December 31st to be eligible for reimbursement.
8. Subrecipient must submit all required documentation as stated on the UCP Reimbursement Checklist.
9. Should the Subrecipient fail to comply with timely submittals of monthly reimbursement requests and/or performance reports, the Urban County Program shall consider termination of the Subrecipient Agreement as per Section XII "Suspension and Termination".
10. All reimbursement requests and reports submitted to Urban County must be originals signed with blue ink.
11. As per Section IV of this Agreement, the Urban County Program Monitoring Division will conduct on-site monitoring visits to ensure compliance with applicable Federal requirements and performance goals are being met.
12. Reimbursement requests are processed by Urban County on a first come first serve basis.
13. Payments to Subrecipients will only be mailed. Checks will not be allowed for pickup unless approved by UCP Director.
14. Checks are mailed eleven (11) days from the date the reimbursement request is submitted to the finance division, only after all documentation is reviewed, corrections are made, and all documentation is in order.

Initials _____

Exhibit F
Other Applicable Provisions
As stated in Section IX
24 CFR 576.407

(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.

Initials _____

Exhibit G
Applicable Provisions - 24 CFR Part 84
OMB Circular A-133
As stated in Section X

**PART 84— UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH
INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-
PROFIT ORGANIZATIONS**

Subpart A—General

Sec.

- 84.1 Purpose.
- 84.2 Definitions.
- 84.3 Effect on other issuances.
- 84.4 Deviations.
- 84.5 Subawards.

Subpart B—Pre-Award Requirements

- 84.10 Purpose.
- 84.11 Pre-award policies.
- 84.12 Forms for applying for Federal assistance.
- 84.13 Debarment and suspension; Drug-Free Workplace.
- 84.14 Special award conditions.
- 84.15 Metric system of measurement.
- 84.16 Resource Conservation and Recovery Act.
- 84.17 Certifications and representations.

Subpart C—Post-Award Requirements

Financial and Program Management

- 84.20 Purpose of financial and program management.
- 84.21 Standards for financial management systems.
- 84.22 Payment.
- 84.23 Cost sharing or matching.
- 84.24 Program income.
- 84.25 Revision of budget and program plans.
- 84.26 Non-Federal audits.
- 84.27 Allowable costs.
- 84.28 Period of availability of funds.

Property Standards

- 84.30 Purpose of property standards.
- 84.31 Insurance coverage.
- 84.32 Real property.
- 84.33 Federally-owned and exempt property.
- 84.34 Equipment.
- 84.35 Supplies and other expendable property.
- 84.36 Intangible property.
- 84.37 Property trust relationship.

Procurement Standards

- 84.40 Purpose of procurement standards.

Initials _____

84.41 Recipient responsibilities.

84.42 Codes of conduct.

84.43 Competition.

84.44 Procurement procedures.

84.45 Cost and price analysis.

84.46 Procurement records.

84.47 Contract administration.

84.48 Contract provisions.

Reports and Records

84.50 Purpose of reports and records.

84.51 Monitoring and reporting program performance.

84.52 Financial reporting.

84.53 Retention and access requirements for records.

Termination and Enforcement

84.60 Purpose of termination and enforcement.

84.61 Termination.

84.62 Enforcement.

Subpart D—After-the-Award Requirements

84.70 Purpose.

84.71 Closeout procedures.

84.72 Subsequent adjustments and continuing responsibilities.

84.73 Collection of amounts due.

Subpart E—Use of Lump Sum Grants

84.80 Conditions for use of Lump Sum (fixed price or fixed amount) grants.

84.81 Definition.

84.82 Provisions applicable only to lump sum grants.

84.83 Property standards.

84.84 Procurement standards.

84.85 Reports and records.

84.86 Termination and enforcement.

84.87 Closeout procedures, subsequent adjustments and continuing responsibilities.

**Revised to show changes published in the Federal Registers
of June 27, 2003 and June 26, 2007
Audits of States, Local Governments, and Non-Profit Organizations**

**--AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT
ORGANIZATIONS
OMB Circular A-133**

Subpart A--General

Sec.

___ .100 Purpose.

___ .105 Definitions.

Subpart B--Audits

___ .200 Audit requirements.

___ .205 Basis for determining Federal awards expended.

___ .210 Subrecipient and vendor determinations.

___ .215 Relation to other audit requirements.

___ .220 Frequency of audits.

___ .225 Sanctions.

___ .230 Audit costs.

___ .235 Program-specific audits.

Subpart C--Auditees

___ .300 Auditee responsibilities.

___ .305 Auditor selection.

___ .310 Financial statements.

___ .315 Audit findings follow-up.

___ .320 Report submission.

Subpart D--Federal Agencies and Pass-Through Entities

___ .400 Responsibilities.

Initials _____

____.405 Management decision.

Subpart E—Auditors

____.500 Scope of audit.

____.505 Audit reporting.

____.510 Audit findings.

____.515 Audit working papers.

____.520 Major program determination.

____.525 Criteria for Federal program risk.

____.530 Criteria for a low-risk auditee.

Initials _____

STATE OF TEXAS }
 }
COUNTY OF HIDALGO }

2014 -- YR 27
EMERGENCY SOLUTIONS GRANTS PROGRAM

SUBRECIPIENT AGREEMENT

This Agreement is made and entered into on this the 10th day of NOVEMBER, 20 14 by and between the COUNTY OF HIDALGO, Urban County Program, a political subdivision of the State of Texas, hereinafter referred to as "ENTITY", and WOMEN TOGETHER FOUNDATION, INC., a neighborhood based not-for-profit organization, hereinafter referred to as "SUBRECIPIENT".

WITNESSETH

WHEREAS, SUBRECIPIENT desires to carry out eligible activities as described in the Statement of Work attached hereto as Exhibit A (the "Statement of Work"), to this Agreement and permitted by the Federal Register/Vol. 76, No. 233/Rules and Regulations pursuant to the U. S. Department of Housing and Urban Development Emergency Solutions Grant Program Entitlement Grant Regulations and covered in 24 CFR Parts 91 and 576.

WHEREAS, the ENTITY proposes to contract with SUBRECIPIENT in order that the eligible activities described in Exhibit A (the "Statement of Work") can be carried out for the benefit of residents in the ENTITY'S jurisdiction.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration the receipt of which is hereby acknowledged, the ENTITY and the SUBRECIPIENT do mutually agree as follows:

SECTION I
Rules and Regulations

The SUBRECIPIENT agrees to cooperate with the ENTITY in respect to the implementation of Emergency Solutions Grants Program ("ESG") activities CFDA No. 14.231 to be carried out by SUBRECIPIENT pursuant to 24 CFR Parts 91 and 576 and other requirements, regulations and decisions as may be made by the Department of Housing and Urban Development (HUD) or any other federal or state ENTITY that may legally exercise its jurisdiction over expenditures of ESG funds.

SECTION II
Statement of Work

SUBRECIPIENT agrees to perform services as outlined in Exhibit A: Statement of Work, of this Agreement for and in consideration of ESG funding in the amount of \$ 133,726.00 enumerated in Exhibit B-1 (the "Grant Budget") and Exhibit B-2 (the "Payment Schedule").

SUBRECIPIENT agrees to notify ENTITY, in writing, prior to any changes in its Statement of Work, the Grant Budget, the Payment Schedule and the Schedule of Activity attached hereto as Exhibit C (the "Schedule of Activity"). SUBRECIPIENT shall obtain approval, in writing, from ENTITY prior to commencing work on any changes made to the Statement of Work, the Grant Budget, the Payment Schedule and the Schedule of Activity.

ENTITY shall not be liable for costs incurred or performances rendered by SUBRECIPIENT before commencement of this Agreement or after termination of this Agreement.

SUBRECIPIENT agrees to follow the schedule outlined in the Schedule of Activity of this Agreement, and shall notify ENTITY, in writing, prior to any changes, delays or departures from the Schedule of Activity. If SUBRECIPIENT demonstrates that delays or departure from the Schedule of Activity is due to circumstances beyond its control, ENTITY and SUBRECIPIENT may (but Entity shall not be required) to amend the Schedule of Activity.

Initials _____

SECTION III

Records and Reports

SUBRECIPIENT agrees to establish and maintain records and reports as outlined in the Records and Reports attached hereto as Exhibit D (the "Records and Reports") and agrees to make the Records and Reports available to the **ENTITY**, HUD, and any other local, state or federal entity or authority that may exercise jurisdiction over ESG funds. Monthly performance reports must be submitted on or before the 15th of every month.

SECTION IV

Monitoring Visits

SUBRECIPIENT agrees that **ENTITY** shall conduct on-site monitoring visits to assure compliance with applicable Federal requirements and that performance goals are being achieved, if applicable, as per 24 CFR Part 85.40 (a) and 24 CFR Part 84.51(a).

SUBRECIPIENT shall attend an orientation prior to the award of funds and prior to the first draw of funds. After each monitoring visit, **ENTITY** shall provide **SUBRECIPIENT** with a written report of the monitor's findings.

If the monitoring reports note deficiencies in **SUBRECIPIENT**'s performance under the terms of this Agreement, the monitoring report shall include requirements for the timely correction of such deficiencies by **SUBRECIPIENT**.

Failure by **SUBRECIPIENT** to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, as provided in Section XII of this Agreement.

In addition, **SUBRECIPIENT** shall give HUD, the Comptroller General of the United States, **ENTITY**, and any of their duly authorized representatives, unobstructed and full access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by **SUBRECIPIENT** pertaining to this Agreement.

SECTION V

Payment Requests and Program Income

SUBRECIPIENT agrees to follow administrative directions from the **ENTITY** regarding documenting and processing payment requests as defined in the Requests for Payments attached hereto as Exhibit E (the "Requests for Payments") of this Agreement.

SUBRECIPIENT shall submit final reimbursement request to **ENTITY** within fifteen (15) days (by DECEMBER 2015) of the Agreement termination date.

SUBRECIPIENT and **ENTITY** agree that if applicable, program income generated from the use of ESG funds shall be retained by the **SUBRECIPIENT**. If the activity is partially assisted with ESG funds, the **SUBRECIPIENT** agrees to pro-rate the gross income to reflect the percent of ESG funds assisted in the activity.

The **SUBRECIPIENT** is to provide to the **ENTITY** by the third Wednesday of each month an accounting of program income through Monthly Performance Reports outlined in the Records and Reports. The **ENTITY** is then required to report all ESG program income earned, retained, and expended.

The **SUBRECIPIENT** shall be allowed to use program income for the same or similar eligible activities that generated the program income. Failure of the **SUBRECIPIENT** to report program income as required shall cause the **ENTITY** to require all program income to be recovered by the **ENTITY**.

SUBRECIPIENT and **ENTITY** agree that all unused ESG funds at the end or termination of this agreement will be reallocated or reprogrammed by **ENTITY**.

Initials _____

SECTION VI

Matching Funds

SUBRECIPIENT shall match the funds provided in this agreement as set forth in 24 CFR § 576.201. Eligibility of matching fund sources shall be subject to review and approval by the **ENTITY**.

In the event the **ENTITY** determines that the **SUBRECIPIENT**'s match funds are not in compliance with HUD regulations, policies, or directives, the **ENTITY** may, in its sole discretion, reduce the total funding amount set forth in an amount proportionate to the ineligible match funds.

SECTION VII

Lead Based Paint

Lead Based Paint regulations require that all owners, perspective owners, and tenants of properties constructed prior to 1978 be properly noticed that such properties may contain lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment, and precautions that should be taken when dealing with lead-based paint poisoning.

Lead-based Paint Remediation and Disclosure. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C 4821-4826), the residential lead-Based Paint Hazard reduction Act of 1993 (42 U.S.C. 4851-4856), and implementing regulations at 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.

The **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 24 CFR § 576.403 (b), (c), (1-10).

SECTION VIII

Religious Activities

The **SUBRECIPIENT** and **ENTITY** both agree that none of the funds expended or activities undertaken shall be used in support of any sectarian or religious activity, nor shall any building or structure funded under this Agreement be used for sectarian or religious activities. If an entity 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 as described in 24 CFR 576.406.

SECTION IX

Other Program Requirements

SUBRECIPIENT agrees to comply with "Other Program Requirements" as listed in 24 CFR 576.407 except for those environmental review requirements listed as 24 CFR 576 and initiation of review process under the provisions of 24 CFR Part 50.

SECTION X

Uniform Administrative Requirements

Subrecipients, except subrecipients that are governmental entities, shall comply with the requirements and standards OMB Circular No. A-122 implemented in 2 CFR Part 230, "Cost Principles for Non-profit Organizations and OMB Circular A-133 implemented in 2 CFR Part 200, "Audits of Institutions of Higher Education and Other Nonprofit Institutions".

Audits shall be conducted annually.

Such subrecipients shall also comply with the provisions of the Uniform Administrative requirements of OMB Circular A-110 implemented in 24 CFR part 84, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations" or the related ESG provisions, as specified in the other Applicable Provisions attached hereto as Exhibit F (the "Applicable Provisions") and any subsequent amendments thereto.

Initials _____

SECTION XI

Audit Requirements

SUBRECIPIENT agrees to comply with the applicable requirements and standards as set forth in OMB Circular A-133 implemented in 2 CFR Part 200, Audits of States, Local Governments and Non-Profit organizations.

If the **SUBRECIPIENT** expends less than Five Hundred Thousand Dollars (\$500,000.00) a year in federal awards, then they are exempt from the OMB Circular A-133 audit requirements for that year; however, records must be available for review or audit by appropriate officials of the federal agency, pass-through entity and the General Accounting Office

However, if **SUBRECIPIENT** expends Five Hundred Thousand Dollars (\$500,000.00) or more in federal funds, **SUBRECIPIENT** must, within nine (9) months from the end of its fiscal year, supply **ENTITY** with an audit of revenues and expenditures conducted by a certified public accountant. **Grant funds will automatically be forfeited if the SUBRECIPIENT fails to submit an audit within the allotted time.**

SUBRECIPIENT agrees to furnish **ENTITY** with a current Financial Management Letter (financial statements) within six (6) months from the end of its fiscal year covering the period of this Agreement that includes detailed receipts and disbursement of payments to **SUBRECIPIENT** hereunder. **Grant funds will automatically be forfeited if the SUBRECIPIENT fails to submit a Financial Management Letter.**

SUBRECIPIENT is required to submit a 990 Tax Return (Return of Organization Exempt from Income Tax) for the most recent fiscal year within six (6) months if submitting a Financial Management Letter or within nine (9) months if submitting a Financial Audit. If the subrecipient is not classified as an exempt entity, the subrecipient will not be awarded grant funds.

SUBRECIPIENT is required to submit 941 Employer's QUARTERLY Federal Tax Return reports.

If applicable, **SUBRECIPIENT** agrees to cooperate with **ENTITY** relating to any inquiries regarding the Financial Audit or Financial Management Letter and **SUBRECIPIENT** acknowledges that a Financial Audit or Financial Management Letter shall be provided to **ENTITY** at the expense of the **SUBRECIPIENT**.

Financial Audit or Financial Management Letter shall be available to **ENTITY** staff, and any and all applicable federal agencies, and be of unrestricted access, as listed in 24 CFR Part 84.

SECTION XII

Suspension and Termination

SUBRECIPIENT understands that this Agreement may be suspended or terminated, in accordance with 24 CFR 84.86, if applicable, and 24 CFR 84.61, if the **SUBRECIPIENT** materially fails to comply with the provisions of this Agreement or the provisions so listed in the Statement of Work attached hereto as Exhibit A (the "Statement of Work"), the Grant Budget attached hereto as Exhibit B-1 (the "Grant Budget), the Payment Schedule attached hereto as Exhibit B-2 (the "Payment Schedule), the Schedule of Activity attached hereto as Exhibit C (the "Schedule of Activity"), the Records & Reports attached hereto as Exhibit D (the "Records & Reports"), the Request for Payments attached hereto as Exhibit E (the "Request for Payments"), Other Applicable Provisions attached hereto as Exhibit F (the "Applicable Provisions"), and the Applicable Provisions - 24 CFR Part 84 attached hereto as Exhibit G (the "Other Applicable Provisions - 24 CFR Part 84").

SUBRECIPIENT agrees to follow all the requirements under §567.402 when terminating assistance on a program participant. 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 the individuals affected.

SUBRECIPIENT must document the determination of ineligibility for each individual or family determined ineligible as required in §576.500. The record must include documentation of the reason for that determination.

It is expressly agreed that this Agreement may not be amended except upon the joint action of both the **Entity and Women Together Foundation, Inc.**

Initials _____

SECTION XIII

Assets

SUBRECIPIENT shall not purchase any asset unless so permitted by the **ENTITY** and such procurement shall be done in the form and manner so prescribed by the **ENTITY**.

Any asset acquired or improved in part or in whole with ESG funds must be used in an activity that meets one of the national objectives listed in 24 CFR Part 91 and 576.

The disposition of any asset improved or acquired in part or in whole with ESG funds by the **SUBRECIPIENT** must be done with prior written approval of the **ENTITY** and the **ENTITY** shall be reimbursed for the asset, if sold, in the full amount of the disposed value of the asset. The **ENTITY** may, at its option, request that such asset be transferred to **ENTITY** if the asset is no longer being used to meet one of the national objectives or in any case where the **SUBRECIPIENT** no longer provides services shown on the Statement of Work.

SECTION XIV

Use of Emergency Shelter

SUBRECIPIENT agrees to operate and maintain an emergency shelter for a period of three (3) or ten (10) years depending on the type of renovation and value of the building as required on §576.102. Renovation other than major rehabilitation or conversion, in all other cases where ESG funds were used for renovation, the minimum period of use is three (3) years.

If the **SUBRECIPIENT** uses ESG funds for operation and maintenance costs, **SUBRECIPIENT** hereby agrees to maintain the shelter for the homeless for the period for which assistance is being provided for the same targeted population. For the purposes of this Agreement, such time period shall be from the date the Agreement is executed to its expiration, as identified in Section XXI.

SECTION XV

Indemnity Clause

SUBRECIPIENT agrees to hold **ENTITY** harmless from, and indemnify **ENTITY** from and defend **ENTITY** against any and all claims brought against **ENTITY** by employees or officers of **SUBRECIPIENT** or brought by any third person arising in any manner directly or indirectly from **SUBRECIPIENT** programs, activities or events conducted pursuant to this Agreement.

SUBRECIPIENT shall acquire, maintain and furnish to **ENTITY** a Certificate of Insurance as proof that it has secured and paid for policies of public liability and automobile insurance to cover all operations and services under this Agreement with limits of not less than \$300,000.00 per occurrence, \$300,000.00 aggregate, covering all risks incident to or in connection with the execution, performance, attempted performance or non-performance of this Agreement.

SECTION XVI

Procurement

SUBRECIPIENT agrees to follow the statutes and rules governing the **ENTITY** in the procurement of services, supplies or non-real property in relation to **ENTITY**-funded projects. The legal standards that will apply include the procurement standards of the HIDALGO COUNTY Urban County Program, which includes 24 CFR Part 84.46, and the TEXAS COUNTY PURCHASING ACT.

Initials _____

SECTION XVII
Conflict of Interest

SUBRECIPIENT covenants that members of its organization or staff members who exercise influence on the decision-making process will not have any interest, direct or indirect, with any person, corporation, company or association that is hired to carry out any of the activities so listed in the Statement of Work (Exhibit A), 24 CFR Part 576.404, 24 CFR Part 84.40-48.

SUBRECIPIENT agrees that no person who is an elected official, officer, director, employee, consultant, or agent of the **SUBRECIPIENT's** organization or the **ENTITY's** organization shall gain any interest in any corporation, company, or association that is hired to carry out any of the activities so listed in Statement of Work during their tenure or for a period of one year thereafter.

SUBRECIPIENT is responsible for repayment of funds associated with any conflict of interest that may occur either knowingly or unknowingly.

No **ENTITY** employee, elected official, consultant and/or agent shall solicit nor accept gratuities, favors, or anything of monetary value from any person, corporation, company, or association that has been hired or expects to be hired to perform any of the activities so described in the Statement of Work.

SECTION XVIII
Legal Action and Venue

SUBRECIPIENT agrees to notify the **ENTITY** when a problem arises that may lead to legal action or claim against the **SUBRECIPIENT**. The **SUBRECIPIENT** agrees to furnish to the **ENTITY** any and all information with respect to such action or claim. The **SUBRECIPIENT** agrees not to take any action with respect to any legal action or claim sought against the **SUBRECIPIENT** without the advice and written consent of the **ENTITY**.

Venue and jurisdiction of any suit, right or cause of action arising under or in connection with this Agreement shall lie exclusively in HIDALGO COUNTY

SECTION XIX
Miscellaneous Provisions

Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

No Waiver. No waiver by **ENTITY** of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

Entire Agreement. This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by **ENTITY** and **SUBRECIPIENT**, and not otherwise.

Texas Law to Apply. THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN HIDALGO COUNTY, TEXAS. THE PARTIES HEREBY CONSENT TO PERSONAL JURISDICTION IN HIDALGO COUNTY, TEXAS.

Notice. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by electronic mail, or (iii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or (iv) sent by facsimile or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

Initials _____

If to ENTITY:

COUNTY OF HIDALGO
Urban County Program
427 E. Duranta Ave., Suite 107
Alamo, TX 78516
Email: ucp@ucp.co.hidalgo.tx.us
Phone # (956) 787-8127
Fax # (956) 318-2988

If to SUBRECIPIENT:

WOMEN TOGETHER FOUNDATION, INC.
c/o Estella DeAnda, Executive Director
511 N. Cynthia
McAllen, Texas 78501
Phone #: (956) 630-4878
Fax #: (956) 687-4715
Email: womentog@swbell.net

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

Additional Documents. The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

Assignment. This Agreement shall not be assignable by SUBRECIPIENT. ENTITY may assign this Agreement without the consent of SUBRECIPIENT.

Headings. The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

Gender and Number. All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

Authority to Execute. The execution and performance of this Agreement by ENTITY and SUBRECIPIENT have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of ENTITY and SUBRECIPIENT in accordance with its terms.

Initials _____

SECTION XX
Participation in HMIS and Coordinated Access System

The **SUBRECIPIENT** agrees that projects receiving funding under Emergency Solutions Grants ("ESG") program will participate in the Homeless Management Information System (HMIS). Section 416 (f) of the McKinney-Vento Act and HEARTH Act (24 CFR Part 580) requires that projects receiving funding under Emergency Solutions Grant (ESG) program participate in HMIS pursuant to 24 CFR 576.107.

The **SUBRECIPIENT** 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 provide to an HMIS.

The **SUBRECIPIENT** shall work with the Continuum of Care to ensure the screening, assessment and referral of program participants are consistent with the written standards required by the ENTITY. A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system as set forth in 24 CFR § 576.400(d).

The **SUBRECIPIENT** shall 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 the area as set forth at 24 CFR § 576.400(b).

System and Program Coordination with Mainstream Resources. The **SUBRECIPIENT** 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 as set forth in 24 CFR § 576.400(c).

Participation of Homeless Persons in Policy-Making and Operations, The **SUBRECIPIENT** understands they are required by federal rule to provide for the participation of at least one homeless or formerly homeless person(s) in a policy-making function within the organization as required in 24 CFR §576.405. This might include, for example, involvement of a homeless or formerly homeless person on the Board of Directors or similar entity that considers and sets policy or makes decisions for the recipient agency.

If the **SUBRECIPIENT** is unable to meet requirement, 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.

The **SUBRECIPIENT** also agrees that to the maximum extent practicable, they will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under this agreement and in providing services for occupants of facilities assisted under this agreement as listed in 24 CFR § 576.405 in accordance with 42 U.S.C. 11375 (d) and 42 U.S.C. 11375 (c) (7)

Initials _____

SECTION XXI
Effective Date

The effective date of this agreement shall be the 10TH day of November 2014 such date being the date the HIDALGO COUNTY COMMISSIONERS' COURT approved entering into this Agreement with SUBRECIPIENT and shall terminate on the 31st day of December 2015. *Non-profits funding will be for a period of fourteen (14) months and a two (2) year period for the grantee (UCP). An extension can be granted by the UCP director up to a period of 6 months.

Approved and signed this _____ day of _____, 20__.

Print or Type Name of Authorized Official

Signature of Authorized Official

SUBRECIPIENT Name: Women Together Foundation, Inc.
Address: 511 N. Cynthia
City/State/Zip: McAllen, Texas 78501
Federal I.D. # or Soc. Sec. #: 74-2007536
DUNS #: 170221972

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

_____ personally appeared before me and declared that he/she signed this application in the capacity designated, if any, and further states that, he/she has read the above application, and the statements therein contained are true.

Subscribed and sworn to before me this _____ day of _____, 20__.

(Seal)

Notary - Signature

COUNTY OF HIDALGO – URBAN COUNTY PROGRAM

Witness:

Diana R. Serna, UCP Director

APPROVED AS TO FORM
Atlas & Hall L.L.P.
By: Steve Crain
Date: 10-21-2014

Initials _____

EXHIBIT A
STATEMENT OF WORK

HMIS -Data Collections: §576.107

Funds may be used to pay the costs for contributing data to the HMIS designated by the Continuum of Care or a comparable database system for client tracking when servicing battered and abused population for the area. Eligible activities include (computer hardware, software, or equipment, technical support, office space, salaries of operators, staff training costs, and participation fees.)

Rapid Re-housing: §576.104

ESG funds may be used to provide housing relocation and stabilization services and short-and 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. Participants must meet the criteria under paragraph (1) of the homeless definition in §576.2

Shelter Operations: §576.102

Funds may be used for costs of providing services to homeless families and individuals in emergency shelters. Funds may be used for renovating shelter and the operating the emergency shelter. This activity is subject to the expenditure limit in §576.100(b)

Initials _____

EXHIBIT B-1
Grant Budget
As identified through the Statement of Work

TYPE OF EXPENDITURES	BUDGETED AMOUNT
HMIS (Data Collections) Staff Salaries for Data Entry \$ 2,675.00 Equipment \$ 0.00 Training \$ 0.00	\$ 2,675.00
Rapid Re-housing Financial Assistance (Rental) \$ 25,408.00 Financial Assistance (Dep/Utilities) \$ 4,011.00 Financial Services (HR Stab. Services) \$ 5,349.00	\$ 34,768.00
Shelter Operations Maintenance & Operations \$ 65,526.00 Essential Services \$ 30,757.00	\$ 96,283.00
TOTAL GRANT BUDGET:	\$ 133,726.00

Initials _____

EXHIBIT B-2
PAYMENT SCHEDULE

2014 - 2015 For the Months of...	Estimated Amount of Expenditures	Type of Budgeted Expenditures
Jul. 2014		
Aug. 2014		
Sept. 2014		
Oct. 2014		
Nov. 2014	9,551.85	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Dec. 2014	9,551.85	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Jan. 2015	9,551.85	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Feb. 2015	9,551.85	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Mar. 2015	9,551.86	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Apr. 2015	9,551.86	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
May 2015	9,551.86	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Jun. 2015	9,551.86	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Jul. 2015	9,551.86	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Aug. 2015	9,551.86	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Sept. 2015	9,551.86	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Oct. 2015	9,551.86	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Nov. 2015	9,551.86	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Dec. 2015	9,551.86	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
TOTALS	\$ 133,726.00	

Initials _____

EXHIBIT C

Schedule of Activity

SUBRECIPIENT hereby agrees to perform services as outlined in Exhibit A.

A proposed monthly schedule of activity should be provided in this space. Schedule should not exceed SUBRECIPIENT contract time frame of 14 months from contract date.

20 <u>14</u> - 2015 For the Months of...	Number of Beneficiaries	Services
Jul. 2014		
Aug. 2014		
Sep. 2014		
Oct. 2014		
Nov. 2014	396	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Dec. 2014	396	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Jan. 2015	396	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Feb. 2015	396	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Mar. 2015	396	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Apr. 2015	396	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
May 2015	396	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Jun. 2015	396	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Jul. 2015	396	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Aug. 2015	396	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Sep. 2015	396	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Oct. 2015	396	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Nov. 2015	396	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Dec. 2015	396	Homeless Prevention, HMIS, Shelter Operations, Rapid Rehousing
Total Unduplicated	5,544 persons	

Initials _____

EXHIBIT D RECORDS & REPORTS

A. When requesting payment, attach a cover letter summarizing the expenditures with the following documents:

- Copies of Invoices
- Canceled Checks
- Portion requesting from ESG Program
- Other Supporting Documents
- HMIS Client Enrollment report
- HMIS client reports
- Other comparable data reports when exempt from using HMIS system

Payment requests must be submitted to Urban County by the 15th of each month.

- A Performance report must be submitted to the Urban County Program accompanying each request for payment. Each performance report must have the following items:

- a). Period covered by Performance Report
- b). Type of services provided
- c). Type of Equipment/Supplies Purchased
- d). Amount of fund Expended
- e). Number of Beneficiaries Served & Ethnicity Data

_____ White, non Hispanic
_____ Black, non Hispanic
_____ Native American
_____ Asian or Pacific Islander
_____ Hispanic
_____ Total

- How services provided benefit clientele
- Projection for next disbursement period
- Program Income Report/Blank Statement (when applicable)
- Other significant Information

B. Matching Funds 24 CFR 576 requires that each grantee and/or SUBRECIPIENT must match the funding provided by HUD under 24 CFR 576 with an equal amount of funds from sources other than under Part 576. Therefore, each request for payment must be with either cash, volunteer time, in-kind, office space, or donations.

C. Provide an annual report of activity by July 10th of each year the Agreement is in effect. The annual report shall include the following:

- ☐ **Facility Name:** List name, address (unless confidential) of each shelter/facility receiving HESG assistance.
- ☐ **HESG Amount:** Indicate the amount of ESG assistance allocated to each shelter/facility. It is optional whether the amount of funds for each activity type
- ☐ **Activity Types:** Briefly describe the accomplishments from each eligible activity –
Summarize category of services provided.
- ☐ **Homeless Beneficiaries:** For each shelter/facility assisted use the following codes for describing the types of beneficiaries: Please utilize HMIS for other reports such as CAPER Report.

UM - Unaccompanied Men
UW - Unaccompanied Women

UFY - Unaccompanied Female Youth under 18 years of age
UMY - Unaccompanied Male Youth under 18 years of age

TPF - Two Parent Families
AC - Adult Couples without children
DK - Don't Know/Refuse
SPF - Single Parent Families

Initials _____

- Note: If there is more than one beneficiary type, list all with the predominant beneficiary type listed first.
- ☐ **Racial and Ethnic Data:** During the past year of operation what was the estimated average number of people each ESG-Shelter/Facility served per day/night? What is the estimated portion of these different racial and ethnic groups?
Estimated average number served per day/night _____.
- ☐ **Racial and Ethnic Data (Continued):**
Portion Served:
- _____ White, non Hispanic
_____ Black, non Hispanic
_____ Native American
_____ Asian or Pacific Islander
_____ Hispanic
_____ Total

SUBRECIPIENT must maintain a file of all records and reports submitted to the Urban County Program.

SUBRECIPIENT must maintain record of beneficiaries being served (i.e. application, membership, clientele profile, etc.).

SUBRECIPIENT must maintain files of all original contract agreements amendments, and correspondence.

SUBRECIPIENT must maintain proper financial records.

SUBRECIPIENT must participate in the Annual Point in time Homeless Count

Initials _____

Exhibit E
REQUEST FOR PAYMENTS

1. Subrecipient must submit **monthly** reimbursement requests as approved on the Schedule of Payment hereto attached as Exhibit B-2 (the "Schedule of Payment") due on or before the 15th of each month.
2. Subrecipient must inform Urban County in writing if the reimbursement request and/or monthly performance report will not be submitted by the due date.
3. Request for reimbursements that are submitted after the last working day of the month will be returned unpaid if the subrecipient did not comply with Request for Payments (2) hereto attached as Exhibit E (the "Request for Payments").
4. Urban County Program will return incorrect and/or incomplete reimbursement requests to the subrecipient as soon as possible in order for corrections to be made.
5. Subrecipient must submit the corrections and/or pending documentation no later than 10 days from notification by UCP. Should the subrecipient fail to submit the corrections within the allotted time, the RFP will be returned, and will NOT qualify for re-submission.
6. Subrecipient must submit **FINAL** reimbursement request and monthly performance report to the Urban County Program on or before December 15th.
7. December expenditures (equipment / supplies) must be invoiced and paid by December 31st to be eligible for reimbursement.
8. Subrecipient must submit all required documentation as stated on the UCP Reimbursement Checklist.
9. Should the Subrecipient fail to comply with timely submittals of monthly reimbursement requests and/or performance reports, the Urban County Program shall consider termination of the Subrecipient Agreement as per Section XII "Suspension and Termination".
10. All reimbursement requests and reports submitted to Urban County must be originals signed with blue ink.
11. As per Section IV of this Agreement, the Urban County Program Monitoring Division will conduct on-site monitoring visits to ensure compliance with applicable Federal requirements and performance goals are being met.
12. Reimbursement requests are processed by Urban County on a first come first serve basis.
13. Payments to Subrecipients will only be mailed. Checks will not be allowed for pickup unless approved by UCP Director.
14. Checks are mailed eleven (11) days from the date the reimbursement request is submitted to the finance division, only after all documentation is reviewed, corrections are made, and all documentation is in order.

Initials _____

Exhibit F
Other Applicable Provisions
As stated in Section IX
24 CFR 576.407

(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.

Initials _____

Exhibit G
Applicable Provisions - 24 CFR Part 84
OMB Circular A-133
As stated in Section X

**PART 84— UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH
INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-
PROFIT ORGANIZATIONS**

Subpart A—General

Sec.

- 84.1 Purpose.
- 84.2 Definitions.
- 84.3 Effect on other issuances.
- 84.4 Deviations.
- 84.5 Subawards.

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**Revised to show changes published in the Federal Registers
of June 27, 2003 and June 26, 2007
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Department of Housing & Urban Development

24 CFR Parts 91 and 576

Homeless Emergency Assistance and Rapid Transition to Housing: Emergency Solutions Grants Programs and Consolidated Plan Conforming Amendments

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 576

[Docket No. FR-5474-I-01]

RIN 2506-AC29

Homeless Emergency Assistance and Rapid Transition to Housing: Emergency Solutions Grants Program and Consolidated Plan Conforming Amendments

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim 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, and revises the Emergency Shelter Grants program and renames it as the Emergency Solutions Grants (ESG) program. The HEARTH Act also codifies into law the Continuum of Care planning process, a longstanding part of HUD's application process to assist homeless persons by providing greater coordination in responding to their needs.

This interim rule revises the regulations for the Emergency Shelter Grants program by establishing the regulations for the Emergency Solutions Grants program, which replaces the Emergency Shelter Grants program. The change in the program's name, from Emergency Shelter Grants to Emergency Solutions Grants, reflects the change in the program's focus from addressing the needs of homeless people in emergency or transitional shelters to assisting people to quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness.

DATES: Effective date: January 4, 2012.

Comment Due Date: February 3, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to

the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments 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.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled 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 through TTY by calling the Federal Relay Service at (800) 877-8339. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-7000; telephone number (202) 708-4300 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at (800) 877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—HEARTH Act

On May 20, 2009, the President signed into law "An Act to Prevent Mortgage Foreclosures and Enhance Mortgage Credit Availability," which became Public Law 111-22. This law implements a variety of measures directed toward keeping individuals and families from losing their homes. Division B of this law is the HEARTH Act, which consolidates and amends three separate homeless assistance programs carried out under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 *et seq.*) (McKinney-Vento Act) into a single grant program that is designed to improve administrative efficiency and enhance response coordination and effectiveness in addressing the needs of homeless persons. The HEARTH Act codifies into law and enhances the Continuum of Care planning process, the coordinated response for addressing the needs of homelessness established administratively by HUD in 1995. The single Continuum of Care program established by the HEARTH Act consolidates the following programs: the Supportive Housing program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy program. The Emergency Shelter Grants program is renamed the Emergency Solutions Grants program and revised to broaden existing emergency shelter and homelessness prevention activities and to add short- and medium-term rental assistance and services to rapidly re-house homeless people. In addition the new Rural Housing Stability program replaces the Rural Homelessness Grant program.

HUD commenced the process to implement the HEARTH Act with a proposed rule, which was published on April 20, 2010, (75 FR 20541) and titled "Defining Homeless." That proposed rule sought to clarify and elaborate upon the new McKinney-Vento Act definitions for "homeless" and "homeless individual with a disability." In addition, the proposed rule included recordkeeping requirements related to the revised definition of "homeless." The final rule for the "homeless" definition and the related recordkeeping requirements appears elsewhere in today's Federal Register. Today's publication of the final rule for the homeless definition and this interim rule for the Emergency Solutions Grants program, which includes corresponding amendments to the Consolidated Plan, will be followed by separate proposed rules for the Continuum of Care program and the Rural Housing Stability program to implement other HEARTH Act

amendments to the McKinney-Vento Act. HUD will also soon publish a proposed rule establishing regulations for Homeless Management Information Systems (HMIS). The definition of "homeless" in this interim rule for the Emergency Solutions Grants program and the corresponding recordkeeping requirements are not the subject of further public comment. Public comment for this definition and the corresponding recordkeeping requirements were addressed in the Defining Homeless final rule published elsewhere in today's Federal Register.

II. This Interim Rule

This interim rule revises the regulations for the Emergency Shelter Grants program at 24 CFR part 576 by establishing the new requirements for the Emergency Solutions Grants program and making corresponding amendments to HUD's Consolidated Plan regulations found at 24 CFR part 91. The Emergency Solutions Grants (ESG) program builds upon the existing Emergency Shelter Grants program, but places greater emphasis on helping people quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness. The key changes that reflect this new emphasis are the expansion of the homelessness prevention component of the program and the addition of a new rapid re-housing assistance component. The homelessness prevention component includes various housing relocation and stabilization services and short- and medium-term rental assistance to help people avoid becoming homeless. The rapid re-housing assistance component includes similar services and assistance to help people who are homeless move quickly into permanent housing and achieve stability in that housing.

In developing regulations for the ESG program, HUD is relying substantially on its experience with its administration, and that of HUD's grantees, of the Homelessness Prevention and Rapid Re-Housing Program (HPRP), authorized and funded by the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5, approved February 17, 2009). The Recovery Act language that created HPRP was directly drawn from the proposed HEARTH Act, which was under consideration by Congress at the time the Recovery Act was enacted. HPRP is the first HUD program to fund, on a large scale (\$1.5 billion), homelessness prevention and rapid re-housing assistance. HUD is therefore drawing from its recent program experience with HPRP, a temporary

program, to establish the regulations for the ESG program, a permanent program. Because HPRP activities will continue, the interim rule is also directed at ensuring continuity between HPRP and ESG. This interim rule provides HPRP program recipients with an opportunity to comment on the policies implemented under HPRP and continued under the ESG program.

This interim rule also implements HUD's longstanding interest in making its McKinney-Vento Act programs consistent, where appropriate, with other HUD programs such as the Community Development Block Grant (CDBG) program, the HOME Investment Partnerships (HOME) program, and the Housing Choice Voucher (HCV) program. To the extent that similar requirements in these programs can be made consistent, communities may be better able to implement coordinated plans and projects to prevent and end homelessness, while decreasing the administrative burden for recipients and subrecipients.

This interim rule will become effective 30 days after today's date. Grantees are receiving two allocations of Fiscal Year (FY) 2011 funds. The first allocation was made and is subject to the Emergency Shelter Grants program regulations. The second allocation will be made after publication of this Emergency Solutions Grants program rule and must exclusively be used for homelessness prevention assistance, rapid re-housing assistance, Homeless Management Information Systems (HMIS), and administration, in accordance with this interim rule. Each recipient may use up to 7.5 percent of its total FY 2011 amount for administrative costs as provided under this interim rule. In addition, if a recipient wishes to reprogram some or all of its first allocation funds to carry out homelessness prevention assistance, rapid re-housing assistance, or HMIS, the recipient must amend its consolidated plan in accordance with the requirements of the consolidated plan regulations as amended by this interim rule.

The following sections of this overview highlight significant differences between the interim rule and the existing regulations for the Emergency Shelter Grants program. This overview does not address every regulatory provision of the interim rule. However, the reader is requested to review the entire interim rule, and HUD welcomes comment on all aspects of the rule. As previously mentioned, the definition of "homeless" and the recordkeeping requirements related to that definition are included in a final

rule published elsewhere in today's **Federal Register**. Note that the new definition of "homeless" and the related recordkeeping requirements are not subject to further public comment. Therefore, the new definition and related reporting requirements are not included in this interim rule, so as to avoid any confusion that HUD is reopening these provisions for additional public comment through this rule.

A. Emergency Solutions Grants Program Regulations (24 CFR Part 576)

This interim rule amends the regulations at 24 CFR part 576, which have governed the Emergency Shelter Grants program and will govern, as revised, the Emergency Solutions Grant (ESG) program.

This interim rule reflects HUD's comprehensive review and revision of part 576. In addition to making changes to implement the HEARTH Act amendments to the McKinney-Vento Act, this interim rule includes changes to reorganize the regulations in part 576 to make the regulations more intuitive and user-friendly; removes the cross-references to the McKinney-Vento Act; provides greater elaboration of existing requirements where necessary or useful; updates requirements to reflect changes to the underlying law, such as the removal of Indian tribes as eligible grantees/recipients; builds from HUD's experience in developing and administering both the existing Emergency Shelter Grants program and HPRP; aligns the ESG program with the new Continuum of Care and Rural Housing Stability programs, to the extent feasible, in order to facilitate coordination and foster efficient use of resources; and align the requirements of the ESG program with HUD's other formula programs and rental assistance programs, to the extent feasible and beneficial, in order to increase efficiency and coordination among the different programs.

In developing the regulations for the ESG program and other programs authorized under title IV of the revised McKinney-Vento Act, HUD has sought to provide grantees with the programmatic framework to: maximize communitywide planning and strategic use of resources to prevent and end homelessness; improve coordination and integration with mainstream services to marshal all available resources, capitalize on existing strengths, and increase efficiency; improve coordination within each community's homeless services, including services funded by other programs targeted to homeless people;

build on lessons learned from years of practice and research, so that more resources are invested in demonstrated solutions to end homelessness, such as rapid re-housing; expand resources and services available to prevent homelessness; realign existing programs and systems to focus on shortening homelessness; direct funding to the most critical services to help people achieve long-term housing stability and avoid becoming homeless again; standardize eligibility determinations and improve the targeting of resources to help those most in need; improve data collection and performance measurement; and allow each community to tailor its program to the particular strengths and challenges within that community.

General Provisions (Subpart A)

The major changes to this subpart include new definitions required by the HEARTH Act amendments and revisions to existing definitions where needed to conform to the new program requirements or to improve administration of the program.

Definitions (Section 576.2)

At Risk of Homelessness. The interim rule clarifies the definition of "at risk of homelessness" under section 401(1) of the McKinney-Vento Act. The definition includes three categories under which an individual or family may qualify as "at risk of homelessness." For an individual or family to qualify as "at risk of homelessness" under the first category of the definition, the individual or family must meet two threshold criteria and must exhibit one or more specified risk factors. The two threshold criteria, as provided in the statute, are: (1) The individual or family has income below 30 percent of median income for the geographic area; and (2) the individual or family has insufficient resources immediately available to attain housing stability. Under the interim rule, the first criterion refers specifically to annual income and to median family income for the area, as determined by HUD. The second criterion is interpreted as, "the individual or family 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 § 576.2]." These clarifications are consistent with HUD's practice in administering its homeless assistance programs and will help ensure consistent application of these criteria.

To further ensure consistency of interpretation, the interim rule also clarifies several of the risk factors that pertain to the first category of individuals and families who qualify as "at risk of homelessness." As provided under the statute, the pertinent risk factors are as follows: (1) Has moved frequently because of economic reasons; (2) is living in the home of another because of economic hardship; (3) has been notified that their right to occupy their current housing or living situation will be terminated; (4) lives in a hotel or motel; (5) lives in severely overcrowded housing; (6) is exiting an institution; or (7) otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness.

Under the interim rule, the words "has moved frequently" in the first risk factor are interpreted as "2 or more times during the 60 days immediately preceding the application for homelessness prevention assistance." This interpretation is consistent with HUD's interpretation of similar language in the "homeless" definition. However, HUD is still considering whether and how to clarify "economic reasons" in the first risk factor and "economic hardship" in the second risk factor. HUD believes at times, "economic reasons" and "economic hardship" can have the same meaning, HUD specifically requests comments regarding these terms.

The third risk factor, "has been notified that their right to occupy their current housing or living situation will be terminated," is clarified by adding that the notice has to be in writing and that the termination has to be within 21 days after the date of application for assistance.

The fourth risk factor, "lives in a hotel or motel," is clarified by adding "and the cost of the hotel or motel is not paid for by federal, state, or local government programs for low-income individuals or by charitable organizations." This change is being made to avoid overlap with the conditions under which an individual or family living in a hotel or motel qualifies as homeless under paragraph (1)(ii) of the "homeless" definition (section 103(a)(3) of the McKinney-Vento Act).

The fifth risk factor, "lives in severely overcrowded housing," is interpreted as "lives in a single-room occupancy or efficiency apartment unit in which more than two persons, on average, reside or another type of housing in which there reside more than 1.5 persons per room, as defined by the U.S. Census Bureau."

The sixth risk factor, "is exiting an institution," is interpreted as "a

publicly funded institution or system of care, such as a health-care facility, mental health facility, foster care or other youth facility, or correction program or institution." This language is derived from section 406 of the McKinney-Vento Act to include all public institutions and systems of care from which people may be discharged into homelessness.

The seventh risk factor, "otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness," remains as is, but requires the particular housing characteristics to be identified in the recipient's HUD-approved consolidated plan. This requirement strives to balance the need for consistent application of this risk factor with sensitivity to the differences in the conditions of each community's housing stock.

The second and third categories under which individuals and families may qualify as "at risk of homelessness" are based on the last sentence of section 401(1) of the McKinney-Vento Act, which provides that the term "at risk of homelessness" includes all families with children and youth defined as homeless under other federal statutes. The term "families with children and youth defined as homeless under other federal statutes" is defined under section 401(7) of the McKinney-Vento Act. Section 401(7) provides that this term means "any children or youth that are defined as 'homeless' under any Federal statute other than this subtitle, but are not defined as homeless under section 103, and shall also include the parent, parents, or guardian of such children or youth under subtitle B of title VII this Act (42 U.S.C. 11431 *et seq.*)."

For the sake of clarity, the definition of "at risk of homelessness" this interim rule uses separate categories to describe the children and youth defined as homeless under other federal statutes and to describe the children and youth defined as homeless under subtitle B of title VII of the McKinney-Vento Act and their parent(s) or guardian(s). In light of comments received in response to the proposed rule concerning the definition of "homeless" HUD has provided specific citations to the other federal statutes that are applicable to the first of these two categories. As for the last category, the interim rule clarifies that the parent(s) or guardian(s) of the children or youth defined as homeless under subtitle B of title VII of the McKinney-Vento Act must be living with those children or youth to qualify as "at risk of homelessness" under that category.

Emergency shelter. This interim rule revises certain definitions currently found in the existing part 576 regulations. The definition of "emergency shelter" has been revised to distinguish this type of shelter from transitional housing. This distinction is necessitated by the McKinney-Vento Act's explicit distinction between what activities can or cannot be funded under the Continuum of Care program and the Rural Housing Stability program (see section 423(a)(2) and section 491(b)(1)(E) of the McKinney-Vento Act). However, under the definition, any project that received funding in FY 2010 as an emergency shelter may continue to be funded under the ESG program, regardless of whether the project meets the revised definition.

Homeless. The interim rule includes the definition of "homeless" which is made final by the Defining Homeless rule, published elsewhere in today's **Federal Register**. No further public comment is being solicited or taken on this definition.

Metropolitan city. This interim rule revises the definition of "metropolitan city" to clarify that the definition includes the District of Columbia, since the McKinney-Vento Act includes the District of Columbia in both its definitions of "state" and "metropolitan city". HUD has decided to resolve this conflict in favor of treating the District of Columbia under the ESG program as a metropolitan city. This interpretation will provide the District of Columbia with the flexibility afforded to metropolitan cities and urban counties for carrying out activities directly, rather than being compelled to subgrant all ESG funds. In addition, the definition of "territory" in 24 CFR 576.3 has been updated to exclude the Trust Territory of the Pacific Islands, which is no longer a U.S. territory.

Private nonprofit organization; unit of general purpose local government. The changes to the definitions of "private nonprofit organization" and "unit of general purpose local government" are intended to make clear that governmental organizations, such as public housing agencies or state or local housing finance agencies, are not eligible subrecipients under the ESG program. To recognize these entities under either definition would be inconsistent with section 411 of the McKinney-Vento Act, which refers specifically to "private nonprofit organizations" and "unit of general purpose local government."

Recipient and subrecipient. In the interim rule, the terms "recipient" and "subrecipient" replace the existing terminology for entities that received grants and subgrants under the ESG

program. Under the McKinney-Vento Act, "recipient" means "any governmental or private nonprofit entity approved by the Secretary [of HUD] as to financial responsibility" (Sec. 42 U.S.C. 11371(6)). The interim rule clarifies that "recipient" means any state, territory, metropolitan city, or urban county, or in the case of reallocation, any unit of general purpose local government, approved by HUD to assume financial responsibility and which enters into a grant agreement with HUD to administer Emergency Solutions Grant (ESG). Private nonprofit organizations are excluded from the definition, because they are not direct recipients under the program. The interim rule defines "subrecipient" as any unit of general purpose local government or private nonprofit organization to which a recipient awards ESG grant funds.

Allocation of Funding (Section 576.3)

Under the interim rule, the existing set-aside of funding for the territories has been changed for the Emergency Solutions Grant program to "up to 0.2 percent, but not less than 0.1 percent" of the total fiscal year appropriation for Emergency Solutions Grant (ESG). This change provides HUD with greater administrative discretion if there are significant increases in the annual appropriations for ESG. In addition, the formula for distributing the set-aside among the territories has been modified for this program to incorporate the rate at which each territory has completed its expenditures by the previous expenditure deadline. In all other respects, the allocation of funding will remain the same as the current practice.

Eligible Activities (Subpart B)

The major changes to this subpart of part 576 include the addition of an annual funding cap on street outreach and emergency shelter activities; clarification of the eligible costs for street outreach and emergency shelter activities; the expansion of the homelessness prevention component of the program and addition of a new rapid re-housing assistance component, which both include rental assistance and housing relocation and stabilization services; expansion of the range of eligible administrative costs; and the addition of a new category of eligible activities for Homeless Management Information Systems (HMIS), to the extent that costs are necessary to meet the new HMIS participation requirement under the McKinney-Vento Act.

General Provisions. In general, the interim rule allows ESG funds to be

used for five program components (street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and HMIS) and necessary administrative costs. However, in accordance with the McKinney-Vento Act, some restrictions apply to the amounts that can be spent on street outreach, emergency shelter, and administrative costs. Funds used for street outreach and emergency shelter activities will be limited to the greater of 60 percent of the recipient's total fiscal year grant for ESG or the hold-harmless amount established by the section 415(b) of the McKinney-Vento Act ("the amount expended by [the recipient] for such activities during fiscal year most recently completed before effective date under section 1503 of the [HEARTH Act]"). To reasonably and practicably implement the statute's hold-harmless language, the interim rule makes the hold-harmless amount the amount of FY 2010 grant funds committed for street outreach and emergency shelter activities in FY 2010.

In accordance with the amendments to the McKinney-Vento Act, the interim rule provides that the total funds that can be spent on administrative activities are 7.5 percent of the recipient's ESG grant. In addition, the interim rule clarifies that, subject to the cost principles in Office of Management and Budget (OMB) Circulars A-87 (2 CFR part 225) and A-122 (2 CFR part 230),¹ employee compensation and other overhead costs directly related to carrying out street outreach, emergency shelter, homelessness prevention, rapid re-housing, and HMIS activities are eligible costs of those activities and not subject to the spending limit for administrative costs. This clarification is in response to questions and concerns raised by HPRP grantees and subgrantees and the recent U.S. Government Accountability Office (GAO) study, *Homelessness: Information on Administrative Costs for HUD's Emergency Shelter Grants Program* (GAO-10-491).²

Street outreach and emergency shelter components. Consistent with section 415(a)(2) of the McKinney-Vento Act, the interim rule clarifies that the costs of essential services related to street outreach are eligible costs under the ESG program. The eligible costs for street outreach activities differ from the eligible costs for essential services

¹ OMB Circular A-87 and the regulations at 2 CFR part 225 pertain to "Cost Principles for State, Local, and Indian Tribal Governments." OMB Circular A-122 and the regulations codified at 24 CFR part 230 pertain to "Cost Principles for Non-Profit Organizations."

² See <http://www.gao.gov/new.items/d10491.pdf>.

related to emergency shelter, as they are limited to those necessary to provide emergency care on the street. To the extent possible, essential services related to emergency shelter and street outreach are the same as the eligible costs for supportive services under the Continuum of Care program. This consistency across these three sets of services is intended to improve understanding of the programs' requirements, facilitate coordination, and maximize efficiency.

The interim rule revises the eligible costs for operating emergency shelters by removing the limit on staff costs, adding the cost of supplies, and allowing the cost of a hotel or motel stay under certain conditions.

The interim rule clarifies the "maintenance of effort" requirement in two respects. First, the references to new service and quantifiable increase in services are eliminated in favor of simply prohibiting a unit of general purpose local government from using ESG funds to replace funds the local government provided for street outreach or 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. Second, the interim rule specifies how this determination would be made.

Homelessness Prevention and Rapid Re-Housing Components. HUD has interpreted sections 415(a)(4) and (5) of the McKinney-Vento Act to authorize ESG funds to be used for short- and medium-term rental assistance and housing relocation and stabilization services for homelessness prevention and rapid re-housing of homeless individuals and families into permanent housing. Consistent with this interpretation and to serve HUD's programmatic goals, the interim rule categorizes the eligible activities under sections 415(a)(4) and (5) of the McKinney-Vento Act under two program components—one for homelessness prevention and one for rapid re-housing assistance. This organization is intended to be function/outcome-focused and helps emphasize the integral relationship between rental assistance and housing relocation and stabilization services in both homelessness prevention and rapid re-housing assistance. This organization also provides for differentiation between the conditions for providing homelessness prevention and the conditions for providing rapid re-housing assistance. These conditions are intended to facilitate the strategic and efficient targeting of resources.

Housing Relocation and Stabilization Services. The eligible costs and requirements for providing housing relocation and stabilization services are based on HUD's experience in developing and administering HPRP. For the purpose of determining compliance with the statutory limit on street outreach and emergency shelter activities, housing stability case management and legal services are distinguished from the case management and legal services in the essential services sections of street outreach and emergency shelter by when and for what purpose the case management and legal services are provided. Note that "housing relocation and stabilization services," the name of which comes from section 415(a)(5) of the McKinney-Vento Act, are not to be confused with the relocation assistance and payments required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655). Costs arising under the URA are eligible for federal financial assistance in the same manner and to the same extent as other program or project costs (see 42 U.S.C. 4631(a)), and are separately listed at § 576.102 of this interim rule.

Short-term and Medium-term Rental Assistance. Consistent with HPRP, HUD has interpreted short-term rental assistance to be up to 3 months of assistance. Unlike HPRP, HUD has interpreted medium-term rental assistance to be up to 24 months. This change is intended for consistency with the period for transitional housing in the Continuum of Care (CoC) program.

The requirements for short- and medium-term rental assistance require that a program participant and a housing owner have a written lease for the provision of rental assistance. In addition, the interim rule also requires a rental assistance agreement between the recipient or subrecipient and the housing owner. Similar to HPRP, the interim rule gives Emergency Solutions Grant (ESG) recipients broad discretion in determining the type, amount, and duration of rental assistance a program participant can receive for homelessness prevention or rapid re-housing assistance. But where HPRP allows only tenant-based rental assistance, the interim rule allows rental assistance to be tenant-based or project-based, as provided under section 415(a)(4) of the McKinney-Vento Act. However, the requirements for project-based rental assistance under this interim rule have been specially designed to accommodate both the impermanent nature of the rental assistance and the program goal of helping people quickly

re-enter permanent housing and achieve long-term stability in that housing. For example, instead of requiring an individual or family to move from an assisted unit when the individual or family's assistance ends, the interim rule provides for the assistance to be suspended, terminated, or transferred to another unit.

HUD specifically requests comments on how short- to medium-term project-based rental assistance can best be fashioned to avoid forcing each program participant to move at the end of the program participant's term of assistance and to make project-based rental assistance a feasible and useful alternative to tenant-based rental assistance.

Similar to the rules of other HUD housing programs, the interim rule prohibits rental assistance from being provided for a housing unit, unless the total rent for the unit does not exceed the fair market rent established by HUD, as provided under 24 CFR 982.503, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507. These rent restrictions are intended to make sure that program participants can remain in their housing after their ESG assistance ends.

HMIS Component. Section 416(f) of the McKinney-Vento Act requires for the first time that projects receiving funding under Emergency Solutions Grant (ESG) program participate in an HMIS. The interim rule makes certain HMIS costs eligible to the extent necessary to enable this participation. HUD will soon be publishing a proposed rule on HMIS to establish in 24 CFR part 580, the regulations that will govern HMIS. In addition to establishing HMIS regulations in a new part 580 provisions, the HMIS rule will propose corresponding amendments to this interim rule regarding the use of Emergency Solutions Grant (ESG) funds for HMIS and the incorporation of the requirements under part 580 that will apply to ESG recipients.

Administrative Activities. Under this interim rule, the eligible costs for administrative activities have been expanded to reflect most of the eligible administrative costs under the CDBG program. The revisions to the sharing requirement also clarify that, although not required, funds for administrative costs may be shared with private nonprofit organizations, and a reasonable amount must be shared with units of general purpose local government. This clarification is made in response to grantee and subgrantee concerns and questions raised through the recent GAO report, *Homelessness: Information on Administrative Costs for*

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 85.24³ 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

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).⁴

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

³ 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.

⁴ See http://www.usich.gov/PDF/OpeningDoors_2010_FSPPreventEndHomeless.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.⁵ 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 put 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

⁵ 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 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 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.

576.102 Emergency shelter component.

576.103 Homelessness prevention component.

576.104 Rapid re-housing assistance component.

576.105 Housing relocation and stabilization services.

576.106 Short-term and medium-term rental assistance.

576.107 HMIS component.

576.108 Administrative activities.

576.109 Indirect costs.

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.

576.203 Obligation, expenditure, and payment requirements.

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 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;

(E) 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,

and creates the Rural Housing Stability program to replace the Rural Homelessness Grant program. The HEARTH Act also codifies in law the Continuum of Care planning process, long a part of HUD's application process to assist homeless persons by providing greater coordination in responding to their needs.

This final rule integrates the regulation for the definition of "homeless," and the corresponding recordkeeping requirements, for the Shelter Plus Care program, and the Supportive Housing Program. This final rule also establishes the regulation for the definition "developmental disability" and the definition and recordkeeping requirements for "homeless individual with a disability" for the Shelter Plus Care program and the Supportive Housing Program.

DATES: *Effective Date:* January 4, 2012.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-7000; telephone number (202) 708-4300 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at (800) 877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—HEARTH Act

An Act to Prevent Mortgage Foreclosures and Enhance Mortgage Credit Availability was signed into law on May 20, 2009 (Pub. L. 111-22). This new law implements a variety of measures directed toward keeping individuals and families from losing their homes. Division B of this new law is the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). The HEARTH Act consolidates and amends three separate homeless assistance programs carried out under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 *et seq.*) (McKinney-Vento Act) into a single grant program that is designed to improve administrative efficiency and enhance response coordination and effectiveness in addressing the needs of homeless persons. The single Continuum of Care program established by the HEARTH Act consolidates the following programs: The Supportive Housing Program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy program. The former Emergency Shelter Grant program is

renamed the Emergency Solutions Grant program and revised to broaden existing emergency shelter and homelessness prevention activities and to add rapid rehousing activities. The new Rural Housing Stability program replaces the Rural Homelessness Grant program. The HEARTH Act also codifies in law and enhances the Continuum of Care planning process, the coordinated response to addressing the needs of homelessness established administratively by HUD in 1995. HUD has commenced rulemaking to implement these new and revised programs, and this final rule is central to all of the HEARTH Act rules.

II. The April 2010 Proposed Rule

On April 20, 2010, HUD published a proposed rule (75 FR 20541) to commence HUD's implementation of the HEARTH Act. The proposed rule provided necessary clarification on terms within the statutory definitions of "homeless," "homeless individual," "homeless person," and "homeless individual with a disability." In addition, the proposed rule contained proposed recordkeeping requirements designed to assist communities appropriately document an individual or family's homeless status in the case file.

Through the proposed rule, HUD solicited public comment and suggestions on the proposed clarifications. The public comment period closed on June 21, 2010.

A more detailed discussion of HUD's April 20, 2010, proposed rule can be found at 75 CFR 20541 through 20546, of the April 20, 2010, edition of the *Federal Register*, and the discussion of public comments submitted on the proposed rule and HUD's responses to the comments are addressed later in this preamble.

This final rule is being published contemporaneously with the interim rule for the Emergency Solutions Grants (ESG) program, which establishes the regulations for the ESG program in 24 CFR part 576 and makes corresponding amendments to HUD's Consolidated Plan regulations in 24 CFR part 91. To complement the ESG interim rule, this final rule revises the definition of "homeless" in both 24 CFR parts 91 and adds recordkeeping requirements to part 576. While the proposed rule also included definitions for "developmental disability" and "homeless individual with a disability," those definitions are not being adopted by this final rule. Part 576 does not use those terms, and the Consolidated Plan regulations in 24 CFR part 91 covers more than HUD's homeless assistance programs.

The definitions of "developmental disability" and "homeless individual with a disability" will be addressed in the final rule for the Continuum of Care program, which will replace the Shelter Plus Care program and the Supportive Housing Program, and in the rule for the new Rural Housing Stability Assistance program. The rulemaking for the Continuum of Care program and the Rural Housing Stability Assistance program have not yet commenced, and therefore, this final rule integrates these new definitions into the current regulations for the Shelter Plus Care program and Supportive Housing Program at 24 CFR parts 582 and 583, respectively.

III. Overview of the Final Rule—Key Clarifications

The proposed rule, submitted for public comment, provided four possible categories under which individuals and families may qualify as homeless, corresponding to the broad categories established by the statutory language of the definition in section 103 of the McKinney-Vento Act, as amended by the HEARTH Act. The final rule maintains these four categories. The categories are: (1) Individuals and families who lack a fixed, regular, and adequate nighttime residence and includes a subset for an individual who resided in an emergency shelter or a place not meant for human habitation and who is exiting an institution where he or she temporarily resided; (2) individuals and families who will imminently lose their primary nighttime residence; (3) unaccompanied youth and families with children and youth who are defined as homeless under other federal statutes who do not otherwise qualify as homeless under this definition; and (4) individuals and families who are fleeing, or are 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. Throughout this preamble, all references to a number "category of homeless" refer to this list.

After reviewing issues raised by the commenters, discussed in Section IV of this preamble, and upon HUD's further consideration of issues related to this final rule, the following highlights the changes that are made by this final rule.

"Shelter" includes "Emergency Shelter" but not "Transitional Housing." The HEARTH Act defines an individual or family who resided in shelter or a place not meant for human habitation and who is exiting an institution where he or she temporarily

resided as "homeless." In this final rule, HUD clarifies that "shelter" means "emergency shelter" but not "transitional housing" for the purposes of qualifying as homeless under this provision.

"Youth" is defined as less than 25 years of age. Traditionally, HUD has defined children as less than 18 years of age and adults as 18 years of age and above (as established in the *Point-in-Time (PIT) and Housing Inventory Count Reporting* and the annual Continuum of Care Competition Exhibit 1 and Exhibit 2 applications). The proposed rule did not define "youth." With the inclusion of the term "youth" in Section 103(6), HUD determined it necessary to define youth. By establishing youth as less than 25 years of age, it is HUD's hope that the programs authorized by the HEARTH Act amendments to the McKinney-Vento Act (42 U.S.C. 11301 *et seq.*), (the Act) will be able to adequately and appropriately address the unique needs of transition-aged youth, including youth exiting foster care systems to become stable in permanent housing.

Inclusion of the "other federal statutes" with definitions of homelessness under which unaccompanied youth and families with children and youth could alternatively qualify as homeless under category 3 of the homeless definition. The final rule includes references to other federal statutes with definitions of "homeless" under which unaccompanied youth and families with children and youth could alternatively qualify as homeless under category 3 of the definition of "homeless." These statutes are 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.*) (VAWA), 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), and subtitle B of title VII of the McKinney-Vento Act (42 U.S.C. 11431 *et seq.*). This list represents the entire universe of statutes with definitions under which an unaccompanied youth or a family with children and youth can qualify as homeless under this category. While there may be other federal statutes with definitions of "homeless," this list is intended to include only those that encompass children and youth.

"Long-term period" defined to mean 60 days and "frequent moves" is defined as two. The term "long-term period" found in Section 103(6)(A) of the McKinney-Vento Act, is defined in

this final rule to mean 60 days and the number of moves required during that time that are considered "frequent," as established in Section 103(6)(B) of the McKinney-Vento Act, is two. HUD determined that two moves over a 60-day period strikes an appropriate balance between the statutory requirements of "long term" and "frequent moves" and identifying and addressing the needs of unaccompanied youth and families with children and youth in a manner that does not encourage instability.

Third-party documentation, where it is available, is the preferable documentation of homeless status. The final rule provides that, whenever possible, third-party documentation of the criteria used to establish an individual or family as homeless should be obtained. The exception to this is for recipients that provide emergency assistance, including emergency shelters that provide a bed for one night, and victim service providers. The recordkeeping requirements in the final rule reflect this requirement and exception.

Utilizing other forms of already available documentation is acceptable evidence of an individual or family's homeless status. HUD recognizes that verifying an individual or family's homeless status requires additional steps by housing and service providers and often requires a homeless individual or family to answer the same questions more than once. In an effort to alleviate some of this burden on both housing and service providers and homeless persons, HUD has established the recordkeeping requirements in this final rule to allow already available documentation to be used, where it is available. Already available documentation includes certification or other appropriate service transactions recorded in a Homeless Management Information System (HMIS) or other database that meet certain standards, discussed later in this preamble. This also includes discharge paperwork, to verify a stay in an institution.

Documenting an individual's stay in an institution. The final rule expands what is acceptable evidence of an individual's stay in an institution to include an oral statement made by a social worker, case manager, or other appropriate official at an institution that is documented by the intake worker of the housing or service program. Where the intake worker is not able to obtain a written or oral statement from a social worker, case manager, or other appropriate official at an institution, the intake worker may document his or her due diligence in attempting to obtain a

statement from the appropriate official in the case file.

Documentation of imminent loss of housing. The final rule provides that documentation of imminent loss of housing includes not only a court order resulting from an eviction action, or the equivalent notice under applicable state law, but also a formal eviction notice, a Notice to Quit, or a Notice to Terminate, that require the individual or family to leave their residence within 14 days after the date of their application for homeless assistance.

Documentation of homeless status of an unaccompanied youth or a family with children and youth who qualify as homeless under "other federal statutes." The final rule provides that documentation of the homeless status of an unaccompanied youth or a family with children and youth who qualify as homeless under other federal statutes must be certified by the local nonprofit, state or local government entity that administers assistance under the other federal statutes. When certifying the homeless status of an unaccompanied youth or a family with children and youth who qualify as homeless under another federal statute, the case file must include a determination from the appropriate official at the appropriate administering nonprofit organization or state or local government.

Verification of homeless status by providers serving individuals and families fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, and stalking that are not victim service providers. The final rule imposes additional verification requirements for oral statements by individuals or families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, and stalking who are seeking or receiving shelter or services from providers who are not victim service providers, as defined in section 401(32) of the McKinney-Vento Act, as amended by the HEARTH Act. Specifically, the individual or head of household must certify that he or she 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, 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 from a housing or service provider, social worker, health-care provider, law enforcement agency, legal assistance provider, pastoral

counselor, or any other organization from whom the individual 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. HUD does not expect that the written referral contain specific details about the incidence(s) of violence that occurred prior to the victim fleeing, or attempting to flee.

Written documentation of disability status. The final rule provides that written documentation of disability status includes: (1) Written verification from a professional who is licensed by the state to diagnose and treat that condition, that the disability is expected to be long-continuing or of indefinite duration and that the disability substantially impedes the individual's ability to live independently; and (2) written verification from the Social Security Administration, or the receipt of a disability check (e.g., Social Security Disability Insurance check or Veteran Disability Compensation). Information on disability status should be obtained in the course of client assessment once the individual is admitted to a project, unless having a disability is an eligibility requirement for entry into the project. Where disability is an eligibility requirement, an intake staff-recorded observation of disability may be used to document disability status as long as the disability is confirmed by the aforementioned evidence within 45 days of the application for assistance.

Technical and additional clarifying changes. In addition to the changes highlighted above, this final rule also includes technical and minor clarifying changes to certain proposed regulatory provisions. Several of these changes are in response to requests by commenters for clarification, and are further discussed in section IV of this preamble. HUD's response to public comments discussed below identifies where the final rule makes these changes.

IV. Discussion of the Public Comments

A. The Comments, Generally

The public comment period on the proposed rule closed on June 21, 2010, and HUD received 201 public comments. HUD received public comments from a variety of sources including: Private citizens; nonprofit organizations; advocacy groups; Continuums of Care; and government, community, and affordable housing

organizations. General concerns about this rule most frequently expressed by commenters were: (1) Vulnerable populations (e.g., individuals who are "couch surfing" and individuals and families in substandard housing) continue to be excluded from the definition of "homeless" used by HUD to administer its programs; and (2) the recordkeeping requirements are too burdensome.

Regarding the first concern, it is important to note that the definition of "homeless" must be reviewed in its entirety when attempting to confirm that an individual or family is homeless. For example, an unaccompanied youth may not meet the criteria in the third category, but if the youth is fleeing domestic violence, then the youth will meet the criteria established in the fourth category. For individuals and families who do not meet the definition of "homeless" under any of the categories, HUD notes that the McKinney-Vento Act was amended to allow homeless assistance to be provided to persons who are "at risk of homelessness." Commenters should look for the definition of persons who are at risk of homelessness in upcoming program regulations, including the ESG program interim rule, which is published elsewhere in today's **Federal Register**.

Regarding the second concern, documentation of an individual or family's status as "homeless" has always been required. Failure to maintain appropriate documentation of a household's status as homeless is the monitoring finding that most often requires recipients of HUD funds to repay grant funds. The recordkeeping requirements established by this final rule are those necessary for appropriately documenting "homeless" status.

Specific comments most frequently expressed by commenters pertained to requests that: (1) HUD revisit the standards provided for "long-term period" and "persistent instability" and the list provided for "barriers to employment" and (2) HUD broaden the fourth category of "homeless," "homeless individual," and "homeless person" to include "other dangerous or life-threatening situations" and not limit the fourth category to individuals and families fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous life-threatening conditions that relate to violence against the individual or family member.

In addition to the general concerns raised and specific comments submitted regarding the definitions and the

recordkeeping requirements in the proposed rule, many commenters raised questions or provided comments about topics that will be addressed in the upcoming proposed rules for the Rural Housing Stability program, the Continuum of Care program, and the Homeless Management Information System and the interim rule for the ESG program. Topics on which further clarification and guidance was requested, and which HUD intends to address in one or more of the upcoming proposed rules, or has addressed in the ESG interim rule, include the following: The definition of "chronically homeless"; the definition of "episode of homelessness"; the definition of "at risk of homelessness"; the overlap between the definition of "homeless" and the definition of "at risk of homelessness" and how this impacts eligibility for programs; conducting point-in-time counts; establishing local priorities for serving homeless persons; matching requirements for recipients of funds; specific program requirements for protecting the confidentiality of victims of domestic violence, dating violence, sexual assault, and stalking; specific program requirements to ensure that recipients and subrecipients make known to lesbian, gay, bisexual, and transgendered persons the facilities, assistance, and services available within the community; confidentiality and privacy standards of HMIS; requirements for domestic violence providers with regard to HMIS; eligibility of costs necessary to participate in HMIS; further guidance on the Involuntary Separation provision in section 404 of the McKinney-Vento Act; further guidance on the provision providing communities the flexibility to serve persons identified as homeless under other federal laws established in section 422(j) of the McKinney-Vento Act; determining eligibility for rapid rehousing and homelessness prevention assistance; determining eligibility of subpopulations, specifically unaccompanied youth, in HUD's homeless assistance and homelessness prevention programs; for projects that are limited to persons with disabilities, guidance on which family member must have the disability to qualify a family for assistance; an appeal process for a person presenting as homeless who was denied assistance; information about the coordination and collaboration between recipients of ESG program funds and recipients of Continuum of Care program funds; eligibility of costs related to documenting homelessness; eligibility of costs related to documenting disability; Collaborative

Applicants; Unified Funding Agencies; discharge planning requirements; high-performing communities and the bonus available to communities selected as high-performing; guidance on the "Use Restrictions" as they apply to "Conversion" as established in section 423(c)(3) of the McKinney-Vento Act; clarification of "renewal funding for unsuccessful applicants" established in section 422(e) of the McKinney-Vento Act; clarification on the standards HUD will use to determine when transitional housing assistance may be extended beyond 24 months; and clarification of the other federal laws that apply to the programs in the Act. For these issues, HUD welcomes commenters to review forthcoming HEARTH Act proposed rules when published and the ESG interim rule published elsewhere in today's *Federal Register* and to submit comments.

Many commenters requested future guidance and technical assistance related to this final rule defining "homeless," "homeless person," "homeless individual," and "homeless individual with a disability," on the following topics: a simple matrix clarifying the definition; a standard set of questions that can be used to make determinations about the credibility of oral statements; a standard set of questions for determining "imminent loss of housing;" a simple, safe process for determining survivor eligibility, with great attention paid to the confidentiality rights and needs of victims of domestic violence, dating violence, sexual assault, and stalking; eligibility of specific subpopulations, including prisoners and youth exiting the foster care system, within the specific categories of the definition of "homeless," "homeless individual," and "homeless person"; the other federal definitions of homelessness and how to integrate these definitions into intake procedures; assisting agencies and projects adjust their service delivery models to serving a broader group of homeless persons to ensure success; targeting funds from HUD's homeless assistance programs and other common funding streams; and the consequences of signing a certification that is false for both the applicant of funds and the program participant. HUD is coordinating a technical assistance strategy to assist recipients of funds who are required to use this definition adapt their projects, as necessary, and meet the requirements set forth in this proposed rule.

Many commenters noted that current funding levels for the homeless assistance programs at HUD will not be sufficient to serve the increase in

individuals and families defined as homeless under this final rule and encouraged HUD to work with Congress to increase funding to the homeless programs. HUD and its federal partners, including the U.S. Interagency Council on Homelessness, the U.S. Department of Education, the U.S. Department of Health and Human Services, the U.S. Department of Veterans Affairs, and the U.S. Department of Labor, are committed to preventing and ending homelessness as evidenced in *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness*. To meet the goals established in the *Federal Strategic Plan*, HUD and its federal partners will provide the resources from both targeted and nontargeted agency programs. HUD reminds its stakeholders that the availability of resources, both for targeted and nontargeted programs, are subject to appropriations by Congress.

B. The Definition of "Homeless" in 24 CFR Parts 91, 582, and 583

In General: Overarching Comments

Comment: The definition of "homeless" should be broadened to include others that continue to be left out of the definition. Several commenters noted that HUD's definition of homeless continues to leave out vulnerable persons who should be included in order for them to access needed housing and services. Several commenters requested that HUD's definition match the definition of homeless used by the U.S. Department of Education. Another commenter stated that someone who is living doubled up with others due to economic or other safety conditions should be included in the definition of homeless. One commenter requested that the definition be broadened to include those who are currently homeless, in danger of becoming homeless, or in housing where the rental or mortgage rate exceeds 30 percent of household qualifying income, while another commenter requested that the definition also include those persons who have recently experienced homelessness. Another commenter stated that a person should retain his or her homeless status if the person exited the shelter to live with family and friends.

One commenter stated that a fifth category of "homeless" should consist of persons with disabilities who: (1) Have resided with a relative, but by virtue of age or other circumstances of that relative is unable to continue to provide shelter to the individual with a disability; (2) reside in an institution or facility not meant for permanent human

habitation such as a hospital, rehabilitation facility, nursing or board and care home, and such individual has no home to return to where that person could live independently and safely; (3) are in situations such as (1) and (2) who no longer choose to live in that circumstance and who wish to live independently.

HUD Response: HUD understands that there are vulnerable populations that continue to be excluded from the definition of homeless used by HUD to administer its programs; however, HUD is following the statutory guidelines established in section 103 of the McKinney-Vento Act as HUD further clarifies the definition. HUD reminds its stakeholders that the McKinney-Vento Act also includes the definition of "at risk of homelessness" and that funds through the ESG program, Rural Housing Stability program, and Continuum of Care program will be available to serve persons "at risk of homelessness" as well. Commenters should review the upcoming proposed and interim program rules when they are published, and HUD welcomes comments at that time.

Comment: Restore the categories established in the statute. Some commenters viewed the paragraphs of section 103 of the McKinney-Vento Act as seven separate categories of homelessness and recommended that HUD use them instead of the four categories included in the proposed rule. These commenters stated that if Congress had intended for the statutory categories to be condensed from seven to four categories, then Congress would have drafted the law differently.

One commenter stated that the proposed rule's simplification of the categories does not provide enough information and is confusing. This commenter suggested that the statutory categories be restored or be listed as examples.

Several commenters stated that HUD is effectively eliminating eligibility for persons who lack a fixed, regular and adequate nighttime residence. The commenters stated that the statute was unambiguous and that HUD has narrowed the definition.

Several commenters suggested that by maintaining the seven distinct categories from the McKinney-Vento Act, HUD's definition would match the Department of Education's definition and better align federal homelessness policy and complementary services.

HUD Response: The final rule clarifies that an individual or family meets the first paragraph of section 103 of the McKinney-Vento Act by meeting the second, third, or fourth paragraph. In

other words, a person “lacks a fixed, regular and adequate nighttime residence,” if that person “lives in a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings,” “lives in a supervised publicly or privately operated shelter designated to provide temporary living arrangements,” or “is exiting an institution in which he or she temporarily resided after living in a shelter or a place not meant for human habitation.”

This interpretation is consistent with HUD’s longstanding interpretation of the statutory language “lacks a fixed, regular and adequate nighttime residence,” which the HEARTH Act, in amending the McKinney-Vento Act, did not change. This longstanding interpretation has helped target HUD’s limited homeless resources to those most in need of them, while directing other people, like those who are poorly housed, to other HUD housing programs. The suggested alternatives to HUD’s interpretation would greatly reduce this targeting of resources.

The suggested alternatives also appear inconsistent with the statutory language. If the first paragraph were interpreted to encompass people who are poorly housed, it would undermine the McKinney-Vento Act’s imposition of additional criteria for these people under the sixth paragraph of the “homeless” definition and the “at risk of homelessness” definition in section 401(1) of the McKinney-Vento Act. For example, if a person qualifies as homeless merely because she lives in housing, there would be no reason to consider the additional criteria those provisions would otherwise require the person to meet.

Although the final rule does not broaden the definition as requested by the commenters, HUD is committed to working as much as possible within its statutory parameters to facilitate coordination across all federal programs that can help prevent and end homelessness, including those administered by the Department of Education.

Comment: Expand the single term “domestic violence” to include “domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions.” Many commenters disagreed with the proposed rule’s inclusion of the term “domestic violence” without any accompanying mention of “domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions.” Commenters stated that

individuals and families fleeing their homes for reasons of lack of safety in their housing situation, other than domestic violence, should be included as it is specified in the statute. Commenters explained that the term domestic violence does not adequately or accurately describe each unique term. By using separate terms, commenters stated that victims of each crime are afforded the same protections and benefits. The commenters recommended that each term be identified specifically and consistently throughout the proposed rule and stated that each term is defined under VAWA.

HUD Response: HUD agrees that the references to “domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions” should appear together in the final rule, wherever possible. Therefore, the final rule includes each of these unique terms in both the last category of the homeless definition and its corresponding recordkeeping requirements. However, because the term “domestic violence” is the only one of these terms to appear in section 103(a)(6)(C) of the Act, it remains the only one of these terms to appear in the corresponding provision in the final rule.

Rule clarification. HUD has revised paragraph (b)(5) of the recordkeeping requirements of the final rule to include individuals and families who are fleeing dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence, in addition to individuals and families who are fleeing domestic violence.

Comment: A more detailed standard for “lacks the resources” is necessary. Section 577.3(b)(2)(ii) and (b)(4)(iii) of the proposed rule required that the individual or family lack the resources or support networks needed to obtain other permanent housing. One commenter asked for a clear definition of the meaning of lack of resources, as well as guidance on how to demonstrate a lack of resources, which would include examples.

HUD Response: Historically, HUD has not specifically defined in regulations or notices “lacks the resources or support networks” for the purposes of documenting eligibility for HUD’s homeless and homelessness prevention programs. HUD’s view is that the resources and support networks required to demonstrate this criteria can vary drastically from person to person and community to community and HUD could never capture all of the various possibilities. The final rule, therefore, does not define “resources or support networks,” although HUD has included

examples of support networks about which recipients must inquire when determining whether an individual or family lacks the resources or support networks to obtain other permanent housing. These examples, which include friends, family, and faith-based or other social networks, are not meant to be an all-inclusive list, but rather they are designed to illustrate the kinds of support networks that people must first turn to, if they are able to, before drawing on the scarce resources targeted to homeless people. A housing situation that is unsafe due to violence is not considered a resource or support network, and providers must not disqualify an individual or family under the applicable category based on these situations.

Rule clarification. To clarify that family, friends, and faith-based or other social networks are examples of “resources or support networks” about which recipients must inquire, HUD is revising paragraphs (2)(iii) and (4)(iii) of the “homeless” definition.

Comment: Strike the word “other” when referring to “other permanent housing.” Where the proposed rule required “The individual or family lacks the resources or support networks needed to obtain other permanent housing,” some commenters recommended that HUD strike the word “other.” These commenters stated that the term “other” implies that housing in which one lives without paying rent or shares with others, including rooms in hotels and motels not paid for by federal, state, or local government programs for low-income individuals or by charitable organizations, is considered a permanent living arrangement as opposed to a primary nighttime residence.

HUD Response: HUD recognizes that the statutory language may infer permanency in a housing situation that may not exist in reality; however, “other” is statutory language. Therefore, in this final rule, HUD has not changed the language from the proposed rule.

Category 1: An Individual or Family Who Lacks a Fixed, Regular, and Adequate Nighttime Residence

Comment: Address severely substandard housing by including “places designed for or ordinarily used as a regular sleeping accommodation that are not fit/suitable for human beings.” Several commenters noted that the definition in the proposed rule does not address the issue of severely substandard housing. These commenters stated that by only including a “place not designed for or ordinarily used as a regular sleeping

accommodation," persons living in houses that are dilapidated, or without water or electricity, will be excluded from the homeless definition because the buildings were originally designed for sleeping accommodation.

HUD Response: HUD recognizes that there are vulnerable populations that live in overcrowded housing and are excluded from the definition of homeless; however, the language "place not designed for or ordinarily used as a regular sleeping accommodation" is statutory.

Comment: A person staying in a hotel or motel room is homeless. Commenters recommended that a person be considered homeless regardless of who was paying the bill for the hotel or motel room—a federal, state, or local government; charitable institution; or the individual. The commenters stated that it should be recognized that these types of nighttime residences, as well as housing that is shared and in which rent is not paid, are, by their nature, temporary living arrangements.

HUD Response: HUD understands that some housing situations are more precarious than others; however, the language in the proposed and final rules concerning people living in hotels and motels is directly derived from the statutory language in section 103(a)(3) and (5)(A) of the McKinney-Vento Act. Therefore, HUD has not changed this language in response to the comments.

Comment: A clearer standard is needed for the term "shelter." With respect to the term "shelter," several commenters requested that HUD explicitly include both transitional housing and emergency shelter in the definition of "shelter." One commenter stated that this inclusion is important for certain geographic areas where it is difficult to establish emergency shelters, but transitional housing has been more acceptable.

HUD Response: The proposed rule did not define the term "shelter" from the definition in the McKinney-Vento Act. However, after reviewing the comments, HUD agrees that more clarification is needed regarding the use of the term "shelter" and has further clarified that "shelter" means "emergency shelter." HUD disagrees that transitional housing should be included in the definition of "shelter" for persons who are exiting institutions who have resided in such institutions for less than 90 days. Historically, projects funded through the Supportive Housing Program and Shelter Plus Care program have been allowed to maintain a unit for an individual who is temporarily residing in an institution, and HUD intends to continue this policy

in the proposed rule for the Continuum of Care program; therefore, these individuals would not be "homeless" because they would have a unit to which they could return. HUD welcomes commenters to review the Continuum of Care proposed rule when published and to submit any comments on this issue in connection with the Continuum of Care proposed rule.

Rule clarification. The final rule clarifies that "shelter" in paragraph (1)(iii) of the definition of "homeless" means "emergency shelter."

Comment: More clarification is needed for the term "institution." With respect to the term "institution," HUD received many comments that a clear standard for this term is needed. Commenters offered suggested standards, the most common of which were: penal institutions (jails and prisons), hospitals, nursing homes, Institutes for Mental Disease (IMDs), juvenile detention centers, substance abuse facilities, publicly operated mental health facilities, state mental hospitals, youth crisis beds, and Intensive Residential Treatment Service (IRTS) facilities. One commenter said that, in the regulatory text, "institution" should explicitly include all possibilities, including health, mental health, and chemical dependency institutions.

HUD Response: HUD acknowledges that clarification of the type of facility that qualifies as an institution would aid in better understanding of the meaning of "institution." However, rather than establishing a fixed set of institutions in the final rule, HUD intends to issue guidance on the meaning of "institution."

Comment: The standard for "temporarily resided" should be revised. With respect to the term "temporarily resided," many commenters stated that the standard of 90 days or less should be lengthened. A variety of alternative time frames were suggested, the most common of which was 180 days, which is the current standard for HUD's Homelessness Prevention and Rapid Re-Housing Program (HPRP). Other commenters suggested that HUD define the term as a period of up to one year.

Other commenters recommended that HUD not limit "temporarily resided" by an arbitrary count of calendar days and instead allow for a length of stay in the institution that varies based on the reason the individual entered the institution. One commenter suggested that HUD not establish a time frame or any additional qualifiers for "temporarily resided" and instead should allow anyone who was homeless

when entering an institution to be considered homeless upon exit.

One commenter suggested that "temporarily resided" should mean that an individual exiting an institution may be considered homeless if that individual had at least one previous episode of homelessness lasting at least 30 days in the 5 years prior to entering the institution, has no subsequent residence identified, and lacks the resources or support networks needed to obtain other permanent housing.

HUD Response: HUD disagrees with the conclusion that "temporarily resided" should be for a period of longer than 90 days. HUD has determined that 90 days strikes an appropriate balance between allowing homeless persons to maintain their homeless status while residing in an institution without undermining the considerable progress made in strengthening the discharge planning protocols and practices of institutions or state systems of care. Additionally the 90-day standard set for "temporarily resided" in paragraph (1)(iii) of the definition of "homeless" is consistent with policy established in the Fiscal Year (FY) 2008 Continuum of Care Homeless Assistance Grants Notice of Funding Availability (NOFA) and matches the "Rule of Construction" regarding the definition of "chronically homeless" in section 401(2)(B) of the McKinney-Vento Act, which states that "a person who currently lives or resides in an institutional care facility * * * and has resided there for fewer than 90 days shall be considered chronically homeless if such person met all of the requirements."

Category 2: An Individual or Family Who Will Imminently Lose Their Housing

Comment: Restore the statutory language covering people who will imminently lose their housing. Section 103(a)(5) of the McKinney-Vento Act adds a new category under which families and individuals may qualify as homeless: "individuals or families who will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs." The corresponding language in the proposed rule is "an individual or family who will imminently lose their primary nighttime residence." Commenters stated that Congress used explicit language to ensure that there would be no confusion by HUD or other parties that a subset of doubled-up individuals and families would be allowed access to HUD's homeless assistance programs.

Many of these commenters stated that the proposed rule's rewording of the statute's language creates a risk that this subset of families will not be considered homeless as Congress intended. Commenters requested that HUD restore the language, "(including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs * * *)" in the final rule. One commenter stated that HUD should be faithful to the statute and give guidance to individuals in eligibility determination roles.

HUD Response: HUD disagrees that any population was excluded by replacing "housing" with "primary nighttime residence" or that clarity was lost by eliminating the examples from paragraph (a)(2) of the statutory definition of "homeless." It is HUD's position that the recordkeeping requirements provided in § 577.3(3)(i) of the proposed rule establish clear guidance for persons responsible for verifying and documenting homeless status for category two of the "homeless" definition. Accordingly, HUD did not make changes in the final rule in response to these comments.

Comment: Increase the time frame for the imminent loss of housing beyond 14 days. While many commenters supported the 14-day limit in § 577.2(2)(i) of the proposed rule, which pertains to the period in which an individual or family has housing, but is about to lose such housing under § 577.2(2)(i), one commenter disagreed. This commenter stated that more must be done to ensure that resources remain available to those who need them the most. The commenter stated that the 14-day limit presents a difficult time constraint on individuals and social workers trying to secure housing and resources. The commenter stated that the limit would also drastically reduce the ability to create a smooth housing transition without forcing individuals and families onto the streets. This commenter stated that many people who "couch-surf" would not be eligible, because these people are not considered "street homeless." This commenter stated that by viewing a temporary shared living space with a friend or family as an obstacle to receiving additional housing assistance, the reality of homelessness looks more like a revolving door than a slow, steady climb to safe and suitable, permanent housing.

HUD Response: HUD acknowledges that 14 days may not be sufficient time in all situations to ensure a smooth housing transaction to individuals and

families facing imminent loss of their housing; however, the 14-day limit is statutory. However, HUD notes that 14 days is an increase from the 7-day time frame currently allowed in HUD's homeless programs. Beginning with the publication of the 2005 NOFA, and for every year since, HUD has allowed persons who are about to lose their housing within 7 days to be considered homeless if no subsequent residence has been identified and they lack the resources and support networks needed to obtain housing. Accordingly, HUD did not make changes in the final rule in response to these comments.

Comment: Individuals and families who will imminently lose their housing should not be defined as "homeless" if the eviction was due to a lease violation. One commenter stated that being evicted should not qualify as homeless if the reason for eviction is based on a tenant's actions that violate the lease. The commenter pointed out that in public housing, it is conceivable that a family is evicted for failure to pay rent, drugs, etc. and that in such cases, the family should not qualify as homeless under this definition.

HUD Response: HUD recognizes that there may be situations where individuals and families could have prevented the loss of their housing; however, HUD disagrees that these persons should not be defined as homeless when all other criteria for the definition of "homeless" are met. HUD has not changed this language from the proposed rule based on these comments.

Category 3: Unaccompanied Youth and Families With Children and Youth Defined as Homeless Under Other Federal Statutes

Comment: HUD should include individuals in the category of persons defined as homeless under other federal statutes. Many commenters stated that the category for unaccompanied youth and families with children and youth defined as "homeless" under other federal statutes should also include adult individuals. One commenter stated that HUD unnecessarily distinguishes families with children from those without children. Another commenter stated that many individuals who experience homelessness depend on "couch surfing," especially in rural areas in the winter months when it is life-threatening to sleep outside, and would meet the criteria of this category.

HUD Response: HUD recognizes that many adult individuals experience a long period of time without living independently and moving frequently; however, the limitation to unaccompanied youth and families with

children and youth is statutory. HUD has not changed this language from the proposed rule.

Comment: It would be helpful to identify the specific definitions of "homeless" included in "other federal statutes." Commenters requested further clarification on using the definitions of homeless children and youth from other federal statutes. Commenters stated that the proposed rule is not clear concerning which other federal programs have definitions of "homeless." One commenter asked if the proposed rule addresses only definitions existing as of the date of this proposed rule or if future definitions by other federal programs will also be considered.

HUD Response: HUD agrees that further clarification is needed of the other federal statutes that have definitions of "homeless" that relate to children and youth. HUD has identified the following federal statutes with definitions of homelessness that apply to children and youth: 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 VAWA (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. 2012(m)), the Child Nutrition Act of 1996 (42 U.S.C. 1786(b)(15)), and subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*). This list represents the current universe of statutes with definitions under which an unaccompanied youth or family with children and youth can qualify as homeless under this category. While there may be other federal statutes with definitions of "homeless," this list is intended to include only those that encompass children and youth. This list also includes section 725(2) of the McKinney-Vento Act, which contains the definition of "homeless children and youths" used by the Department of Education. While this section is not actually an "other federal statute," its definition of "homeless children and youths" is fully incorporated by reference in the definition of "homeless children" under section 330 of the Public Health Service Act (42 U.S.C. 254b). See 42 U.S.C. 254b(h)(5)(A). Therefore, section 725(2) of the McKinney-Vento Act would be applicable, regardless of whether it is specifically mentioned. HUD has specifically included this statutory section in order to make its applicability clear.

Rule clarification: To clarify the other federal statutes with definitions of "homeless" that apply to youth and

families with children and youth, HUD has revised paragraph (3) of the definition of "homeless" by listing the other federal statutes in the final rule.

Comment: Clarification of the terms "unaccompanied youth," "children" and "youth" is needed. Many commenters suggested that HUD define an age range for youth. The suggested age in these requests varied, but the most common age suggested was 24 and under, followed by the suggestion that youth be defined as persons under the age of 21. Commenters noted that HUD traditionally has defined "child" as up to 18 and "adult" as 18 and older and wanted to ensure that the uniquely vulnerable population of persons aged 18 through 24 were explicitly included in this category. One commenter suggested that HUD rename the category as "unaccompanied minors" and include children up to age 18.

With respect to "child," one commenter recommended that HUD define the term "child," as "an individual, the greater of not more than 18 years of age or the age of majority established by the law of the State in which the child or his or her family is seeking assistance."

With respect to "unaccompanied youth," many commenters requested that HUD define unaccompanied youth. These commenters suggested that HUD define "unaccompanied youth" to mean "youth not in physical custody of a parent or guardian."

HUD Response: HUD agrees that more clarification is needed regarding the use of the term "youth." HUD determined that defining "youth" as up to age 25 for the purposes of this category will help meet the needs of this uniquely vulnerable population, especially those youth exiting the foster care system. Additionally, this age standard aligns with that provided in the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)). The final rule clarifies that an unaccompanied youth must be under 25 years of age to qualify under the category for unaccompanied youth and families with children and youth defined as homeless under other federal statutes.

HUD disagrees that additional clarification is needed regarding the terms "unaccompanied youth" and "child."

Rule clarification: To clarify that HUD means a youth under 25 years of age when referring to unaccompanied youth, paragraph (3) of the "homeless" definition is revised.

Comment: The standard for "living independently" should be revised. As reflected in the proposed rule, HUD interpreted "without living

independently in permanent housing" under section 103(a)(6)(A) of the McKinney-Vento Act as not having "a lease, ownership interest, or occupancy agreement in permanent housing." Some commenters requested that HUD change its interpretation of the statutory language to include people who "have not resided in a place where they had a lease, ownership interest, or occupancy agreement," in order to account for a person whose name appears on a lease for a residence but who cannot live in that residence because of domestic violence, uninhabitable housing, or other reasons. Commenters stated that under HUD's proposed language, families whose names appear on any lease, ownership interest, or occupancy agreement cannot qualify for assistance, whether or not they have been able to reside in that unit. Commenters submitted that changing the language to specify that an individual or family must have resided in the property where they are named on the lease will increase the effectiveness of this section and ensure that families in these situations do not have to remove their names from a lease before receiving assistance.

One commenter stated that the lease language unnecessarily excludes families with children who have a rental agreement with their landlord, but are doubling up out of economic need. This commenter explained that despite the fact that such families have leases or rental agreements, they often are not living "independently" and, out of pressing economic need, these families often strike long-term voluntary arrangements to inhabit housing with other individuals or families as a double or triple occupancy. This commenter recommended that HUD allow these families, even if their names appear on a lease, to be considered as not living independently.

Another commenter stated that language requiring that a family not have a lease, ownership interest, or occupancy agreement should be removed altogether from the rule because it is too difficult to prove and to document that someone has not had a lease and it adds little value.

HUD Response: HUD disagrees that the standard for "living independently" in the proposed rule, "have not had a lease, ownership interest, or occupancy agreement in permanent housing," needs to be revised to reflect individuals who cannot stay in their housing due to domestic violence or uninhabitable housing or to accommodate those who are living doubled up due to economic reasons. Accordingly, HUD has not

changed the language in this final rule from the proposed rule.

HUD reiterates that this category is for unaccompanied youth, and families with children and youth, who do not qualify as homeless under another part of the definition. Those families who cannot stay in their housing due to domestic violence would qualify as homeless under the fourth category of the definition.

Comment: The standards for "long-term period" and "persistent instability" should be redefined. Commenters urged HUD to amend the time period used in the proposed rule to define "long-term period," as a period which is at least 91 days. The suggested time frames varied greatly—the most commonly suggested time period was 30 days. Another common recommendation was 180 days. One commenter suggested that HUD use 14 days to define "long-term period" because this is the time frame that HUD's rental housing programs use for visitation rules and that HUD should be consistent across programs.

One commenter stated that there is nothing in the statutory language that required the long-term period to be continuous and suggested that the standard could be met by having several doubled up experiences over a certain longer time frame. This commenter suggested a definition similar to the chronically homeless definition, which allows four episodes over a time frame of 3 years.

Many commenters simply requested that HUD elaborate on why 91 days or less was the chosen standard. These commenters stated that it would be helpful to understand HUD's decision-making process on the 91-day standard and whether there was research to support this time frame. Commenters noted that 91 days is not a factor in the Department of Education's statutory definition of homelessness under the Education for Homeless Children and Youth programs. Commenters mentioned that having two different standards would create confusion.

With respect to "persistent instability" as measured by "frequent moves," the proposed rule set a standard of three moves or more during a 90-day period. Many commenters had concerns about this interpretation. These commenters stated that this standard is too restrictive and suggested a variety of alternatives. The standard most frequently suggested by the commenters was two moves; however, the period of time over which those two moves should occur varied greatly among the commenters. Common suggestions were 30 days, 90 days, and

180 days. Many commenters stated that one move should be sufficient, while others stated that three moves is appropriate so long as the length of time was extended to 180 days or a year. Most commenters agreed that the initial move out of the original, permanent placement should count as the first move.

Some commenters suggested a standard not relating to a set period of time and number of moves. These commenters stated that there should be an alternate option that would combine the housing history of the family or unaccompanied youth with the current housing instability, which might be more applicable for some families and youth. One of these commenters stated that the housing history and current situation could be considered in conjunction with referrals from social workers and school counselors.

Other commenters suggested a standard that was a combination of situational and number of moves over a designated length of time. One commenter recommended that, for unaccompanied youth, the standard for persistent instability should be defined as having no viable housing resources and having been in the foster care system some time during the 90-day period immediately before applying for homeless assistance or experiencing at least two moves in 90 days. Another commenter recommended that for unaccompanied youth between the ages of 18 and 22, the following standard should apply: two moves in 90 days or having been in the care and responsibility of the child welfare or juvenile justice systems at some point in the 90-day period immediately before applying for homeless assistance.

Commenters stated that nothing in the McKinney-Vento Act requires a long period such as chronic homelessness when defining "persistent instability" over a "long-term period." Many commenters stated that this standard would be detrimental to unaccompanied youth and children, especially when related to their performance in school. Some commenters pointed to studies that have proven that homelessness causes multiple problems for children when they lack stability and must experience multiple moves. Other commenters stated that there is little actual evidence to either support or contradict HUD's decision to provide this standard. These commenters recommended that HUD study the phenomenon of persistent instability, and modify this regulation in the future, if the need to do so is indicated by evidence.

HUD Response: HUD agrees that 90 days without a permanent housing placement, coupled with three moves over that period, is too long a period and too many moves for unaccompanied youth and families with children and youth before homeless status can be documented and resources can be provided. In an effort to respect the statutory language of "long term" and "frequent moves" in section 103(6)(A) and (B) of the McKinney-Vento Act while still reaching this population earlier in their instability, in the final rule, HUD has redefined the long-term period as 60 days and redefined frequent moves as two moves or more during those 60 days. Moreover, HUD would consider the move out of the initial permanent housing placement as the first move.

Rule clarification. To clarify that HUD means 60 days when referring to "long-term period," and that HUD means two moves or more over that period when referring to "persistent instability," HUD is revising paragraph (3)(i) of the definition of "homeless." To clarify that HUD means persistent instability as measured by two moves or more during that 60-day period, HUD is revising paragraph (3)(ii) of the definition of "homeless."

Comment: Standards should be established for "childhood abuse." With respect to "childhood abuse," many commenters requested a specific definition of this term. These commenters recommended that "childhood abuse" be defined to include physical abuse, sexual abuse, chronic neglect, commercial sexual exploitation and human trafficking, mental abuse, and emotional or psychological abuse. In addition, commenters recommended that "childhood abuse" be defined without increasing the burden of proof for agencies.

HUD Response: HUD disagrees that the term "childhood abuse" requires further specificity. HUD would consider "childhood abuse" to include physical abuse, sexual abuse, chronic neglect, commercial sexual exploitation and human trafficking, mental abuse, and emotional or psychological abuse, without further definition. Accordingly, HUD has not changed the language from the proposed rule.

Comment: Fewer "barriers to employment" should be required. Some commenters did not agree with HUD's interpretation of "multiple barriers to employment" to mean two or more barriers to employment. Commenters recommended that only one barrier to employment be required. Other commenters stated that requiring youths

to face two or more barriers to their employment unfairly restricts their ability to receive aid, because even well-qualified individuals, including recent college graduates, have been unable to attain employment in this economy. Commenters stated that the inherent barriers facing homeless youth are as great, and presumably greater, than those standing in the way of the average person trying to find a job.

HUD Response: Section 103(6)(C) of the McKinney-Vento Act specifically refers to "multiple barriers to employment" (emphasis added). HUD disagrees with comments that one barrier meets the "multiple" standard established by the McKinney-Vento Act. HUD has not revised the rule in response to these comments.

Comment: The list of "barriers to employment" should be expanded and be more representative of the actual experiences of youth. Commenters expressed concerns with the list of "barriers to employment." Some commenters urged HUD to make the list of barriers illustrative and not exclusionary. To achieve this, commenters recommended that HUD include the phrase "including but not limited to." Other commenters recommended that HUD eliminate the list altogether.

Other commenters strongly encouraged HUD to include additional barriers to employment to the list. The most common requests for inclusion were lack of child care; lack of transportation; lack of resources for necessary job-specific items (uniforms); the responsibility for care of another family member; and a history of victimization including domestic violence, stalking, dating violence, sexual assault, controlling behaviors, substance abuse, mental health issues such as post traumatic stress disorder (PTSD) and complex trauma, and other dangerous nonlife-threatening conditions. Commenters recommend that HUD include the barriers identified by the Department of Labor and Workforce Investment Act. Other commenters stated that there are barriers to employment that affect the general population, such as a high unemployment rate, plant closures, or an over-burdened Work Investment Act agency that should be included.

Within the list of barriers to employment in the proposed rule was "a history of unstable employment." Several commenters stated that this term should be further clarified. Some commenters suggested that the phrase should be revised to state "a lack of employment history or a history of unstable employment" and should

reference the barrier created by a weak, unstable job market. Another commenter recommended that the number of jobs held within a specific time period and/or the length of periods of employment and unemployment experienced should define "a history of unstable employment."

Other commenters stated that "unstable employment," unlike the other listed barriers, is an outcome and not necessarily a precipitating factor. These commenters suggested this term be further revised to read "unstable employment refers to employment that is not permanent or procured on a full-time basis." Commenters also stated that unstable employment could be inferred as the result of a combination of the barriers to employment currently listed; therefore, these commenters recommended that lack of work experience, including vocational training, be identified in this section as it is both a barrier to employment and a factor which contributes to unstable employment.

Many commenters commented that the list of barriers to employment did not accurately reflect the experiences of youth. Specifically, commenters recommended that HUD change the inclusion of a "history of incarceration" in the proposed rule to a "history of incarceration or detention." Other commenters stated that a "history of incarceration" should be more inclusive, such as including a history of institutionalization, and should also include detention or involvement with juvenile court, since these are much more likely in the case of youth.

Many commenters suggested that unaccompanied youth under the age of 18 should automatically be considered as having met the barriers to employment, because being under the age of majority and being unaccompanied by a parent or guardian each represent barriers to employment.

HUD Response: The list in the regulatory text of "barriers to employment" provides examples of possible barriers to employment that unaccompanied youth and families with children and youth might face and is not indicative of all the possible barriers. HUD has not added additional items to the list of barriers in the regulatory text, and HUD has not further defined "a history of unstable employment." HUD would consider the suggestions provided in the comments (e.g., lack of child care, lack of transportation, lack of work experience) as barriers to employment without their specific inclusion in the regulatory text.

HUD agrees with comments that the list of barriers does not reflect the

typical experiences of youth and has added "detention for criminal activity" to "history of incarceration," as suggested by many commenters.

HUD also agrees that it is probable that unaccompanied youth under the age of 18 will likely meet the criteria of having multiple barriers to employment; however, intake workers cannot automatically presume eligibility for this criterion. The intake worker must document the barriers used to establish eligibility in the case file.

Rule clarification. To more accurately reflect the experiences of youth, HUD has revised paragraph (3)(iii) of the definition of "homeless" to add "detention for criminal activity."

Comment: This category should be revised to broaden the number of children, youth, and families defined as homeless that could meet the standards. Commenters appeared, through the comments submitted, to understand that lack of precision in the statute compelled HUD to elaborate on the statutory provisions; however, the commenters sought to ensure that HUD did so in a way that is inclusive of as many people considered homeless under other federal statutes as possible. One commenter stated the view that HUD's narrow interpretation of the key terms is unnecessary to meet the statutory requirements and is unreasonable. A few commenters stated that unaccompanied youth and families with children and youth should not have to meet all three criteria to qualify as "homeless" under this category. One commenter recommended that families be considered homeless if they: (1) Have not lived independently in the last 90 days (including doubling up) and are likely to continue to be unstably housed because of disability or barriers to employment; or (2) have moved frequently in the last 90 days (with three or more moves dispositive, but fewer moves still allowable) and are likely to continue to be unstably housed because of disability or barriers to employment; or (3) have experienced a combination of not living independently and moving frequently. The commenter stated that this language allowed the consideration of a number of conditions, but did not create a rigid formula that excludes needy families with children. Another commenter suggested that as long as the youth and families deemed homeless under this category have chronic disabilities or other similarly disabling conditions, there is no purpose served by extending the time period to be living in doubled-up conditions or requiring a certain number of moves, as it is the presence of these conditions

that make it difficult for these youth and families to find stable housing.

HUD Response: HUD understands that there are vulnerable populations that continue to be excluded from the definition of homeless. The changes made to the standards for "youth," "long-term period," and "persistent instability" discussed above will help make the definition more inclusive. Nevertheless, the requirement that unaccompanied youth, and families with children and youth defined as homeless under other federal statutes meet the three criteria in paragraphs (3)(i), (ii), and (iii) of the definition of "homeless" is statutory. HUD has not made any change in the final rule in response to these comments.

Category 4: Individual or Family Who Is Fleeing, or Attempting To Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Other Dangerous or Life-Threatening Conditions

Comment: Restore the statutory language regarding people fleeing domestic violence and other dangerous or life-threatening situations. Section 103(b) of the McKinney-Vento Act states that any individual or family "who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions in the individual's or family's current housing situation, including where the health and safety of the children are jeopardized * * *" shall be considered homeless. The proposed rule limited the "other dangerous or life-threatening conditions" to those that "relate to violence against the individual or family member 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." Many commenters expressed concerns about the specific language of "that relate to violence," noting that the McKinney-Vento Act did not require this. Commenters stated that violence is not the only dangerous environment and strongly suggested that HUD use broad language that includes unsanitary and unsafe living conditions.

Other commenters simply sought clarification regarding other dangerous or life-threatening conditions that relate to violence against an individual or family that HUD would consider as meeting this standard. One commenter asked if an arson case would qualify as a dangerous or life-threatening condition or must such condition specifically relate to domestic violence.

Many commenters expressed concerns that the proposed rule does not refer to "where the health and safety of children are jeopardized," which is statutory language, given the paramount importance of protecting already vulnerable children and youth. Some commenters advised that other federal programs contain express provisions for the health and safety of children (i.e., the Childcare and Development Block Grant, and the Asbestos Control Loan programs). Commenters explained that unaccompanied youth may be vulnerable to sexual abuse or other exploitation and they should not have to experience such abuse to meet eligibility criteria for homeless services. The commenters also recommended that HUD elaborate on "where the health and safety of children are jeopardized" by including the following: Physical abuse, sexual abuse, mental or emotional abuse, child abuse, child neglect, commercial sexual exploitation, human trafficking, sex trafficking, discharge from the child welfare system into a nonpermanent living arrangement, discharge from juvenile justice placement into a nonpermanent living arrangement, and witness to domestic violence or sexual assault. Some commenters stated that while the current language could be interpreted to include sex exploitation and sex trafficking, there would be no debate about their inclusion if they were specifically mentioned.

Commenters stated that the statutory language uses the phrase "in the individual's or family's current housing situation," but the proposed rule uses the phrase "primary nighttime residence." Commenters stated that the proposed rule's simplification narrows the number of people who would be covered. For example, commenters explained that a dangerous situation could be at the house of a noncustodial parent but this would not be the custodial parent's nor the children's primary nighttime residence. One commenter stated that the language in the proposed rule did not take into account dangers to children that may exist within an apartment complex, such as actions by a known child predator. Commenters recommended that HUD use the phrase "in the individual's or family's current housing situation."

HUD Response: HUD acknowledges that the rule limits the eligibility of individuals and families living in unsanitary and unsafe living conditions. HUD's view is that persons living in these types of situations are at risk of homelessness and reiterates that persons at risk of homelessness may be served

under programs created by the HEARTH Act amendments. Additionally, the Department administers other programs to serve persons who are poorly housed, such as the Housing Choice Voucher (Section 8) program, the Public Housing program, and the HOME program.

The examples that commenters recommended for inclusion for situations "where the health and safety of children are jeopardized" are already covered in the definition of "homeless" either under this category or another category within the definition. However, HUD has revised the language to state "including a child" to identify that the dangerous or life-threatening condition applies to the child as well as to the adult.

Further, HUD disagrees that any population has been excluded by replacing "housing" with "primary nighttime residence." Accordingly, HUD has not revised the language from the proposed rule based on these comments.

Rule clarification: HUD has revised paragraph (4)(i) to state "including a child" in the definition of "homeless."

Comment: The phrase "dangerous or life-threatening" should not be construed to describe the level of violence required to qualify as "homeless." Commenters expressed concern that the phrase "dangerous or life-threatening" could be construed as describing the level of domestic violence, dating violence, sexual assault, and stalking needed to qualify for programs. Commenters feared that this interpretation could result in the denial of assistance to domestic violence, dating violence, sexual assault, or stalking victims who may not appear to be in immediate physical danger. The commenters stated that the definition could exclude many victims of violence whose situations may not be deemed dangerous or life-threatening by untrained third parties, contrary to congressional intent. Commenters recommended that HUD ensure that dangerous or life-threatening is not applied as a determination of the level of violence experienced.

HUD Response: It is HUD's position that any level of domestic violence, dating violence, sexual assault, or stalking is inherently dangerous and life-threatening. Therefore, HUD did not intend the phrase "dangerous or life-threatening" to be interpreted as a level of violence that must occur before an individual or family can qualify as homeless. HUD interprets the intent behind section 103(a)(6) of the McKinney-Vento Act as including all individual and families fleeing, or attempting to flee domestic violence,

dating violence, sexual assault, and stalking in the definition of "homeless" and plans to interpret this provision in such a way.

Comment: Unaccompanied youth should be presumed eligible under category four of the definition of "homeless." Many commenters suggested that unaccompanied youth should be presumed eligible under the last category of the definition of "homeless." These commenters stated that an unaccompanied youth's vulnerability to abuse should constitute a dangerous or life-threatening condition and consequently automatically qualify such youth as eligible. Some commenters limited this to unaccompanied minor youth that have left their housing and are living on the streets or seeking assistance. All of these commenters expressed the view that these youth are particularly vulnerable to victimization, sexual abuse, exploitation, and other forms of abuse.

HUD Response: HUD agrees that unaccompanied youth are highly vulnerable to victimization, sexual abuse, exploitation, and other forms of abuse. However, intake workers cannot automatically presume that a youth is eligible under the last category of the definition. The category under which an unaccompanied youth can qualify as homeless will depend on his or her particular situation. An unaccompanied youth who is living on the streets or in shelters will qualify as homeless under the first category of this definition. An unaccompanied youth who has been notified that she or he cannot stay in her or his current home may qualify under the second category of homeless. An unaccompanied youth who has bounced from one home to the next may qualify under the third category of the definition. If an unaccompanied youth is fleeing domestic violence, dating violence, sexual assault, or stalking, she or he will qualify under the last category of the definition. But to qualify under any of these four categories, an unaccompanied youth must meet the same criteria and evidentiary requirements that apply to all other individuals and families. The intake worker must obtain the credible evidence required to document that an unaccompanied youth is fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence, in order to qualify the unaccompanied youth as homeless under this category.

Comment: The standards in the fourth category are so broad that almost anyone can qualify. One commenter suggested

that the definition of domestic violence in the proposed rule is so broad that almost anyone can qualify. This commenter suggested that the prescreening tools could be fine tuned to clearly identify those who truly need and would most likely benefit from the limited resources.

HUD Response: In the final rule, HUD has clarified that the lesser documentation standards for homeless status under this category shall be limited to victim service providers, as defined in section 401(32) of the McKinney-Vento Act. If the person is not being admitted to a domestic violence shelter or is not receiving services from a victim service provider, then stricter documentation requirements are imposed. Specifically, the individual or head of household must certify in writing that he or she 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 and, where the safety of the individual or family would not be jeopardized, the documentation must include either: (1) A written referral by a housing or service provider, social worker, 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, (2) or a written observation that will verify that the individual or family is fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous and life-threatening situations that relate to violence. 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. HUD does not expect that the written referral contain specific details about the incidence(s) of violence that occurred prior to the victim fleeing, or attempting to flee.

HUD stresses that where the safety of the individual or family fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking would be jeopardized by an intake worker's attempt to obtain third-party verification, that the intake worker must not attempt to obtain, under any circumstances, third-party verification and may accept written certification by the individual or head of household that he or she is fleeing, or attempting to flee, domestic violence, dating violence,

sexual assault, or stalking. When making this determination, homeless service providers are expected to take into account community dynamics that may impact the victim. For example, if the community is so small that any attempt to gain third-party documentation would potentially reveal the identity or location of the victim to the perpetrator of the violence, the homeless service provider must not pursue third-party documentation.

Rule clarification: To clarify HUD's expectations, HUD has revised the recordkeeping requirements found in paragraph (b)(5) of the final rule to accept the most minimal documentation of an oral statement only if it is made by an individual or family being admitted to a domestic violence shelter or receiving services from a victim service provider as defined in section 401(32) of the McKinney-Vento Act. 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, 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, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or 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. Recordkeeping Requirements for the Definition of "Homeless" in 24 CFR Parts 582 and 583

Comment: In general, reduce the recordkeeping requirements. Generally, commenters recommended that HUD keep recordkeeping requirements to a minimum. These commenters stated that this would help expedite assistance and be less burdensome to providers. Other commenters emphasized that individuals claiming to be homeless under the rule should be taken at their

word, unless information comes to light that casts substantial doubt on a claim of homelessness. Many commenters expressed the view that an oral statement, or self-verification, by the homeless person should suffice in order to receive housing and/or services and that the statements should not be verified in such rigid terms. Finally, many commenters stated that the verification requirements in the proposed rule will be burdensome to project sponsors, take up valuable caseworker time and resources, and will increase the burden on homeless individuals and families.

While most commenters supported reduced recordkeeping requirements, many suggested differing standards for persons seeking emergency shelter as opposed to those seeking transitional and permanent housing. Many commenters suggested that HUD allow Continuums of Care to adopt a presumptive eligibility period in which an intake worker could serve a homeless household or a household at risk of homelessness while obtaining the required evidence. These commenters explained that presumptive eligibility should apply particularly to homelessness prevention and permanent supportive housing.

HUD Response: HUD acknowledges that the recordkeeping requirements established in the proposed rule are detailed and have not previously been established by HUD in codified regulation. However, recipients of grants have always been required to keep records proving the eligibility of program participants. The monitoring finding that most often requires repayment of grant funds by recipients is failure to maintain adequate documentation of homeless eligibility; therefore, to assure that program compliance and funding is directed to those individuals intended to be the beneficiaries of funding under the McKinney-Vento Act programs, the recordkeeping requirements set forth in this final rule are important and necessary.

The recordkeeping requirements in paragraph (b) of the rule are included to clarify for recipients the documentation that HUD deems acceptable as proof of homelessness to assist recipients in maintaining adequate case files. For paragraphs (b)(1) and (b)(5), the rule prefaces the list of acceptable documentations with the term "includes." This assures that the list is not the all-inclusive list but rather that HUD will consider other forms of evidence, in addition to those listed, for these categories. The recordkeeping requirements for all four categories of

"homeless" contain more than one form of evidence that HUD considers satisfactory evidence.

HUD recognizes that circumstances, as well as the type of service or housing provided, will affect the ability of intake workers to obtain some forms of documentation listed in paragraph (b) of the recordkeeping requirements for the definition of "homeless." For emergency shelters that require clients to present every night to gain access to a bed for just that night, HUD would not want the inability to obtain third-party documentation to prohibit access to a bed for the night. Therefore, in such instances, HUD would expect to see certification by the individual or head of household as the primary method of establishing homeless eligibility. HUD would consider a sign-in sheet, with a certification that the individual or head of household seeking assistance is homeless typed at the top, as meeting this standard. However, for permanent housing and nonemergency services, such as employment assistance, HUD will expect to see third-party documentation.

Specific changes to the recordkeeping requirements for the definition of "homeless" will be discussed in the remainder of this section of the preamble.

Comment: Create a template for communities to use to document "homeless" status. In the proposed rule, HUD solicited comment as to whether a HUD-approved form would assist recipients in documenting homelessness. The comments HUD received in response to this question were mixed. Some commenters requested a standard form of documentation to allow intake workers to record oral statements provided by homeless households, as well as enable applicants to self-certify statements. Some commenters stated that the HPRP Eligibility Determination and Documentation Guidance (3-17-10) was an extremely helpful tool and suggested that HUD develop a document similar to this guide.

Other commenters stated that it would be helpful if HUD provided guidelines regarding the information a self-certification should include, as well as a sample form, or template, that a provider could choose to use, but not be required to use. These commenters stated that it would be easier to comply with the rules if there was flexibility regarding the format of the statement and certification and suggested that a HUD-approved form would not lessen the recordkeeping burden. Other commenters requested that HUD create a mechanism whereby a Continuum of

Care could submit one or more forms for preapproval to HUD. One commenter suggested that a government form may actually create a barrier to service for many people, especially those who have a mental illness. Many commenters requested the ability to collect intake information in a flexible manner that meets local needs.

Response: HUD understands that communities need flexibility at the local level to determine a household's status. Therefore, HUD will not issue a HUD-approved form that providers must use to document homelessness at this time, because HUD agrees that would be contrary to providing the flexibility needed at the local level. However, HUD intends to provide a template that can be used, or modified, by providers to certify homeless status at intake.

Comment: Documentation standards should be clarified and third-party documentation is preferable. While many commenters suggested that the recordkeeping standards established by HUD in the proposed rule were burdensome, other commenters recommended that oral statements should be relied upon as evidence only after all other attempts to obtain documentation have been exhausted. Another commenter, referring specifically to the standards established in § 577.3(3) of the proposed rule, stated that the standards were particularly confusing and it was unclear when an oral statement could be accepted versus one written down versus when third-party documentation must be obtained. One commenter urged HUD to establish and promulgate clear criteria for documentation to confirm eligibility and suggested that the inability to obtain a written or oral statement from a third party to document homeless status will cause providers to rely heavily on self-declaration of homelessness, which will increase the likelihood of misuse, and which is problematic because of the inability to meet current need, combined with the knowledge that few resources will be available to the current eligible population when the eligibility pool is expanded with the publication of this rule.

HUD Response: HUD agrees that third-party documentation should be obtained whenever possible. HUD revised paragraph (b) of the recordkeeping requirements for "homeless status" to clarify that the order of priority among documentation is third-party documentation first, intake worker observation second, and certification by the individual or head of household seeking assistance third. Overnight emergency shelters, where

program participants line up nightly for a bed for one night and must leave at a designated time in the morning, may rely on certifications by the individual or head of household seeking assistance.

Rule clarification. To clarify HUD's expectations for the recordkeeping requirements, giving priority to third-party documentation, HUD has revised paragraph (b) in the recordkeeping requirements for homeless status.

Comment: The rule should allow intake workers to use other evidence that may be available to document homeless status of a household. Some commenters stated that the rule should include other evidence that providers could use to document homeless status. These commenters stated that this would be particularly useful when a person may be reluctant to reveal information or sign a certification because of a disability or because the person fears for his or her safety. Some commenters suggested that incorporating existing electronic technology, such as HMIS, is favorable.

HUD Response: HUD agrees that providers should be able to use existing evidence to document a household's status. To help reduce the burden of documentation on providers and to utilize existing resources where they are available, HUD has revised the rule to allow use of information recorded in an HMIS that retains an auditable history of all entries, including the person who entered the data, the date of entry, and the change made, and that prevents overrides of changes of the dates on which entries are made.

Rule clarification. HUD has revised paragraph (b) of the recordkeeping requirements for "homeless status" to include service transactions recorded in an HMIS or comparable database as acceptable evidence.

Comment: The recordkeeping requirements for persons leaving an institution should be clarified. Commenters stated that HUD should provide additional guidance on documentation that should be collected or provided by an institution under this rule to certify homeless status at entry and exit. Commenters recommended that, at a minimum, institutions should document the address and program name of the last known location, and any supportive service program a resident may have had contact with prior to entry. One commenter suggested that HUD create a form that institutions could use to certify homelessness. These commenters noted that extensive documentation requirements will create an additional burden on already stressed institutions, and that it will be important to know

what the homeless documentation requirements will be for institutions so that they can attempt to collect as much information as needed at intake.

Many commenters expressed concern that it is very difficult to obtain information from institutions. Commenters stated that many public institutions are currently in crisis mode and will not have the time or wherewithal to do this. In addition, commenters stated that once the person has left the institution, the institution is less likely to respond quickly to requests for information. Commenters said that there is often local information that would verify the stay in the institution, such as a local mental health agency or HMIS records. Commenters recommended that the rule mention other ways stays in institutions could be verified, such as via certifications by local caseworkers, discharge paperwork, or HMIS. In addition, commenters recommended that intake workers that can reach the institution by phone should be allowed to document that call. The commenters expressed the view that it was important that access to assistance for a homeless individual not be adversely impacted by the inability of a provider to obtain data from the institution.

Other commenters expressed the view that the proposed rule places a relatively light burden of documentation or proof for institutions, such as a referral letter with end dates, while provider agencies are burdened with far greater documentation requirements. These commenters requested that HUD clarify protocols whereby social workers, case managers, or other officials of institutions identify homelessness and community of origin, so that it is clear that institutions are not simply coding clients as homeless without cause.

HUD Response: HUD recognizes that it is often difficult for homeless providers to obtain documentation from discharging institutions and agrees that an individual should not be denied access to housing or services because the institution did not maintain the appropriate records. To accommodate these concerns while still maintaining a level of responsibility for documentation by the institution, HUD added additional methods of documenting "homeless status" for persons in paragraph (1)(iii) of the "homeless" definition to include discharge paperwork; written and oral referrals from a social worker, case manager, or other appropriate official of the institution; and a written record of the intake worker's due diligence in attempting to obtain a statement from an

appropriate official at the institution as acceptable evidence when coupled with a certification by the individual seeking assistance.

Rule clarification. To incorporate additional methods of documenting homeless status for persons who have temporarily resided in an institution, but were homeless prior to entry, HUD has revised paragraph (b)(2) of the recordkeeping requirements for the "homeless" definition.

Comment: Additional documentation standards should be included for persons at imminent risk of losing their housing. Many commenters expressed concern with HUD's standard set in § 577.3(b)(3)(i)(A) of the proposed rule. These commenters stated that this language shows a disconnect with how the eviction process actually works, fails to recognize that eviction procedures differ by state, and lacks the understanding that many evictions are not conducted legally, and even if they are, the paperwork is not easily transferred from location to location by the evicted household. These commenters recommended that HUD incorporate a Notice to Quit/Notice to Terminate, a letter from the landlord, or other similar documentation as acceptable evidence in the final rule.

HUD Response: The language to which the commenters object in § 577.3(b)(3) of the proposed rule is the exact language from the statute. In response to the comments, HUD has added "or the equivalent under applicable state law" after "court order resulting from an eviction action" in recognition of differing state law. HUD agrees that the recordkeeping standards established in section § 577.3(b)(3) of the proposed rule should be expanded to incorporate a documentation standard that reflect situations that occur. Accordingly, HUD has revised the language from the proposed rule in this section to include "or the equivalent under applicable state law" after "court order resulting from an eviction." Additionally, HUD has clarified that the "equivalent notice under applicable state law, a Notice to Quit, or a Notice to Terminate issued under state law" are acceptable evidence where a court order resulting from an eviction action or other equivalent under applicable state law are not available.

Rule clarification. HUD has revised paragraph (b)(3) of the recordkeeping requirements for the "homeless" definition in response to these comments.

Comment: Clarify the recordkeeping standards for persons staying in a hotel or motel that lack the resources to stay

there for more than 14 days. One commenter stated that the requirement to prove that someone lacks the funds to continue paying for a hotel or motel established in § 577.3(b)(3)(i)(B) of the proposed rule is not realistic and is unnecessary. This commenter questioned how this could be proven and suggested that persons whose residence is a motel should automatically be assumed homeless without this requirement.

HUD Response: The requirement that the individual or family "lack the resources necessary to reside there for more than 14 days" is statutory. HUD recognizes that the methods used to establish lack of resources and lack of funds will vary by community. In order to allow for this variation, HUD has not revised the language from the proposed rule.

Comment: An oral statement should be sufficient without further verification. Many commenters stated that HUD should relax the verification and documentation requirements under § 577.3(b)(3)(i)(C) of the proposed rule for households that will imminently lose their housing. Most commenters stated that an oral statement should be sufficient and that requiring an intake worker to obtain records from the host family where the individual or family is living could cause friction between the families and seriously threaten the housing. In addition, many commenters expressed the view that this requirement is burdensome and stated that it would divert resources from assistance to individual and families. Other commenters stated that requiring additional documentation went against the statutory intent of the McKinney-Vento Act and would lengthen the time that persons spend homeless. Another commenter stated that requiring written, third-party documentation of an oral statement is inconsistent with and contrary to the principles of statutory interpretation articulated in *Chevron, U.S.A., Inc. v. N.R.D.C., Inc.*, 467 U.S. 837 (1984). Other commenters questioned the value of a written self-certification and stated that it did nothing to increase the credibility of an oral statement. Many commenters agreed with the recordkeeping requirements established in § 577.3(b)(3)(i)(C) of the proposed rule, but suggested that further elaboration of the role of the intake worker is needed and suggested that "due diligence" be defined. One commenter suggested that the proposed rule contain a provision that there is a legal penalty of \$10,000 associated with falsifying the homeless status of a person receiving HUD funds for housing and/or services. Other

commenters suggested that time frames should be set for how long the intake worker has to complete the "due diligence."

HUD Response: The statute specifically states that "an oral statement * * * that is found to be credible shall be considered credible evidence." HUD proposed implementation of this provision by providing verification requirements intended to establish a consistent standard by which an oral statement may be found credible. Some form of verification is needed to faithfully implement the statute. However, in light of the numerous comments received, HUD revised the requirements to require a written certification by the person making an oral statement only when third-party documentation is not available and the owner or renter cannot be reached. If the oral statement is verified by the owner or renter of the home where the person or family is living, the oral statement may be documented by the intake worker's certification. The final rule maintains the requirement that the intake worker document his or her due diligence in attempting to obtain the owner or renter's verification, if the owner or renter cannot be reached.

Additionally, HUD recognizes that the methods used to establish "imminent loss of housing," including standards for "due diligence," vary by community and often by the circumstances of the presenting household. In order to allow for a variety of appropriate processes, HUD has not revised the language from the proposed rule.

Comment: Provide training on eligibility criteria for other federal statutes with definitions of "homeless." One commenter stated that many service providers are not familiar with eligibility criteria for other federal statutes with definitions of "homeless" and stated that it is one more program requirement on which they must be trained in order to effectively document homeless status under § 577.3(b)(3) of the proposed rule.

HUD Response: HUD does not expect its providers to become experts in applying the definitions of homeless under other federal statutes. Therefore, HUD has revised the language from the proposed rule to accept certification of homeless status by the local private nonprofit organizations or state or local government entities responsible for administering assistance under the other federal statutes (e.g., the school district) in order to determine if the youth or children meet the homeless definition under that statute.

Rule clarification. HUD has slightly revised § 577.3(b)(4) to incorporate language allowing the local private nonprofit organizations or state or local government entities responsible for administering assistance under the other federal statutes to certify the homeless status of an unaccompanied youth or family with children and youth.

Comment: Relax the standards for documenting "persistent instability." Many commenters stated that the standards established for documenting homelessness of unaccompanied youth and families with children and youth in § 577.3(b)(4) were cumbersome, difficult, countered the intent of increased coordination with school liaisons, and failed to reflect the reality that unaccompanied youth are not likely to travel with documentation. One commenter posited that the criteria for establishing proof of eligibility in this category was so complex that it would cause program operators to "work around" this category and qualify this population as homeless under category two.

Some commenters requested that HUD adopt standards similar to those established in § 577.3(b)(5) for victims of domestic violence, dating violence, sexual assault, and stalking. These commenters stated that unaccompanied youth are often being kicked out of housing by the very people that abuse them.

Specifically, for the standards for "persistent instability" established in § 577.3(b)(4)(ii) of the proposed rule, many commenters stated that the requirement to obtain a statement from host households is unduly burdensome for case managers, as well as for unaccompanied youth and families with children and youth whose living situations are fragile. Other commenters expressed the fear that the requirement to obtain a statement may put host households at risk of losing their housing because they violated the terms of their lease by allowing the unaccompanied youth or family with children and youth to stay there. Some commenters requested that the standard to obtain documentation from each host household be eliminated entirely, other commenters requested that the standard be limited to the most recent owner or renter of the housing, and others requested that it be limited to those host families who still resided in the place where the unaccompanied youth or family with children and youth stayed or to those host households who have phones or email.

HUD Response: HUD understands that it can often be difficult to obtain verification from the owner or renter of

the housing where the individual or family presenting for assistance has been staying. HUD agrees that the standard should be eliminated or scaled back where a move by the unaccompanied youth or family with children and youth was due to domestic violence, dating violence, sexual assault, or stalking. It is HUD's position that these verification steps help ensure that individuals and families meet the definition of "homeless" and assist in identifying resources and needs to allow providers to assist the unaccompanied youth or family with children and youth effectively; however, HUD understands the need to protect this particularly vulnerable population from their abusers.

HUD reminds readers that where an unaccompanied youth or family with children and youth is moving to immediately flee, or attempt to flee, domestic violence, dating violence, sexual assault, or stalking, the unaccompanied youth or family with children and youth will qualify as homeless under the fourth category of the homeless definition and the accompanying minimal evidentiary standards for that category will apply.

Rule clarification: HUD has revised paragraph (b)(4)(iii) of the recordkeeping requirements for the definition of "homeless" to clarify that where a move of the unaccompanied youth, or of the family with children and youth, was due to domestic violence, dating violence, sexual assault, or stalking, the provider may accept a written certification from the individual or head of household as documentation of that living arrangement.

Comment: Appropriate licensed professionals should be able to diagnose and document disabilities. With respect to the standards for documenting disability in § 577.3(b)(4)(iii) of the proposed rule, many commenters suggested that HUD remove the term "medical" and allow "appropriate licensed professionals" to diagnose and document disabilities. These commenters stated that a licensed nonmedical professional will be able to provide acceptable evidence of disability in many cases. Some of these commenters stated that requiring that a disability be confirmed by an "appropriate licensed medical professional" will cost money and HUD should pay the associated costs. These commenters recommended that HUD publish a list of professionals that can verify disability. Another commenter suggested that HUD explore the feasibility of including certification by a Center for Independent Living as

acceptable evidence of disability status if the individual or member of the household has a pre-existing consumer service record.

Other commenters suggested that the provision requiring documentation by an "appropriate licensed medical professional" be removed entirely and that intake workers be allowed to use self-certifications and/or documented behavioral observations by staff as evidence of a disability and that a written diagnosis is not needed.

Other commenters suggested that documentation of disability by an appropriate licensed medical professional within 45 days, as required in § 577.3(b)(4)(iii) of the proposed rule, may be impossible. One commenter urged HUD to consider the constraints of availability of medical professionals in some locations.

HUD Response: HUD disagrees that the requirement to verify disability should be removed from the rule completely. HUD has a responsibility to ensure that federal funds are spent wisely and having the existence of a disabling condition confirmed where required for eligibility protects against fraud and waste. However, in light of the comments, HUD clarified that the diagnosis of a disability need not be made by an appropriate licensed "medical" professional, but must be made by a professional who is licensed by the state to diagnose and treat that condition.

Rule clarification. HUD has revised the recordkeeping standards established in paragraph (b)(4)(iv) of the recordkeeping requirements for the "homeless" definition.

Comment: Revise the standards for documenting "barriers to employment." Many commenters requested that HUD lessen the standards for documenting "barriers to employment" established in § 577.3(4)(iii) of the proposed rule. Many of these commenters suggested that an oral statement from the unaccompanied youth or family with children or youth should be acceptable. Other commenters stated that intake workers should be required to document, in their case notes, the challenges an individual faces in seeking work, but should not have to seek out employment records, department of correction records, and literacy tests. Another commenter requested that a self-certification be an acceptable form of documentation for barriers to employment.

One commenter stated that within the barriers to employment that HUD lists as examples, there are some that are easier to document than others. This commenter stated that this could cause

providers to serve unaccompanied youth and families with children and youth with fewer barriers because they are easier to document and be detrimental to harder-to-serve populations with more intensive disabilities.

HUD Response: HUD disagrees that the standards for documenting barriers to employment are cumbersome and would cause providers to serve easier-to-serve populations for which the recordkeeping requirements are easier to meet. HUD reminds commenters that the list of barriers to employment are examples and not all-inclusive. Intake workers should use whatever evidence is available that is appropriate to the barrier to employment that is utilized for determining eligibility under category three of the definition of "homeless."

Comment: Additional guidance is needed for documenting the absence of a characteristic. Many commenters requested guidance on how to document the absence of a characteristic, such as the lack of a "lease, ownership interest or occupancy agreement in permanent housing," or a "lack of a high school degree or General Education Development (GED)."

HUD Response: The methods used to establish the absence of a characteristic often varies depending on the characteristic, the presenting individual's or family's situation, local processes, and local data that is available. In order to allow for a variety of appropriate documentation standards, including a note from a high school, employment counselor, or a certification signed by the individual or head of household that a characteristic does not exist, HUD has not revised the language from the proposed rule.

Comment: The recordkeeping standards established for victims of domestic violence, dating violence, sexual assault, stalking, and other dangerous or life-threatening conditions should be reduced. Many commenters recommended that § 577.3(b)(5) of the proposed rule should be revised to allow an oral statement to be sufficient. These commenters suggested that requiring a written certification, whether by the victim or the intake worker, creates a number of safety concerns and the proposed rule should be amended to allow service providers to accept the oral statement without the additional written documentation. One commenter stated that by granting intake workers discretion to certify statements in writing, this policy not only risks undermining the confidentiality of sensitive information, but introduces the potential for

subjective judgment to result in discrimination against victims. Other commenters stated that requiring a written verification goes beyond the plain meaning of the McKinney-Vento Act.

Commenters suggested that if HUD requires service providers to implement a written certification process, it should do so in a manner that reduces the burden on survivors and staff and maximizes confidentiality. These commenters proposed that HUD issue guidance on the limited scope of any certification form, requiring only the name of the victim and family members and a box to check to indicate victim status. Some commenters suggested that the same degree of brevity should also characterize the documentation submitted by housing or service providers, social workers, hospital staff, or police when making referrals on behalf of victims.

HUD Response: HUD recognizes the importance of maintaining the confidentiality of all client-level information. HUD also recognizes the significant safety needs of victims of domestic violence, dating violence, sexual assault, or stalking, and for this reason, greatly limited the documentation requirements for victims of domestic violence, dating violence, sexual assault, and stalking. HUD must require some documentation to assist the Department in monitoring and oversight of projects receiving HUD funds, and the final rule presents the minimal documentation necessary. HUD will publish confidentiality and privacy standards at the time of publication of those rules.

D. Definition of "Persons With Disabilities" in 24 CFR Part 582

The proposed rule contained proposed definitions for "developmental disability" and "homeless individual with a disability," which were intended to be included in the final regulations for the Continuum of Care program and the Rural Housing Stability program. However, because the proposed rules for those programs have not yet been published, this final rule has integrated the proposed definitions for "developmental disability" and "homeless individual with a disability" into the regulations for the Shelter Plus Care program and the Supportive Housing Program. Because the existing regulations for the Shelter Plus Care program (24 CFR part 582) use the term "persons with disabilities," the substance of the proposed definition of "homeless individual with a disability" has been integrated into the existing definition of "persons with disabilities"

in the Shelter Plus Care regulations while preserving language that involves requirements that go beyond the definition of "homeless individual with a disability" in the HEARTH Act.

Comment: Further define "long-continuing or indefinite duration." Commenters recommended that HUD provide clear, objective guidelines and factors for determining whether a person's disability is expected to be "long-continuing or of indefinite duration," to assist persons and organizations responsible for administering programs authorized in the Act. Commenters suggested that the guidelines include a set of factors to consider and forms of verifying information, and requested that the guidelines take into account circumstances in which a homeless individual with a disability may not be able to produce such documentation or relate necessary information, often because of their disabilities. These commenters expressed concern that without clear, objective guidelines, decisions on whether a person's disability is "long-continuing or of indefinite duration" may be based on subjective notions or stereotypes about disabilities, and will potentially exclude eligible individuals.

HUD Response: The definition of disability is one that currently exists for HUD's homeless programs. Historically, HUD has not further defined "long-continuing or indefinite duration," and allows an appropriate licensed official to certify that the disability meets this criterion. To clarify that HUD continues to expect a professional licensed by the state to diagnose and treat that condition to certify that the disability is expected to be "long-continuing or of indefinite duration," HUD has added recordkeeping requirements to the final rule.

Rule clarification. To clarify that HUD expects an appropriate professional licensed in the state to diagnose and treat the condition to verify that the disability of the person applying for assistance, is expected to be "long continuing or of indefinite duration," this final rule adds specific recordkeeping requirements for "disability."

Comment: Include additional factors to the list for determining a disabling condition. Commenters requested that HUD include additional factors to the definition of homeless individual with a disability, including persons with intellectual, cognitive, or developmental disabilities (ICDD), who are institutionalized, at risk of institutionalization, or placed in a licensed or more restrictive setting,

under the definition of a homeless individual with a disability. In addition, these commenters requested that HUD include disabled persons residing with aging caregivers. Other commenters expressed the view that the definition of homeless individual with a disability should explicitly recognize individuals with cancer as having a disability, especially those with cancer in advanced stages. Commenters stated that cancer should be explicitly recognized in the regulation because it generally falls outside the traditional notions of physical or mental disability like Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS), which is explicitly recognized by the proposed rule. Commenters stated that cancer is a disability when it, or its side effects, substantially limit(s) one or more of a person's major life activities, and it can lead to the occurrence of other impairments that may be considered a disability.

HUD Response: The definition of "homeless individual with a disability" in the proposed rule includes a "physical, mental, or emotional impairment." Where persons with ICDD and cancer also are homeless, and where the ICDD or cancer is expected to be long-continuing or of indefinite duration, substantially impede the individual's ability to live independently, and could be improved by the provision of more suitable housing, then the individual could be considered a "homeless individual with a disability." HUD has not changed the language from the proposed rule in response to these comments.

Comment: Remove provisions (1)(ii) and (1)(iii) from the definition of "homeless individual with a disability." Commenters recommended that HUD eliminate the requirement that the homeless individual's disability be one that "substantially impedes the individual's ability to live independently." Commenters expressed the view that in order to avoid unnecessary confusion and maintain consistency, HUD should utilize the federal definition of disability employed by other federal laws, such as the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. These laws require only that the disability be one that causes a "substantial limitation on one or more major life activities." Commenters stated that requiring additional proof that the disability "substantially impedes" the individual's ability to live independently is unnecessary and an extremely high burden that will

needlessly preclude many deserving individuals from obtaining housing assistance based on their disabilities.

While commenters strongly recommended that HUD eliminate this requirement, if the regulation is implemented as is, commenters urged HUD to set clear, objective guidelines on how persons and organizations responsible for administering the HEARTH Act should determine whether an individual's disability is a substantial impediment to his or her ability to live independently. These guidelines should include a set of factors these persons and organizations should consider, and types of verifying information, and should also take into account circumstances in which a homeless individual with a disability may not be able to produce such documentation or relate such information, often because of his or her disability.

Some commenters recommended that HUD delete the requirement that the disability "could be improved by the provision of more suitable housing conditions." These commenters stated that every homeless individual's disability improves by the provision of more suitable housing, and this factor is difficult to document and adds little value. Other commenters submitted that the rule should not condition disability eligibility for housing assistance on an expectation that homeless people with disabilities will "improve" their disability in housing. Commenters explained that such a notion is misguided and will exclude many people with disabilities deserving of housing assistance, and that this type of definition is based on outmoded concepts of disability. Commenters stated that while housing assistance provided through this program may improve the person's quality of life or stability, the disability itself will often remain. The commenters concluded that individuals with disabilities should not be barred from the program because their disability cannot be remediated, and barring such individuals from the program would likely violate federal nondiscrimination mandates, including those in the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

In addition, these commenters expressed the view that housing assistance should be focused on stabilizing homeless people with disabilities. The commenters stated that while suitable housing may not succeed immediately in changing the level of impairment of an individual's disability, it does succeed in stabilizing homeless people with disabilities, such as those with serious mental illness and/or

substance-related disorders who have traditionally been very difficult to house or have had great difficulty maintaining their housing. The commenters further stated that housing combined with support services can stabilize a client's financial status and promote self-sufficiency.

HUD Response: The language in paragraphs (1)(ii) and (1)(iii) of the definition of a "homeless individual with a disability" is statutory. Recordkeeping requirements have been established in this rule to assist recipients appropriately document that a disability will "substantially impede the individual's ability to live independently," as will be discussed in Section IV.F of this preamble. It is HUD's position that the provision of stable housing and services will inherently improve with the provision of more stable housing conditions. Additionally, the proposed rule requires that a disability be expected to be "long-continuing or of indefinite duration;" therefore, HUD does not expect the disability to be completely remediated by the provision of more suitable housing.

HUD disagrees that housing and service providers will be barred from determining that an individual has a disability because the disability cannot be remediated; therefore, HUD has not changed this language from the proposed rule based on these comments. HUD includes recordkeeping requirements to assist intake workers in documenting disability as defined in this final rule.

Comment: Restore the statutory language under Section 401(9)(B) of the Act. Commenters recommended that HUD include in the final rule the specific statutory language under section 401(9)(B) the McKinney-Vento Act. Commenters strongly recommended that this language be included unless the language regarding AIDS is removed.

HUD Response: HUD disagrees that the statutory language in section 401(9)(B) of the McKinney-Vento Act needs to be included in the rule or that the language regarding AIDS in section 401(9)(A)(iii) needs to be removed if the language in section 401(9)(B) is not included. Because of the inclusion of an "or," instead of an "and," after the statement in paragraph (2) of the definition of "homeless individual with a disability" in the proposed rule, the language allows persons eligible under paragraph (3) to also qualify as a homeless individual with a disability under paragraphs (1) and (2). Including the statutory language as recommended by the commenters creates a

redundancy in the proposed rule; therefore, HUD has not made changes to the language in the proposed rule based on this comment.

E. Definition of "Disability" in 24 CFR Part 583

Because the existing regulations for the Supportive Housing Program (24 CFR part 583) do not use the term "homeless individual with a disability," the substance of the new definition, including changes HUD has adopted in response to public comments on the proposed rule, has been included in a revised definition of "disability."

F. Recordkeeping Requirements for "Disability" in 24 CFR Parts 582 and 583

Comment: The proposed rule should contain documentation standards for "homeless individual with a disability." Commenters mentioned that the proposed rule did not clarify the requirements for documenting a disability (when a client is not receiving Supplemental Social Security Income (SSI) or Social Security Disability Income (SSDI), other than a brief note in conjunction with the definition of homelessness by virtue of persistent instability. Commenters said that it is critically important to document a disability for the purpose of determining client eligibility for permanent supportive housing targeted for homeless persons with disabilities. Thus, commenters recommended that HUD use this opportunity to clarify, and to the extent possible, expand the options for documenting disability.

Additionally, one commenter recommended that the recordkeeping requirements for a "homeless individual with a disability" should include a process for identifying a person with a disability after intake. This commenter stated that HUD needs to ensure that persons not originally identified at intake as a "homeless individual with a disability" can be identified at a later point and be made eligible for resources associated with that definition.

HUD Response: HUD recognizes that providers need clear guidelines and documentation standards for establishing that an individual meets the definition of "homeless individual with a disability." HUD has added recordkeeping requirements to the language from the proposed rule.

Rule clarification. To set clear guidelines and documentation standards for the definition of "homeless individual with a disability," this final rule adds recordkeeping requirements for "disability" to 24 CFR parts 582 and 583.

G. Comments Regarding Burden Estimate

Comment: The burden estimate of 0.25 hours is too low. Some commenters expressed the view that the Reporting and Recordkeeping burden estimate of 0.25 hours as an average time for requirement is not enough for even one portion of the documentation. Commenters stated that the average burden could be as high as 2 to 3 hours for many individuals and families, and under the third category of homelessness, it could easily be 1 to 2 days per case. Other commenters expressed concern that 0.25 hours was an inadequate amount of time to analyze and document the information provided by applicants and third parties, especially when an applicant has resided in upwards of three different residences, and stated that the time required would be between 30 minutes to 3 hours.

HUD Response: HUD disagrees that the Reporting and Recordkeeping burden estimate of 0.25 hours as an average time is too low. The reporting and recordkeeping burden is an estimate of the average time it takes all recipients of HUD funds that serve homeless persons to document homeless status. In this final rule, HUD has made significant changes to lessen the documentation standards for providers, including allowing providers to use information that is available through other community resources, including HMIS, and clarifying that lesser documentation standards apply to overnight emergency shelters; therefore, HUD determined that 0.25 hours is an appropriate average. HUD has not revised the burden estimated in the April 2010 proposed rule.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (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). 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) 402-3055 (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.

Information Collection Requirements

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2506-0112. 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.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

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 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 definitions of "homeless," "homeless individual," "homeless person," and "homeless individual with a disability." The purpose of this rule is to determine the universe of individuals and families who qualify as "homeless" under the HEARTH Act, and are therefore eligible to be served by HUD homeless programs that will be implemented by separate

rulemaking. Given the narrow scope of this rule, HUD has determined that it would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule 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.

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 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

Accordingly, for the reasons described in the preamble, parts 91, 576, 582, and 583 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 12301-12912.

- 2. In § 91.5, the definition of "Homeless" is added to read as follows:

§ 91.5 Definitions.

* * * * *

Homeless. (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.

PART 582—SHELTER PLUS CARE

■ 3. The authority citation for 24 CFR part 582 continues to read as follows:

Authority: 42 U.S.C. 3535(d), and 11403–11407b.

■ 4. In § 582.5, the definition of “Homeless or homeless individual” is removed, the definitions of “Developmental disability” and “Homeless” are added, and the definition of “Person with disabilities” is revised to read as follows:

§ 582.5 Definitions.

* * * * *

Developmental disability means, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002):

(1) A severe, chronic disability of an individual that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the individual attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency; and

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1)(i) through (v) of the definition of “developmental disability” in this section if the individual, without services and supports, has a high probability of meeting those criteria later in life.

* * * * *

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, and faith-based or other social networks, to obtain other permanent housing.

* * * * *

Person with disabilities means a household composed of one or more persons at least one of whom is an adult who has a disability.

(1) A person shall be considered to have a disability if he or she has a disability that:

- (i) Is expected to be long-continuing or of indefinite duration;
- (ii) Substantially impedes the individual's ability to live independently;
- (iii) Could be improved by the provision of more suitable housing conditions; and
- (iv) Is a physical, mental, or emotional impairment, including an impairment caused by alcohol or drug abuse, post-traumatic stress disorder, or brain injury.

(2) A person will also be considered to have a disability if he or she has a developmental disability, as defined in this section.

(3) A person will also be considered to have a disability if he or she has acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV).

(4) Notwithstanding the preceding provisions of this definition, the term person with disabilities includes, except in the case of the SRO component, two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted under this part, with the deceased member of the household at the time of his or her death. (In any event, with respect to the surviving member or members of a household, the right to rental assistance under this part will terminate at the end of the grant period under which the deceased member was a participant.)

■ 5. A new § 582.301 is added to read as follows:

§ 582.301 Recordkeeping.

(a) [Reserved.]

(b) *Homeless status.* The recipient must maintain and follow written intake procedures to ensure compliance with the homeless definition in § 582.5. 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, as defined in section 401(32) of the McKinney-Vento Homeless Assistance Act, as amended by the HEARTH Act. 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 entries are made.

(1) If the individual or family qualifies as homeless under paragraph (1)(i) or (ii) of the homeless definition in § 582.5, 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 § 582.5, 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 § 582.5, 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 be 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 § 582.5, 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 § 582.5, 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 § 582.5, 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 § 582.5, 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 § 582.5, 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 the date of 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 § 582.5, 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, as defined in section 401(32) of the McKinney-Vento Homeless Assistance Act, as amended by the HEARTH Act, 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, 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) *Disability*.—Each recipient of assistance under this part must maintain and follow written intake procedures to ensure that the assistance benefits persons with disabilities, as defined in § 582.5. In addition to the documentation required under paragraph (b), the procedures must require documentation at intake of the evidence relied upon to establish and verify the disability of the person applying for homeless assistance. The recipient must keep these records for 5 years after the end of the grant term. Acceptable evidence of the disability includes:

(1) Written verification of the disability from a professional licensed by the state to diagnose and treat the disability and his or her certification that the disability is expected to be long-continuing or of indefinite duration and substantially impedes the individual's ability to live independently;

(2) Written verification from the Social Security Administration;

(3) The receipt of a disability check (e.g., Social Security Disability Insurance check or Veteran Disability Compensation);

(4) Intake staff-recorded observation of disability that, no later than 45 days of the application for assistance, is confirmed and accompanied by evidence in paragraph (c)(1), (2), (3), or (4) of this section; or

(5) Other documentation approved by HUD.

PART 583—SUPPORTIVE HOUSING PROGRAM

■ 6. The authority citation for 24 CFR part 583 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11389.

■ 7. In § 583.5, the definitions of "Disability" and "Homeless person" are removed and the definitions of "Disability," "Developmental disability," and "Homeless" are added to read as follows:

§ 583.5 Definitions.

* * * * *

Developmental disability means, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002):

(1) A severe, chronic disability of an individual that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the individual attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency; and

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1)(i) through (v) of the definition of "developmental disability" in this section if the individual, without services and supports, has a high probability of meeting those criteria later in life.

* * * * *

Disability means:

(1) A condition that:
(i) Is expected to be long-continuing or of indefinite duration;
(ii) Substantially impedes the individual's ability to live independently;
(iii) Could be improved by the provision of more suitable housing conditions; and
(iv) Is a physical, mental, or emotional impairment, including an impairment caused by alcohol or drug abuse, post-traumatic stress disorder, or brain injury;

(2) A developmental disability, as defined in this section; or

(3) The disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV).

* * * * *

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, and faith-based or other social networks, to obtain other permanent housing.

■ 8. A new § 583.301 is added to read as follows:

§ 583.301 Recordkeeping.

(a) [Reserved.]

(b) *Homeless status.* The recipient must maintain and follow written intake procedures to ensure compliance with the homeless definition in § 583.5. 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, as defined in section 401(32) of the McKinney-Vento Homeless Assistance Act, as amended by the HEARTH Act. 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 § 583.5, 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 § 583.5, 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 § 583.5, 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: 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 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 § 583.5, 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 § 583.5, 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 § 583.5, 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 § 583.5, 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 for application of 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 § 583.5, 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 the date of 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 § 583.5, 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, as defined in section 401(32) of the McKinney-Vento Homeless Assistance Act, as amended by the HEARTH Act, 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, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or any another 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) *Disability*.—Each recipient of assistance under this part must maintain and follow written intake procedures to ensure that the assistance benefits persons with disabilities, as defined in § 583.5. In addition to the documentation required under paragraph (b) of this section, the procedures must require documentation

at intake of the evidence relied upon to establish and verify the disability of the person applying for homeless assistance. The recipient must keep these records for 5 years after the end of the grant term. Acceptable evidence of the disability includes:

(1) Written verification of the disability from a professional licensed by the state to diagnose and treat the disability and his or her certification that the disability is expected to be long-continuing or of indefinite duration and substantially impedes the individual's ability to live independently;

(2) Written verification from the Social Security Administration;

(3) The receipt of a disability check (e.g., Social Security Disability

Insurance check or Veteran Disability Compensation);

(4) Other documentation approved by HUD; or

(5) Intake staff-recorded observation of disability that, no later than 45 days of the application for assistance, is confirmed and accompanied by evidence in paragraph (c)(1), (2), (3), or (4) of this section.

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Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

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