EMERGENCY SOLUTIONS GRANTS PROGRAM ADMINISTRATIVE MANUAL

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EQUAL HOUSING OPPORTUNITY

ALTERNATIVE FORMATS ARE AVAILABLE UPON REQUEST

PREFACE

This purpose of this Administrative Manual is to assist North Dakota Emergency Solutions Grants Program grantees in implementing their respective grants and in complying with Federal rules and regulations associated with all Federal funds as promulgated by the U.S. Treasury and the Federal Office of Management and Budget. These rules and regulations pertain to administrative and financial management responsibilities.

This Administrative Manual is intended to serve as a required guide for proper use and accountability of Federal funds. Should questions arise, grantees should immediately contact the North Dakota Division of Community Services. It is the responsibility of each grantee to assure that all provisions of this manual, Federal rules and regulations, and Financial Award are complied with and that proper and efficient grant administrative practices are performed.

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SECTION 1 - FINANCIAL AWARD

The Financial Award consists of the following:

Part I. Basic Information and Signatory Sheet.

This sheet, when signed, provides the necessary authorization for a grantee to initiate the program described in the grant agreement and provides the authorization to transfer funds.

Part II. General Assistance Terms and Conditions.

This section of the grant agreement contains those provisions describing standard administrative requirements that the grantee must comply with according to Federal and State rules and regulations.

Part III. Programmatic Special Conditions.

This section describes specific programmatic conditions that must be fulfilled for program implementation. These conditions will be closely monitored by the DCS.

Part IV. Scope of Work and Project Budget.

This section describes the activity for which financial assistance is being provided.

Part V. Statement of Assurances

This section describes specific state and federal compliance requirements applicable to the expenditure of ESG funds. These requirements constitute the major focus for on-site monitoring conducted by the DCS.

Insurance Requirements of the Recipient

Homeless Certifications for ESG Program

SECTION 2 - GRANT IMPLEMENTATION CHECKLIST

The following checklist is provided as an overall guide for the implementation of your approved Emergency Solutions Grants Activity(s). The checklist is general in nature, which means that some items may or may not be applicable based on the type of grant awarded. In addition to this checklist, some sections of the manual contain specific checklists for your use. This checklist is provided so that you can make sure certain actions have been taken, and it should be used as a reference to specific sections of this Administrative Manual. If you are not sure about any aspect of grant implementation procedures, you should contact the Division of Community Services for guidance before proceeding.

Action	Reference	Yes	N/A
1. Receive Letter from DCS		☐	☐
2. Receive Financial Award		☐	☐
3. Sign and Return Financial Award within 30 Days of Receipt		☐	☐
4. Attend Grant Administration Training (as needed)		☐	☐
5. Submit ACH Authorization Form to the DCS	Section 4	☐	☐
6. Establish Required Grant Files	Section 3	☐	☐
7. Establish a Checking Account	Section 4	☐	☐
8. Establish Accounting System	Section 4	☐	☐
9. Comply With Special Conditions on Financial Award		☐	☐
10. Develop schedule for submitting semi-annual and final reports.	Section 9	☐	☐

SECTION 3 - RECORD KEEPING

A. Establishing Project Files

1. Availability

The filing system you establish should be easy to use and provide a historic account of the grantee's activities for examination and review by the General Accounting Office, the DCS, auditors, and grantee staff. The ESG records are subject to the Freedom of Information Act and relevant state laws regarding public availability.

2. Timing and Location

The file system should be established on a program year basis. This may result in duplication of files, but will tie documentation to a given fiscal year and grant. Files should, to the extent possible, be maintained in a central location.

3. Major File Categories

The following list identifies major file categories which should be established in order to permit efficient grants management practices, and to permit an orderly review and audit of all records.

General Files

a. Grant Application

- ☐ Copy of application/business plan
- ☐ Correspondence concerning the application

b. Financial Award

- ☐ Notice of Award from DCS
- ☐ Financial Award
- ☐ Related Correspondence
- ☐ Amendments

c. Financial Management and Accounting records

- ☐ ACH Authorization Form
- ☐ Request for Funds Form

- ☐ Source documentation of all funds (invoices, payrolls, etc.)
- ☐ Canceled checks, deposit slips, bank statements, etc.
- ☐ Related correspondence

d. Contracts and Subcontracts (if applicable)

- ☐ Bid specifications
- ☐ Documentation of soliciting quotes and/or bids for construction, etc.
- ☐ Identification of quotes and/or bids accepted (if applicable), and explanations of acceptance of quotes and/or bids that are not the lowest
- ☐ Copies of contracts and subcontracts, or as applicable, copies of purchase orders

e. Project Monitoring

- ☐ Reports prepared by grantee pertaining to participants where applicable:
  - ☐ At Risk of Homelessness Certification

    The agency must complete the Homeless Certification/At Risk of Homelessness Certification indicating current living situation and provide the appropriate documentation as indicated on the form.

  - ☐ Release of Information Form

    A Release of Information form must be signed by each household member age 18 or older with a copy in file.

  - ☐ Intake and Assessment Form

    The agency will conduct a comprehensive housing assessment with the household.

  - ☐ Income Documentation (pay stubs, etc.)

    All sources of household income (for all adult members) must be verified and documented at intake and every three months to determine program eligibility. To be eligible for assistance, gross household income must be below 30% (ESG), 50% (NDHG) area median income (AMI) for the county in which the household is residing.

- ☐ Self-Certification

  Must be completed if required verifications/other documents cannot be provided and self-certification is the only way to verify information to determine program eligibility.

- ☐ Lease/Rental Agreement

  A lease is required for households receiving financial assistance such as rental assistance, security deposits, rental arrearages and utility payments/deposits.

- ☐ Housing Plan (case notes)

  A Housing Plan must be completed for all individuals that receive a housing assessment and are determined eligible for services.

- ☐ Rent Reasonableness

  Subrecipients **must** complete and file a Rent Reasonableness form for rental assistance above Fair Market Rent (FMR).

- ☐ Habitability Standards Inspection Form

  All units must meet Habitability Standards before financial assistance can be provided such as rental assistance, security deposits, rental arrearages and utility payments/deposits.

- ☐ Lead-Based Paint Inspection

  Lead-Based Paint Inspection is required for housing for properties if built before 1978 and if a child age 6 or younger or a pregnant woman will be residing in the unit.

- ☐ Homeless Definition and Certification

  Must be completed for each household.

☐ Monitoring letter from the DCS

☐ Grantee responses to DCS monitoring findings

☐ Relevant Correspondence

☐ Mid-Term/Final Reports

f. Grant Close-out

- ☐ Grantee Final Report
- ☐ Close-out letter from the DCS

g. Audit

- ☐ Relevant Correspondence
- ☐ Final Audit
- ☐ Documentation that all audit findings have been cleared

h. General Correspondence

- ☐ Correspondence, incoming and outgoing, that does not fall into any other categories.

4. <u>Records Retention</u>

All ND-ESG records and files must be retained for a period of five (5) years after the submission of the final financial status report or until all audit findings are resolved, whichever is longer.

SECTION 4 - FINANCIAL MANAGEMENT SYSTEM

The financial management section has been written to help grant administrators understand and implement financial management systems that comply with the Emergency Solutions Grants program. The procedures address the reporting and financial management requirements of 2 CFR Part 200 Uniform Guidance and requirements by the DCS. The OMB Circular referenced above can be found at www.whitehouse.gov/omb/circulars.

The following are subsections to financial management:

A. Cash Depositories

B. Request for Funds

C. Financial Accounting Standards

D. Standards of Allowability and Allocability of Grant Funds

E. Budget Revisions

A. Establishing ESG Bank Account - Requirements

1. Once the grantee has received its executed Financial Award, arrangements can be made to establish a non-interest bearing bank account to receive and expend ESG funds.

   The funds must be deposited in a bank with adequate Federal Deposit Insurance Corporation (FDIC) insurance coverage. ESG funds drawn and deposited in excess of the FDIC coverage must be collaterally secured. FDIC insurance coverage is limited to $250,000, which means that any request or any combination of requests that will cause the total amount of federal funds being paid to the grantee to exceed $250,000, the account receiving funds must be collaterally secured. A statement from the bank verifying the required security should be attached to all requests that would exceed FDIC coverage.

   The designated depository (bank) should be aware that the ESG funds will be transmitted directly from the DCS to the bank in the form of an Automated Clearing House (ACH) transfer. For this reason, it is recommended the grantee notify the bank of submitted request for funds and the anticipated date the funds will arrive at the bank. Through email, the DCS will notify the grantee of payment made to grantee accounts but it is ultimately the grantee's responsibility to track the deposit of ESG funds.

   New grantees must complete and submit an ACH Authorization Form (SFN 52477) www.communityservices.nd.gov/communitydevelopment/Programs/EmergencySolutionsGrantsESG/ESGForms/ setting up automatic transfers to the grantees account and for identifying those grantee officers authorized to request ESG funds from the DCS. The ACH Authorization Form will also be used when the grantee needs to revise or update its officers authorized to sign its Request for Funds form.

2. Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority members).

B. Request for Funds - Cash Management Requirements

1. Payment requests will be honored only after the ACH Authorization Form (SFN 52477) has been submitted and approved, and any relevant special conditions contained within the Financial Award have been met.

2. The grantee is allowed to designate two (2) individuals the authority to request ESG funds from the DCS. Only one signature is required on the Request for Funds form.

3. Request for funds are to be made on the Request for Funds form (SFN 52681) at www.communityservices.nd.gov/communitydevelopment/Programs/EmergencySolutionsGrantsESG/ESGForms/. Requests for funds must distinguish between components by indicating the amount requested for each in the Amount Requested Block. Telephone requests for funds will not be honored. Faxed Requests for Funds forms will be honored, do not send the original copy. Backup or supporting documentation, must accompany each Request for Funds.

   There may be isolated occasions whereby payment requests may be unexpectedly delayed in which the DCS has little or no control.

4. Cash requests should be for the minimum needed to meet the grantee's immediate cash requirements. If excessive amounts are drawn over the minimum needed, the grantee may be required to return the excess funds to the DCS. No interest can be earned or retained on funds advanced to the grantee.

5. Grantee Record Keeping - At the time the grantee prepares the Requests for Funds, the grantee should attach to its request and file copy all cost documentation to support the Request for Funds. This procedure will provide a traceable system and ease the reviewer's examination of the financial files.

C. Financial Accounting Standards - Requirements

Recipients of ESG funds must maintain a financial accounting system which is in compliance with various Federal guidelines and provides accurate information, traceable transactions, and accountability of funds. The grantee must ensure the following:

1. Accurate, current, and complete disclosure of the financial status of each ESG approved activity. The Financial Award includes a budget attachment which describes each approved ESG activity and the dollar amount authorized for each specific activity. As an ESG grantee, your accounting records must be established to identify expenditures according to each approved activity. You will be required, through mid-term and final financial status reports, to account for dollar amounts authorized, expended, and obligated by each approved activity. The accounting records should be kept current and must include approved amendments by the DCS. A separate accounting system

need not be established to account for ESG financial activity if the grantee's existing system is adaptable to meet the above stated requirements.

2. Effective control over and accountability for all funds, property, and other assets. To ensure adequate internal control, checks must have multiple signatures, appropriate bonding must be secured, and proper segregation of grants management duties and responsibilities must be maintained.

3. The checks must be written to the vendor for equipment, services, etc. If this is not possible, the DCS must be contacted for prior approval.

4. If “Match Funds" have been included in the Financial Award as a part of the total project costs, the grantee will be required to have the proper documentation to support the expenditure of that amount. "Match Funds" must be reported on the Financial Status Report.

5. Accounting records must be supported by source documentation. Original invoices, purchase orders, and payroll records must support each payment and be on file and retained for five years from the submission date of the final financial status report or until all audit findings are resolved, whichever is longer, to verify all ESG expenditures. Payments must not be made without the invoice physically on hand.

   All employees paid in whole or in part from ESG funds must prepare a time sheet which indicates the hours worked on the ESG project for each pay period. The time sheet should be inclusive of all programs to which an employee devotes time. The amount to be distributed as ESG payroll charges during a particular period will be based on time sheet and hourly payroll cost of the employee.

6. A minimum of three accounting documents are suggested for recording ESG transactions:

   a. Cash Receipts Journal: This journal is maintained to record the receipt of all funds (local, state, federal) used for program activities. The record must include the date funds are received, the amount of funds received, and the activity to which the funds were transferred.

   b. Cash Disbursements Journal: This journal must be maintained to record all checks issued for payment of program costs. The record must include the date of payment, the payee, check number, amount, and the account from which the disbursement was made.

   c. General Ledger: This journal must be maintained to summarize cash receipts and disbursements on a subaccount basis. All entries of the General Ledger must be made from the Cash Receipts and Cash Disbursements Journal.

CHECKLIST

- ☐ Necessary accounting journals and ledgers are established and maintained on a current basis.
- ☐ Accounting system is established to meet financial reporting requirements. (Budgets in accounting records, current cash balances, etc.)
- ☐ Funds are being disbursed upon receipt and excess cash balances are not being held by grantee.
- ☐ All employees paid with ESG funds are maintaining time sheets.
- ☐ All payments are supported by source documentation.

D. Standards for Allowability and Allocability of Grant Funds

Recipients of ESG funds will be responsible for determining the types of costs which can be charged to a grant in accordance with 24 CFR Part 576 and requirements established by the DCS. Costs are incurred within the effective "Budget/Project Period" as stipulated on Part I of the Financial Award.

Grantees should refer to the attached 24 CFR Part 576 .101 through 576.107 Program Components and Eligible Activities when determining the allowability and applicability of costs to be charged to the ESG program. Should the ESG grantee subgrant any of its ESG funds, it must ensure that its subgrantee is in compliance with all federal requirements.

E. Budget Revisions

The financial budget as found in the Financial Award agreement is the approved financial plan for the ESG funds necessary to complete the project. This budget is the financial expression of the project as approved during the application and award process and will be directly related to program performance and evaluation throughout the period and at close-out.

All amendment requests must be submitted on Request for Amendment form SFN 52679 which is available at www.communityservices.nd.gov/communitydevelopment/Programs/EmergencySolutionsGrantsESG/ESGForms.

F. Audits

Grantees must comply with the requirements of 2 CFR Part 200 “Audits of States, Local Governments, and Non-Profit Organizations.” Audit Disclosure forms will be sent annually to recipients. These must be completed and returned to Commerce.

SECTION 5 - PROCUREMENT METHODS AND CONTRACTS

This section describes the rules and procedures that must be followed when purchasing supplies, equipment, construction, and services in whole or in part with ESG funds. These requirements are established to ensure that materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and executive orders. The objectives of these regulations are to assure that:

- Unnecessary or duplicate purchases are not made;
- Favorable prices for goods and services are obtained without sacrificing needed quality;
- Purchases are made on the basis of maximum open and free competition whenever possible, and
- National goals such as equal employment opportunity, stimulation of small and minority-owned businesses, and fair labor standards are encouraged through government purchases.

The requirements of procurement methods and contracts are delineated in Part 85.36 and Part 84.40-84.48 of Title 24 of the Code of Federal Regulations which is attached. A thorough working knowledge of Part 85 requirements is imperative in order to assure proper grants management.

SECTION 6 – ENVIRONMENTAL REQUIREMENTS

Activities under the Emergency Solutions Grant are subject to environmental review by HUD under 24 CFR part 58.

The following activities are in the Categorically Excluded Not Subject to Federal laws and authorities cited in Sec. 58.5:

a. Tenant-based rental assistance;

b. Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

c. Operating costs include maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs;

d. Economic development activities, including but not limited to, equipment purchases, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

e. Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction including closing costs and down payment assistance, interest buydowns and similar activities that result in a transfer of title;

f. Affordable housing predevelopment costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not create a physical impact; and

g. Approval of supplemental assistance (including insurance or guarantee) to a project previously approved. Approval must be made by the same responsible entity that conducted the environmental review on the original project. Reevaluation of environmental findings is not required.

All other activities, please consult with DCS for further documentation.

The ESG Habitability Standards Checklist must be filled out and filed for each program participant remaining in or moving into permanent housing that is being funded by ESG. These forms can be found at http://www.communityservices.nd.gov/communitydevelopment/Programs/EmergencySolutionsGrantsESG/ESGForms/.

SECTION 7 – CIVIL RIGHTS

A. OVERVIEW

This section presents summaries of the key regulations and requirements of civil rights, fair housing and equal opportunity laws applicable to the administration of the ESG program.

The civil rights laws and related laws, and regulations are designed to protect individuals from discrimination on the basis of:

1. Race
2. National Origin
3. Religion
4. Color
5. Sex
6. Age
7. Disability

As they apply to the ESG program, these laws protect individuals from discrimination in:

1. Housing
2. Benefits created by ESG projects
3. Employment
4. Business Opportunities

Population groups specifically protected by provisions of these laws include:

1. Minorities (specifically - Blacks, Hispanics, Asians and Pacific Islanders, American Indians and Alaskan Natives)
2. Women
3. Groups distinguished by age
4. Persons with Disabilities
5. Family Status

The applicable laws and regulations provide for:

1. Nondiscrimination
2. Equal Opportunity
3. Affirmative Action (to reduce past discrimination)

Definitions, Acronyms or Terminology

Please reference these terms for explanation of commonly used names, acronyms, and phrases used within this section.

1. Contractor-An entity selected in accordance with the procurement requirements at 24 CFR 85.36. In accordance with 24 CFR 85.36©, such procurement actions must be conducted in a manner that provides for free and open competition.

2. New hires (as it relates to payrolls)-Full-time employees for permanent, temporary or seasonal employment opportunities.

3. Low-Income Person-Persons or families whose total household incomes do not exceed 80 percent of the median income for the area.

4. Very Low-Income Person-Persons or families whose total household incomes do not exceed 50 percent of the median income for the area.

5. Section 3 – please consult with DCS for further documentation.

B. CIVIL RIGHTS REQUIREMENTS - LAWS & STATUTES

Civil Rights laws applicable to ESG programs are set forth in the statutes and Executive Orders which follow:

Statute/Executive Order	Description
Title VI of the Civil Rights Act of 1964	No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of: 1. Race 2. Color, or 3. National Origin
Section 3 of the Housing and Urban Development Act of 1968, as amended	To the greatest extent feasible, employment and other economic opportunities, should be directed to: 1. Low and very low income persons, and 2. Business concerns which provide economic opportunities to low and very low income persons.
Title VIII of the Civil Rights Acts of 1968, as amended (Fair Housing Act)	Prohibits discrimination in housing on the basis of: 1. Race 2. Color 3. Religion 4. Sex, or 5. National Origin

	6. Also requires HUD to administer its programs in a manner that affirmatively furthers fair housing
Section 504 of the Rehabilitation Act of 1973, as amended	No otherwise qualified individual shall, solely, by reason of his or her handicap be: 1. Excluded from participation (including employment) 2. Denied program benefits 3. Subjected to discrimination
Section 109 of the Housing and Urban Development Act of 1974, as amended	Under any program or activity funded in whole or in part under Title I or Title II of the act (regardless of contract's dollar value), no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of: 1. Race 2. Color 3. National Origin, or 4. Sex
The Age Discrimination Act of 1975, as amended	No person shall be excluded from participation, denied program benefits or subjected to discrimination on the basis of age.
Executive Order 11063	No person shall, on the basis of race, color, religion, sex or national origin be discriminated against in: 1. Housing (and related facilities) provided with federal assistance. 2. Lending practices with respect to residential practices when such practices are connected with loans insured or guaranteed by the federal government.
Executive Order 11246, as amended	No person shall be discriminated against, on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal or federally assisted construction contracts in the excess of $10,000.
Equal access to HUD-assisted or Insured Housing-§5.105(a)(2)(i-ii)	Requires equal access to housing in HUD programs, regardless of sexual orientation, gender identity, or marital status.
Human Rights Acts of North Dakota	Prohibits discrimination on the basis of race, color, religion, sex, national origin, age, presence of any mental or physical disability, status with regard to marriage or public assistance; and protects individuals from discrimination in employment, public accommodations, housing, state, and local government services, and credit transactions.

C. STRATEGIES AND PROCEDURES

This section presents strategies and procedures for complying with various civil rights, equal opportunity and affirmative action laws, regulations and requirements outlined in the preceding section of this Chapter.

As a ESG grant recipient you must assure that all ESG-funded activities undertaken as part of your program are conducted in a manner which will not cause discrimination on the basis of race, creed, color, national origin, religion, sex, disabled or age.

The information that follows can be used in whole or in applicable part to assure conformity with the required civil rights laws and regulations and assist in affirmative action policies.

1. Nondiscrimination, Equal Opportunity and Affirmative Action in Employment

    a. Maintain employment data that indicates staff composition by race, sex, disabled status and national origin.

    b. Develop or review existing personnel policies to assure compliance with nondiscrimination and equal opportunity requirements.

    c. Advertise as an equal opportunity employer.

    d. Publish an annual statement of nondiscrimination and/or include such statement in any publicity on the ESG program.

    e. Develop a network of information points that serve minority, elderly, women, disabled and ethnic groups, in addition to newspaper/public service channels.

    f. Utilize information points throughout the community to advertise employment opportunities.

    g. Develop or implement an Affirmative Action Plan.

    h. Develop a Section 3 plan.

    i. Display Equal Opportunity posters prominently.

    j. Take affirmative action to overcome the effect of past discrimination.

2. Nondiscrimination, Equal Opportunity and Affirmative Action in Contracting

    a. Advertise as an equal opportunity employer in bid solicitations.

    b. Solicit bids from minority, women and locally owned businesses.

    c. Maintain a list of locally owned businesses that were awarded contracts.

d. Require a Section 3 clause in all contracts.

e. Inform contractors of equal opportunity requirements at pre-construction conference.

f. Require contractor to submit monthly utilization reports.

g. Monitor contractor compliance at work site.

3. Nondiscrimination, Equal Opportunity and Affirmative Action in Housing

a. Information concerning housing services and activities should be disseminated through agencies and organizations which routinely provide services to protected groups.

b. Contract documents used by grantees and lending institutions participating in local programs should be reviewed and revised, if necessary, to eliminate any discriminatory intent or practice.

c. Criteria for selecting recipients of housing assistance should be evaluated for any discriminatory effect.

d. Acceptable Fair Housing Activities:

(1) Publicize that the recipient will assist persons experiencing discrimination in housing.

(2) Development and adoption of a fair housing policy with identification of methods of enforcement.

(3) Provision of housing counseling services which assist minorities and women seeking housing outside areas of concentration.

(4) Work with local real estate brokers to formulate a Voluntary Area-wide Marketing Agreement.

(5) Work with local banks to post "equal lending opportunity" advertisements.

(6) Use "equal housing opportunity" slogan and logo on city letterhead.

(7) Sponsor fair housing seminars and campaigns.

(8) Work with minority and women leaders in the area to promote housing development and increase minority and female participation.

(9) Assist local housing developers in developing outreach programs to attract minorities and females.

(10) Review zoning ordinances and comprehensive plans to insure they promote special deconcentration of assisted housing units.

(11) Create a local housing authority.

(12) Publicly advertise the city as a "fair housing city."

(13) Adopt a code enforcement ordinance which will compel landlords to keep their units in safe and sanitary condition.

4. Beneficiaries

a. Identify the needs of low- to moderate-income persons, minorities and women.

b. Develop and maintain a data base for the project area which includes information about population characteristics, i.e., sex, race, age, head of household, etc.

c. Maintain data on direct and indirect beneficiaries of the project which include above characteristics.

D. FAIR HOUSING

The Federal Fair Housing Law provides that "…no person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions including lenders, builders and homeowners insurance companies" (24 CFR 100.5). See http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws -- Fair Housing Laws and Presidential Executive Orders.

Grantees must agree to administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act (42 U.S.C.3608(e)(5));(E.O.12259(1-202));(24 CFR 570.601). This basically takes the form of promoting and publicizing Fair Housing laws as explained below. Grantees must also agree to develop and maintain records of the efforts taken to assure fair housing.

Fair housing laws, provisions and regulations apply to the community as a whole
– not just to ESG-supported housing projects –
and they are an essential part of the community's ESG responsibilities.

1. Under the Fair Housing Act, the following actions are illegal when taken based on race, color, national origin, sex, religion, familial status, or disability:

a. Refusing to sell, rent, negotiate, or otherwise make housing unavailable

b. Falsely stating that housing is unavailable

c. Providing different services or facilities

d. Imposing different terms and conditions (including qualifications, fees, pricing, rules, etc.)

e. Advertising or making statements that express a limitation or preference

f. Steering, exclusionary zoning, blockbusting, or redlining

g. Retaliating against anyone exercising her/his rights under the Fair Housing Act (includes intimidation and coercion)

h. Refusing to provide a reasonable accommodation or modification for someone with a disability

2. Affirmatively Furthering Fair Housing

a. Analysis of Impediments to Fair Housing Choice (AI) -- In exchange for federal funds, jurisdictions are required to submit certification of affirmatively furthering fair housing to the U.S. Department of Housing and Urban Development (HUD). This certification has three required elements:

(1) Complete an Analysis of Impediments to Fair Housing Choice (AI),

(2) Take actions to overcome the effects of any impediments identified, and

(3) Maintain records reflecting the actions taken in response to the analysis.

b. HUD provides a definition of impediments to fair housing choice as:

(1) Any actions, omissions, or decisions taken because of race, color, religion, sex, disability, familial status, or national origin which restrict housing choices or the availability of housing choices; and

(2) Any actions, omissions, or decisions that have the effect of restricting housing choices or the availability of housing choices on the basis of race, color, religion, sex, disability, familial status, or national origin.

An Analysis of Impediments to Fair Housing Choice (AI) has been conducted for the State of North Dakota. The final document was issued on May 11, 2015 and is available on the Department of Commerce, Division of Community Services website at: www.communityservices.nd.gov/communitydevelopment/Resources/AnalysisofImpedimentstoFairHousingChoice/

The AI identified several private and public sector impediments to fair housing choice. Private sector impediments that were assigned a severity ranking of medium or high included discriminatory terms and conditions in rental and home purchase markets, refusal to rent, failure to make reasonable accommodations, preferential statements in advertising, and the issuance of predatory type home loans. Public sector impediments include inadequate fair housing outreach and education, lack of sufficient fair housing testing and enforcement, and NIMBYism.

The state has begun addressing these impediments primarily through outreach and education efforts. The North Dakota Department of Labor received a grant to provide fair housing education and outreach in North Dakota. To date, the education and outreach has consisted of fair housing presentations in cities throughout the state, and promotional items including fair housing and human rights brochures. The presentations provide specific information on what fair housing is, the law, and how the Department of Labor handles specific housing complaints. They also provide an overview of the Department of Labor's relationship with HUD and how the state's laws are substantially equivalent to the Federal Fair Housing Law. In addition, fair housing advertising was purchased in various newspapers radio advertising was purchased, and a public service announcement campaign was aired on radio and TV.

ESG grantees are required to affirmatively further fair housing in their community in soliciting renters, determining eligibility, and in the conduct of all transactions.

c. Data and Documentation. The ESG grantee must document the steps it has taken to promote fair housing. Keep these records in the ESG Civil Rights File.

When developing a fair housing/affirmative marketing program, it is very important that the grantee **document all of the actions taken -- as well as the results of those actions**. If these efforts are not documented, DSC will be unable to demonstrate to HUD that grantees are meeting their fair housing obligations.

DCS and ESG grantees with housing projects will assess affirmative marketing efforts of owners by comparing predetermined occupancy goals (based on the area from which potential tenants will come) to actual occupancy data the owner is required to maintain. Outreach efforts on the part of the owner will also be evaluated by reviewing marketing efforts.

d. Resources

High Plains Fair Housing Center, located in Grand Forks, ND, is a private, non-profit organization dedicated to the reduction and eradication of housing discrimination in the state:

High Plains Fair Housing Center
Michelle Rydz, Executive Director
PO Box 5222
Grand Forks, ND 58206
701-203-1077
Toll Free 866-380-2738
www.highplainsfhc.org

e. Housing Complaints

The Human Rights Division of the Department of Labor and Human Rights is responsible for enforcing the North Dakota Human Rights Act (N.D.C.C. Chapter 14-02.4) and the North Dakota Housing Discrimination Act (N.D.C.C. Chapter 14-02.5).

This responsibility includes investigating complaints alleging discriminatory practices, educating the public about human rights laws, and studying the nature and extent of discrimination in North Dakota.

Complaints must be referred directly to:

North Dakota Department of Labor
Human Rights Division
600 E. Boulevard Ave., Dept. 406
Bismarck, ND 58505-0340
Phone - (701) 328-2660 locally or;
1-800-582-8032 toll free in ND

TTY (Relay ND) - 1-800-366-6888 or
Voice 1-800-366-6889
Spanish Users 1-800-435-8590
Fax - (701) 328-2031
E-mail - humanrights@nd.gov
Website – www.nd.gov/humanrights

The name(s) of complainants and the name(s) of the respondent(s) must not be disclosed to any entity other than the ND Department of Labor. DCS should, however, be notified that a complaint has been registered.

To learn more about the complaint process, use the following link.
https://www.nd.gov/labor/printable-brochures

E. SECTION 504

Compliance with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 754) requires that local grantees shall operate each 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 handicaps.

Section 504 provides that "No otherwise qualified individual with handicaps in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance". The local grantee is responsible for compliance with Section 504 by the developer in economic development programs.

1. Citizen Participation

   a. Recipients must make affirmative efforts to involve racial and ethnic minorities, people with disabilities, and female headed households in the citizen participation process. Below is a link to the ND Citizen Participation Plan:
   http://www.communityservices.nd.gov/communitydevelopment/ConsolidatedPlan/

2. Limited English Proficiency

   a. ESG grantees have an obligation under Title VI to reduce language barriers that can preclude meaningful access by person with limited English proficiency (LEP) to programs, services, and activities.

      (1) Written translations of vital documents must be provided for each LEP language group totaling 1,000 persons or 5% of the population

3. Section 504 Non-discrimination Notice

   a. Recipients must provide a Section 504 non-discrimination notice within printed informational materials the Recipient makes available to participants, beneficiaries, applicants, and employees.

   b. Must include the name and contact number of the Section 504 Coordinator.

      (1) A sample notice can be found in the **Section 504/ADA Technical Assistance Handbook**

4. Physical Accessibility

   In new multifamily housing projects, a minimum of five percent of the total dwelling units or at least one unit, whichever is greater, must be made accessible for persons with mobility impairments. [24 CFR § 8.22(b)]

   An additional two percent (or at least one unit, whichever is greater) must be made accessible for persons with hearing or vision impairments. [24 CFR § 8.22(b)]

5. Program Accessibility

   a. A recipient must operate each housing and non-housing program or activity receiving federal assistance so that the program or activity is readily accessible to and usable by individuals with handicaps, when viewed in its entirety.

   b. A recipient is not necessarily required to make each of its existing facilities accessible to and usable by individuals with handicaps.

6. Reasonable Accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use areas.

   a. The requested accommodation must be reasonable.

   b. Does not impose an undue financial and administrative burden on the housing provider.

   c. Does not fundamentally alter the nature of the housing provider's operations.

   d. The determination of undue financial and administrative burden is made on a case-by-case basis.

(1) Section 504 requires recipients to provide and pay for reasonable accommodations that involve structural modifications to units or public and common areas.

7. Equal Access Rule

HUD's **Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Rule** became effective on March 3, 2012.

a. Housing assisted by HUD shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status (24 CFR Section 5.015(a)(2).

b. Clarification of "family" definition to include persons regardless of actual or perceived sexual orientation, gender identity, or marital status.

c. Prohibits inquiries of an applicant or occupant's sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available.

d. Prohibits FHA-approved lenders from basic eligibility determinations for FHA-insured loans on actual or perceived sexual orientation or gender identity.

8. Requirements for All Grantees

In order to comply with Section 504, the following actions must be initiated:

a. Each grantee shall submit an assurance to DCS that the ESG Program will be operated in compliance with Section 504 requirements (24 CFR 8.50(a)). This assurance obligates the grantee for the period during which federal financial assistance is extended. This assurance must be submitted prior to receipt of the executed contract with DCS.

b. Each grantee shall have completed a self-evaluation of current policies and practices with respect to communications, employment, and program/physical accessibility to determine whether, in whole or in part, they do not or may not meet the requirements of being accessible to individuals with disabilities. The self-evaluation will have been completed before the final request for funds of any grant award.

c. The self-evaluation shall designate all buildings and structures as "new" or "existing" depending on whether the building was constructed or altered after July 1988 (24 CFR 8.51(a)). The self-evaluation shall determine whether buildings and structures that house programs and services for the public can be approached, entered, and used by persons with disabilities. At minimum the following items should be addressed in the self-evaluation Parking – Spaces, Curbs, Ramps, Routes and Pathways - Slopes, Levels, Ramps, Notices, Entrance Ways - Widths and Heights, Interiors - Door Grasp, Pressure, Pathways, Elevators, Service - Counter Heights, Notices, and Auxiliary Services - Telephones, Restrooms, Drinking Fountains.

d. Each grantee shall modify any policies and practices that do not meet the requirements for program accessibility (24 CFR 8.51). Because compliance with 504 does not necessarily require a recipient to make each of its existing facilities accessible to and usable by individuals with handicaps, or require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens, a recipient may comply with the requirements of this section in its programs and activities receiving Federal financial assistance through such means as relocation of programs, assignment of aids to beneficiaries, home visits, or any other method that results in making its program or activity accessible to individuals with handicaps. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section (24 CFR 8.21(i)).

e. Each grantee must ensure that members of the population eligible to be served or likely to be affected directly by a federally assisted program who have visual or hearing impairments are provided with the information necessary to understand and participate in the program. Methods for ensuring participation include, but are not limited to, qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.

f. Each grantee must maintain data for DCS showing the extent to which individuals with disabilities are beneficiaries of federally assisted programs.

9. <u>Other Section 504 Requirements, as Applicable</u>

If structural changes to non-housing facilities will be undertaken to achieve program accessibility (see notes below), a recipient shall develop a transition plan with the assistance of interested persons, including handicapped individuals or organizations representing handicapped individuals, for those areas which cannot be made accessible administratively (24 CFR 8.21 (4)).

The construction activities identified in the transition plan must have been/must be completed within three years of completion of the self-evaluation that was before the final request for funds for any grant award made after July 1988 (24 CFR 8.21(c) 3 - see #2 above). The transition plan must be made available for public inspection, and, at a minimum, it shall:

a. Identify all physical obstacles that limit the accessibility of programs and activities to individuals with disabilities;

b. Describe in detail the method to be used in making the facility accessible;

c. Set forth a schedule for completion of the modifications. If the schedule exceeds one (1) year, then you must identify the actions to be taken during each year of the transition period;

d. Identify the individual responsible for implementation of the plan; and

e. Identify the persons or groups with whose assistance the plan was prepared.

NOTE: Unless the grant recipient has recently acquired a facility that was constructed prior to 1988, that will house programs and services available to the public, and intends to make physical alterations to this facility, the three year construction period for meeting the accessibility requirement for existing facilities under this regulation will have expired.

NOTE: New non-housing facilities (designed, constructed or altered after July 11, 1988) shall be designed and constructed to be readily accessible to and usable by individuals with handicaps (24CFR 8.32).

f. If the grantee employs fifteen or more persons:

(1) A responsible employee must be designated to coordinate the community's efforts to comply with Section 504;

(2) The community must adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to housing covered by this part.

(3) The grantee shall publish a statement of compliance to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the grantee that it does not discriminate on the basis of handicap in violation of this part. The notification shall state, where appropriate, that the grantee does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. The notification shall also include an identification of the responsible employee designated above.

A grantee shall make the initial notification required by this paragraph within 90 days of receipt of the executed contract with DCS. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

(4) The grantee must maintain a file, make available for public inspection, and provide to the responsible civil rights official, upon request: (1) a list of the interested persons consulted; (2) a description of areas examined in the self-evaluation and any problems identified; and (3) a description of any modifications made and of any remedial steps taken.

g. In order to assist you with Section 504 compliance, please refer to the “Section 504/ADA Technical Assistance Handbook”.

The regulation requires that you must have available a TDD or equally effective method for communicating with hearing impaired persons. North Dakota has an approved relay service which may be utilized. In order to utilize the relay system, the grantee must have a policy indicating the use of the relay system by the grantee and publish the telephone numbers in the newspaper. The numbers are: TTY Users 1-800-366-6888, Voice Users 1-800-366-6889, and Spanish Users 1-800-435-8590. This service is free of charge. Recently the number "711" has been approved by the FCC for use in contacting the relay service. This number works for both TTY and voice telephones and while it is applicable in most states, you are still required to list the "800" numbers presented above.

If you have been the recipient of prior ESG funds and have a completed self-evaluation and if applicable, a transition plan, as mentioned above, the three year time period for completing the construction activities specified in a transition plan for most grantees has expired. For "existing" buildings and facilities that house programs and services for the public and are not accessible you must have adopted policies and/or modified practices to achieve accessibility. Prior grantees should prepare a summary of their past compliance activities.

F. MEETING SECTION

Please consult with DCS for further documentation.

SECTION 8 - MONITORING

All ESG grantees will be monitored on an annual basis. The method and time schedule of the monitoring visit will be coordinated with the grantee.

An on-site monitoring of each shelter will be conducted during the grant period. This visit will be coordinated with the grantee.

The following are the Grant Monitoring Report and Guidelines that will be used by the DCS staff.

ESG/NDHG MONITORING REPORT AND GUIDELINES

NORTH DAKOTA DEPARTMENT OF COMMERCE
DIVISION OF COMMUNITY SERVICES
SFN 60470 (1/16)

General Information

Grantee	Contact Person	
Title	Address	
City	State	ZIP Code
Grant Number(s)	Grant Amount	Monitoring Date

Grantee Performance, Program Management, and Fair Housing

1. Was the grant utilized as proposed in the grantee's application? (review program description & grant application)	☐ Yes ☐ No
2. Were there any amendments to the grant? If yes, for what?	☐ Yes ☐ No
3. Does the agency have a grievance procedure for clients?	☐ Yes ☐ No
4. Does the agency have written position descriptions for staff administering this program?	☐ Yes ☐ No
5. Does the grantee have a fully accessible (i.e., barrier-free) site available for persons to apply for program benefits? If not, what accommodations are made available?	☐ Yes ☐ No
6. Is your agency currently participating in the HMIS?	☐ Yes ☐ No
7. For projects serving domestic violence victims, is there established written procedures regarding confidentiality of client records and the address/location of any project serving domestic violence victims?	☐ Yes ☐ No
8. Does the grantee have a written policy for the termination of clients? If no written guidance is available, interview staff to determine how terminations are handled. Describe:	☐ Yes ☐ No
9. Has the grantee posted all required notices relative to Equal Employment Opportunity and Fair Housing?	☐ Yes ☐ No
10. Does the grantee maintain and update a list of Fair Housing Resources?	☐ Yes ☐ No
11. Does the grantee use the Fair Housing logo on all materials relating to their housing programs distributed to the general public?	☐ Yes ☐ No
12. Who is the Fair Housing contact person?	
13. Has the program received any discrimination complaints?	☐ Yes ☐ No

Financial Management and Internal Accounting Control Monitoring

1. What is your fiscal year? ☐ Jan 01 - Dec 31 ☐ June 01 - May 31 ☐ July 01 - June 30 ☐ Oct 01 - Sept 30 ☐ Other	
2. Are financial and related records maintained ***per program*** requirements after closeout of your grant? (DCS 5 years)	☐ Yes ☐ No
3. Who is responsible for generating/maintaining financial statements & records? ☐ Director ☐ Bookkeeper-Accountant ☐ Outside Accounting Firm ☐ CPA ☐ Other (*employs a staff person who possesses a bachelor's degree in account, or possesses experience in accounting along with college account credits, or a bookkeeper whose work is overseen by an accounting firm*)	
4. Is supporting documentation maintained for all financial transactions?	☐ Yes ☐ No
5. How often are financial reports prepared? ☐ Monthly ☐ Quarterly ☐ Annually	
6. How often does the Board review financial statement and report? ☐ Monthly ☐ Quarterly ☐ Annually	
7. Are receipts issued for all cash contributions received?	☐ Yes ☐ No
8. Are bank reconciliations performed monthly?	☐ Yes ☐ No
9. Are there procedures for approving payments/cash to vendors?	☐ Yes ☐ No
10. What is the specified dollar amount required for Board approval?	
11. Who is responsible for writing checks and paying bills?	
12. Is more than one signature required for any check?	☐ Yes ☐ No
13. Does the Board authorize all bank accounts and check signers annually?	☐ Yes ☐ No
14. List Authorized Signatory(ies), by Title *(there may be two or more signers)* | | | |---|---| | | | | | | | | |	
15. Are checks signed only when accompanied by approved invoices?	☐ Yes ☐ No
16. Are the following insurance coverages currently in force? ☐ Public Liability ☐ Property ☐ Worker's Compensation	
17. For staff salaries through ESG/NDHG funds, are you able to document that they work exclusively with homeless and/or near homeless clients?	☐ Yes ☐ No
18. Does the organization maintain records of the hours worked for each volunteer by type of job?	☐ Yes ☐ No

For Shelter Facilities Only

1. If applicable, are the following licenses current? (provide documentation) ☐ Certificate of Occupancy ☐ Permit for Fire Marshall ☐ Food Preparation ☐ Programmatic Licensure (e.g., Substance Abuse, Day Care, etc.)	
2. Does the agency have written confidentiality procedures which cover? ☐ Locking/security of files ☐ Written authorization of release of information	☐ Yes ☐ No
3. Do clients have a secure place to store personal belongings and documents?	☐ Yes ☐ No
4. Is there at least one homeless person or formerly homeless participating in the policy decision-making process regarding projects receiving funds?	☐ Yes ☐ No
5. Is the facility in compliance with all codes, general ordinances and laws zoning health department compliance, etc.?	☐ Yes ☐ No
a. Are there any unresolved issues?	☐ Yes ☐ No
6. Is there regular pest control services? If yes, how often?	☐ Yes ☐ No
7. Is there a regular garbage removal and adequate storage (such as a dumpster with a lid)?	☐ Yes ☐ No
8. Are the housekeeping and maintenance plans adequate to assure that the facility is clean and in good repair?	☐ Yes ☐ No
9. Are clean linens provided for each client with a procedure to sanitize all linens and sleeping surfaces?	☐ Yes ☐ No
10. Is there a crib, bed or mat with clean linen for each person?	☐ Yes ☐ No
11. Are fire drills conducted regularly, depending on the maximum length of stay? How often?	☐ Yes ☐ No
12. Are fire detection systems operating, and are they tested regularly? How often?	☐ Yes ☐ No
13. Are first aid equipment and supplies available at all times?	☐ Yes ☐ No
14. Is there adequate ventilation (i.e., bath-one operable window or fan; sleeping rooms-one operable window designed to open)?	☐ Yes ☐ No
15. Are food service areas adequate and sanitary?	☐ Yes ☐ No
16. Are interior and exterior lighting adequate?	☐ Yes ☐ No
17. Are entrances and exits clear of debris, ice and other hazards?	☐ Yes ☐ No
18. Do clients have sufficient shower/bath basins and toilets in proper operating conditions?	☐ Yes ☐ No

Exit Interview

The monitoring is completed by an exit meeting with the appropriate staff or representative(s) to discuss the preliminary results of the monitoring visit and indicate that the grantee is to be formally informed of monitoring findings identified to date and any follow-up actions required of the grantee.

Notes for Exit Interview

Estimated date for providing written monitoring report to grantee	
What unanticipated problems or barriers have arisen throughout the implementation of the grant program?	
Does the grantee need additional technical assistance to resolve these barriers? Explain:	☐ Yes ☐ No
How can DCS be of more assistance to the grantee?	
General Comments:	

Monitoring Documentation Checklist

Name of Agency	Name of Tenant	Date

Eligibility Requirements

	YES	NO	COMMENT
Proof of Identification	☐	☐	
At Risk of Homelessness Certification	☐	☐	
Release of Information	☐	☐	
Screening Assessment of HMIS Printout	☐	☐	
Income Documentation (pay stubs, etc.)	☐	☐	
Self-Certification	☐	☐	
Homeless Certification	☐	☐	

Housing Requirements

	YES	NO	COMMENT
Verification of Income	☐	☐	
Intake & Assessment	☐	☐	
Progress Notes	☐	☐	
Utility Shut Off Notice (if applicable)	☐	☐	
Documentation of Eviction (if applicable)	☐	☐	
Lease/Rental Agreement	☐	☐	
Housing Plan (for re-housing and prevention)	☐	☐	
Rent Reasonableness (for re-housing and prevention)	☐	☐	
Habitability Standards Inspection Form	☐	☐	
Lead-Based Paint Inspection Form	☐	☐	

ESG/NDHG Forms
Client Eligibility Forms

Identification Documentation

There must be identification documentation for all household members whether receiving case management and/or financial assistance. Documentation must be a copy of one of the following:

- Drivers License
- Social Security Card
- Medicaid Card
- Birth Certificate
- Passport

At Risk of Homelessness Certification

The agency must complete the Homeless Certification/At Risk of Homelessness Certification indicating current living situation and provide the appropriate documentation as indicated on the form.

Release of Information Form

A Release of Information form must be signed by each household member age 18 or older with a copy in file.

Intake and Assessment Form

The agency will conduct a comprehensive housing assessment with the household.

Income Documentation (pay stubs, etc.)

All sources of household income (for all adult members) must be verified and documented at intake and every three months to determine program eligibility. To be eligible for assistance, gross household income must be below 30% (ESG), 50% (NDHG) area median income (AMI) for the county in which the household is residing.

Self-Certification

Must be completed if required verifications/other documents cannot be provided and self-certification is the only way to verify information to determine program eligibility.

Lease/Rental Agreement

A lease is required for households receiving financial assistance such as rental assistance, security deposits, rental arrearages and utility payments/deposits.

Housing Plan (case notes)

A Housing Plan must be completed for all individuals that receive a housing assessment and are determined eligible for services.

Rent Reasonableness

Subrecipients **must** complete and file a Rent Reasonableness form for rental assistance above Fair Market Rent (FMR).

Habitability Standards Inspection Form

All units must meet Habitability Standards before financial assistance can be provided such as rental assistance, security deposits, rental arrearages and utility payments/deposits.

Lead-Based Paint Inspection

Lead-Based Paint Inspection is required for housing for properties if built before 1978 and if a child age 6 or younger or a pregnant woman will be residing in the unit.

Homeless Definition and Certification

Must be completed for each household.

SECTION 9 - REPORTING

Reporting constitutes a very essential part of program administration, providing the DCS with the ability to track progress and problems, and to identify technical assistance needs. All grantees are required to submit ESG Mid-Term/Final Progress Reports as specified in this section. Failure to submit ESG Mid-Term/Final reports will result in the withholding of funds until the reports are submitted. Failure to submit these reports as specified will also impact the grantee's score on future ESG applications.

The ESG Mid-Term/Final Report form is to be completed and submitted to the DCS 2 times during the grant year as specified below:

1. The ESG Mid-Term Progress Report is due no later than January 31 of each grant year and is to cover the grantee's activities from the start date of the ESG award through December 31. The grantee is to provide information on the unduplicated number of individuals served from the start date of the award through December 31.

2. The ESG Final Progress Report must be completed and submitted to the DCS with the grantee's final request for funds or no later than 30 days following the end of grant year, whichever occurs earlier. The grantee is to provide information on the unduplicated number of individuals served from the start date of the award through the end of the grant year.

ESG MID-TERM/FINAL PROGRESS REPORT

ESG/NDHG MID-TERM/FINAL PROGRESS REPORT

NORTH DAKOTA DEPARTMENT OF COMMERCE
DIVISION OF COMMUNITY SERVICES
SFN 52677 (10/15)

PART I			
☐ Mid-term Progress Report		☐ Final Progress Report on Entire Grant Year	
Grantee		Instrument Number	
☐ Nonprofit Organization		☐ Unit of Local Government	
Budget/Project Period		Period Covered by this Report	
From *(Month, Day, Year)*	To *(Month, Day, Year)*	From *(Month, Day, Year)*	To *(Month, Day, Year)*
Report Prepared by		Phone Number	
Project Description (Please provide a specific description of how funds are being used, including any amendments to your budget)			
Typed Name of Authorized Representative		Title	
Signature of Authorized Representative *(mail original signed copy)*		Date	

DCS USE ONLY

Reviewed By: _____Date Reviewed Mid-term/Final _____

PART II

Complete a separate Part II Report for your agency and any agency you contract with to provide services for each subgrantee. When answering questions, use the space provided or attach additional sheets.

1. List funded activities accomplished to date.

2. Have any problems arisen which will delay grant completion? If yes, explain the problem and the extent of delay.

3. List activities to be accomplished and estimated timeframes.

4. Do you anticipate requesting any amendments? If yes, explain.

5. List the numbers served with ESG or NDHG Funds during the period covered by this report. Ethnic numbers should equal racial numbers.

Ethnic Categories	Select One
Hispanic or Latino White	
Not-Hispanic or Latino White	
Racial Categories	Select All that Apply
American Indian/Alaskan Native	
Asian	
Black/African American	
Native Hawaiian or Other Pacific Islander	
White	
Other	

6. List the numbers of Persons in Households served with ESG or NDHG Funds during the period covered by this report. (Mid-term: July-Dec) (Final: July-June)				
	Number of Youths*	Number of Adults	Don't Know/ Refused/Other	Missing Information
Street Outreach				
Emergency Shelter				
Prevention				
Re-Housing				

*Age 21 and under as defined by the McKinney Vento Act.

7. Gender				
Male	Female	Transgender	Don't Know/ Refused/Other	Missing Information

8. Age				
Under 18	18-24	25 and Over	Don't Know/ Refused/Other	Missing Information

9. Special Populations Served - Complete for All Activities				
Subpopulation	Total	Total Persons Served - Prevention	Total Persons Served - RRH	Total Persons Served in Emergency Shelters
Veterans				
Victims of Domestic Violence				
Elderly				
HIV/AIDS				
Chronically Homeless				
Persons with Disabilities:				
Severely Mentally Ill				
Chronic Substance Abuse				
Other Disability				
Total (Unduplicated if possible)				

10. Shelter Utilization	
Number of Beds – Rehabbed (total number of bed-nights provided is the total number of beds in all shelters the recipient funded with ESG that were filled each night during the reporting period)	
Total Number of Beds – Nights Available (the total number of shelter bed-nights available is the total number of beds in all shelters the recipient funded with ESG that were available to program participants during the reporting period)	
Number of Beds – Conversion (number of beds created as a result of conversion of a building to a shelter)	
Total Number of Beds – Nights Provided (number of additional beds created as a result of a rehab activity)	

11. For this reporting period, check the program(s) and service(s) provide by your facility*(check all that apply):*
Emergency Shelter Component ☐ Renovation ☐ Operations ☐ Essential Services
Street Outreach Component ☐ Street Outreach
Homeless Prevention Component (At Risk of Homelessness Individuals and/or Households) ☐ Housing Relocation and Stabilization Services ☐ Short-Term and/or Medium-Term Rental Assistance (Project Based Assistance) ☐ Short-Term and/or Medium-Term Rental Assistance (Tenant Based Assistance)

Rapid Re-Housing Component (Homeless Individuals and/or Households) ☐ Housing Relocation And Stabilization Services ☐ Short-Term and/or Medium-Term Rental Assistance (Project Based Assistance) ☐ Short-Term and/or Medium-Term Rental Assistance (Tenant Based Assistance)
HMIS Component ☐ HMIS
Administrative Component *(NDHG Only)* ☐ Salaries for administrative activities

PART III		
Grantee		
1. Total grant funds available		$
2. Total Recipient Share of the Budget (Match)		$
3. Total Funds Available		$
4. Funds activity to date - Funds expended/obligated on:		
a. Street Outreach Component	$	
b. Emergency Shelter Component	$	
c. Homeless Prevention Component	$	
d. Rapid Re-Housing Component	$	
e. HMIS Component	$	
f. Administrative Component *(NDHG Only)*	$	
g. Total funds expended/obligated	$	
5. Match funds activity to date - Funds expended/obligated on:		
a. Street Outreach Component	$	
b. Emergency Shelter Component	$	
c. Homeless Prevention Component	$	
d. Rapid Re-Housing Component	$	
e. HMIS Component	$	
f. Administrative Component	$	
g. Total funds expended/obligated	$	
6. Match funds unobligated (line 1 minus line 4g):		$
7. Recipient funds unobligated (line 2 minus line 5g):		$
8. Total funds unobligated (line 6 plus line 7):		$

INSTRUCTIONS FOR COMPLETING THE ESG/NDHG MID-TERM/FINAL PROGRESS REPORT

The Mid-Term/Final Progress Report is divided into 3 separate parts, each of which must be fully completed, whether you are submitting the form for your mid-term or your final progress report.

PART I

- Indicate whether this report is your mid-term or final progress report by checking the appropriate box at the top of the form.
- Enter grantee name.
- Check whether you are a nonprofit organization or unit of local government.
- Enter the instrument number – this number is found on your financial award.
- Enter the budget/project period, i.e., the start date of the award through December 31 or the start date of the award through June 30 (or the date of your final request for funds).
- Enter the name and phone number of the individual completing the report.
- Under Project Description, provide a specific description of how these funds are being used, including any amendments that have been approved.
- Type the name and title of the individual authorized by your agency to certify the accuracy of the information being submitted. Note: This is typically the chief executive director of the agency.
- The authorized individual is to sign and date Part 1 of the report form. *Only original signature will be accepted by the DCS*.
- The block on the bottom of the form is for DCS use only.

PART II

Note: If your agency sub-contracts with another entity to provide services funded with these dollars, you must obtain and submit to the DCS, a separate Part 2 from the sub-grantee, indicating the name of the sub-grantee on the top of the document.

1. List all funded activities to date.
2. Describe any problems or difficulties that have arisen which might delay the completion of your grant.
3. List activities that still need to be accomplished along with the estimate timeframe for completing those activities.
4. Indicate whether you intend to request an amendment and provide an explanation for the request.

5. The two ethnic categories are defined below. List the numbers served with ESG or NDHG funds during the period covered by this report. (Mid-term first six months; Final – whole year)

   Hispanic or Latino. A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term "Spanish origin" can be used in addition to "Hispanic" or "Latino."

   Not Hispanic or Latino. A person not of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

   The five racial categories defined below. List the numbers served with ESG or NDHG funds during the period covered by this report.

   American Indian or Alaska Native. A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

   Asian. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

   Black or African American. A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black" or "African American."

   Native Hawaiian or Other Pacific Islander. A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

   White. A person having origins in any of the original peoples of Europe, the Middle East or North Africa.

   The total numbers in the Ethnic categories should equal the totals in the racial categories. This total should equal the number reported in #5 above.

6-9. List number served by component with ESG or NDHG.

10. List bed information (for shelters only).

11. Check the program(s) and service(s) provided by your facility funded under ESG or NDHG.

PART III

The Progress Report details the current amount of funds expended/obligated for the period covered by this report. It is a summary report of all of the activities of the subgrantees

1. **Total Grant Funds Available:** Total amount of funds awarded to the grantee by DCS. This amount can be found on Part I of the financial award, #1 under the Funding Authorization Section.

2. **Total Recipient Share of the Budget:** Represents the total amount of match funds that have been pledged for this project period. This amount can be found on Part I of the financial award, #6 under the Funding Authorization Section.

3. **Total Funds Available:** Line 1 plus line 2.

4. **Funds Activity:** This section of the progress report deals only with program funds. Each category represents the total amount of funds either expended or obligated by all of the subgrantees.

5. **Recipient Funds Activity:** This section tracks the amount of match funds that have been expended or obligated by category. Dollar amounts in these categories are totals of all funds expended by the subgrantees.

6. **Funds Unobligated:** This amount represents the total funds the grantee has yet to commit or expend.

7. **Recipient Funds Unobligated:** This amount represents the total match that must be committed before the end of the grant period.

8. **Total Funds Unobligated:** This is the total amount of funding still available on this grant award.

Must submit match requirement documentation with Final Progress Report.

SECTION 10 - GRANT AMENDMENTS

This section lists the types of grant amendments that may be requested, defines each type of amendment, describes the procedures for submitting an amendment request, and includes the form on which to request an amendment.

A. Types of Amendments

1. Extension of Time
2. Budget Revisions
3. Scope of Work
4. Special Conditions

B. Definitions

1. Extension of Time: This type of amendment must be requested when the grantee determines that all grant work cannot be completed prior to the grant expiration date.

2. Budget Revisions: This type of amendment must be requested when:

   a. The grantee wants to transfer funds to another approved grant activity.

   b. The grantee decides not to implement an approved activity.

   c. The grantee wants to transfer unobligated funds from a completed activity to another activity.

3. Scope of Work

   This type of amendment must be requested when expanding or reducing the approved scope of work to be performed.

4. Special Conditions

   This type of amendment must be submitted if a grantee wishes to seek approval to modify, eliminate, or extend the time of a special condition on the grant award.

C. Procedures for Submitting and Acting on Request for Amendment.

1. Request for amendments, especially for extension of time, should be submitted no later than 30 days prior to the grant expiration date.

2. All amendments must be submitted on the Request for Amendment form and must be signed by the Executive Director.

3. If an amendment request is approved by the DCS, the Request for Amendment form will be returned reflecting signed approval. If the request is disapproved, a letter of explanation will be forwarded with the Request for Amendment form. All approved amendments will become a part of the original Financial Award and will be subject to all applicable conditions and assurances.

   If the DCS finds that a Request for Amendment is for an action that has already taken place, the amendment will not be approved.

ESG/NDHG REQUEST FOR AMENDMENT

NORTH DAKOTA DEPARTMENT OF COMMERCE
DIVISION OF COMMUNITY SERVIES
SFN 52679 (3/15)

1. Recipient Name		Address	
City		State	ZIP Code
2. Instrument Number	3. Amendment Number	4. Approved Grant Period	5. Date of Request

6. Type of Amendment

A. ☐ Special Condition B. ☐ Budget Revisions

C. ☐ Scope of Work D. ☐ Extension of Time Extension Revised Date _____

7. Explanation for Request (Attach Additional Page if Necessary)

Activity	Approved DCS Budget	Local Funds	Other Public Funds	Revised DCS Budget	Local Funds Revised	Revised Public Funds	Total Budget
Total Revision (+/-)							
Total Budget							

8. Submitted By: (Executive Director)

Signature _____

Name _____

Title _____

Date _____

9. Action Taken (***DCS USE ONLY)***

Approved ☐ Disapproved ☐

Signature _____

Name _____

Title _____

Date _____

REQUEST FOR AMENDMENT DIRECTIONS

Block 1: Enter the official mailing address of the grantee.

Block 2: Enter the DCS assigned Instrument Number on the Financial Award.

Block 3: Amendment requests are to be numerically accounted for locally. Indicate the appropriate request number.

Block 4: Enter the Approved Budget/Project Period from the Financial Award.

Block 5: Enter date of the preparation of the Request for Amendment.

Block 6: Place a mark in the appropriate space to reflect the type of amendment being requested. Only fill in Extension Revised Date if requesting an Extension of Time.

Block 7: Provide a detailed explanation of the amendment, to include the reason and the results.

Enter activities funded on award. Enter amount awarded for each activity funded. In the Revised DCS Budget column, enter +/- for each activity amending. Total Budget column automatically calculates. Approved DCS Budget should equal Total Budget unless amending for more or less dollars.

Block 8: Enter the name and title of the Executive Director. This is the individual who signed the Financial Award.

Block 9: For DCS use only.

Send original signed document to:

Adele Sigl
ND Department of Commerce (DCS)
1600 East Century Avenue, Suite 2
PO Box 2057
Bismarck, ND 58502-2057

SECTION 11 - GRANT CLOSE-OUT PROCEDURES

This section describes the close-out procedures to be used by the DCS and the recipient.

A. Final Grantee Performance Report

Grantees must file a Final Performance Report with the last Request for Funds or within 30 days of project completion. Failure of the grantee to submit a report as required will not preclude the DCS from closing out a grant when such action is determined to be in the best interest of both parties. The failure or refusal by a grantee to comply with such requirement shall be taken into account in the performance determination by the DCS in reviewing any future grant applications from the grantee.

B. Grant Close-Out

A final grant close-out letter will be issued to a grantee upon receipt and approval by the DCS of the Final Report.

A grant may be closed-out when all other responsibilities of the grantee under the grant agreement have been carried out satisfactorily, or there is no further State interest in keeping the grant agreement open for the purpose of securing performance.

C. Grant Suspension and Termination

1. Suspension

When a grantee fails to comply with the grant award stipulations, standards, or conditions of its grant, the DCS may suspend the grant, withhold further payments, or prohibit the grantee from incurring additional obligations of grant funds, pending corrective action by the grantee.

2. Termination

a. Termination for Cause. The DCS may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The DCS shall promptly notify the grantee in writing of the termination and the reasons for the termination, together with the effective date. Payments made to a grantee or a recovery by the DCS under grants terminated for cause shall be in accord with the legal rights and liabilities of the parties. For this type of termination, the DCS will not honor any costs. If funds have been paid to the grantee, they must be repaid to the DCS.

b. Termination for Convenience. The DCS or grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The DCS will consider all circumstances under which a grant is to be terminated and on a case-by-case basis determine if any eligible, incurred costs will be honored.

APPENDIX A

75954 Federal Register / Vol. 76, No. 233 / Monday, December 5, 2011 / Rules and Regulations

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 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 85.24[3] 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 homeless 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 re-housing 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 re-housing 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.

[5] See the April 20, 2010, edition of the **Federal Register** at 75 FR 20544.

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

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 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.
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Subpart C—Award and Use of Funds

576.200 Submission requirements and grant approval.
576.201 Matching requirement.
576.202 Means of carrying out grant activities.
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(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

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

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

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

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

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

Homeless means:

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

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

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

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

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

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

(ii) No subsequent residence has been identified; and

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

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

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

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

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

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

(4) Any individual or family who:

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

(ii) Has no other residence; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 576.3 Allocation of funding.

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

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

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

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

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

Subpart B—Program Components and Eligible Activities

§ 576.100 General provisions and expenditure limits.

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

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

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

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

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

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

§ 576.101 Street outreach component.

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

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

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

(3) *Emergency health services.* (i) Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals operating in community-based settings, including streets, parks, and other places where unsheltered homeless people are living.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) The unit of general purpose local government has taken all reasonable steps to prevent a reduction in funding of services for homeless people. Reasonable steps may include steps to increase revenue generation, steps to maximize cost savings, or steps to reduce expenditures in areas other than services for homeless people.

§ 576.102 Emergency shelter component.

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

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

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

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

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

(C) Counseling;

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

(E) Monitoring and evaluating program participant progress;

(F) Providing information and referrals to other providers;

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

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

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

(iii) *Education services.* When necessary for the program participant to obtain and maintain housing, the costs of improving knowledge and basic educational skills are eligible. Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED). Component services or activities are screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies and instructional material; counseling; and referral to community resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 576.103 Homelessness prevention component.

ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance necessary to prevent an individual or family from moving into an emergency shelter or another place described in paragraph (1) of the "homeless" definition in § 576.2. This assistance, referred to as homelessness prevention, may be provided to individuals and families who meet the criteria under the "at risk of homelessness" definition, or who meet the criteria in paragraph (2), (3), or (4) of the "homeless" definition in § 576.2 and have an annual income below 30 percent of median family income for the area, as determined by HUD. The costs of homelessness prevention are only eligible to the extent that the assistance is necessary to help the program participant regain stability in the program participant's current permanent housing or move into other permanent housing and achieve stability in that housing. Homelessness prevention must be provided in accordance with the housing relocation and stabilization services requirements in § 576.105, the short-term and medium-term rental assistance requirements in § 576.106, and the written standards and procedures established under § 576.400.

§ 576.104 Rapid re-housing assistance component.

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

§ 576.105 Housing relocation and stabilization services.

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

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

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

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

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

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

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

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

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

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

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

(iii) Housing search;

(iv) Outreach to and negotiation with owners;

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

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

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

(viii) Tenant counseling.

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

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

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

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

(C) Counseling;

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

(E) Monitoring and evaluating program participant progress;

(F) Providing information and referrals to other providers;

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

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

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

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

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

(c) *Maximum amounts and periods of assistance.* The recipient may set a maximum dollar amount that a program participant may receive for each type of financial assistance under paragraph (a) of this section. The recipient may also set a maximum period for which a program participant may receive any of the types of assistance or services under this section. However, except for housing stability case management, the total period for which any program participant may receive the services under paragraph (b) of this section must not exceed 24 months during any 3-year period. The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.

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

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

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

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

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

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

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

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

(c) *Use with other subsidies.* Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, rental assistance cannot be provided to a program participant who is receiving tenant-based rental assistance, or living in a housing unit receiving project-based rental assistance or operating assistance, through other public sources. Rental assistance may not be provided to a program participant who has been provided with replacement housing payments under the URA during the period of time covered by the URA payments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The recipient or subrecipient may make monthly rental assistance payments only for each whole or partial month an assisted unit is leased to a program participant. When a program participant moves out of an assisted unit, the recipient or subrecipient may pay the next month's rent, *i.e.*, the first month's rent for a new program participant, as provided in paragraph (i)(2) of this section.

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

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

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

§ 576.107 HMIS component.

(a) *Eligible costs.*

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

(i) Purchasing or leasing computer hardware;

(ii) Purchasing software or software licenses;

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

(iv) Obtaining technical support;

(v) Leasing office space;

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

(vii) Paying salaries for operating HMIS, including:

(A) Completing data entry;

(B) Monitoring and reviewing data quality;

(C) Completing data analysis;

(D) Reporting to the HMIS Lead;

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

(G) Implementing and complying with HMIS requirements;

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

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

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

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

(i) Hosting and maintaining HMIS software or data;

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

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

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

(v) Administering the system;

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

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

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

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

§ 576.108 Administrative activities.

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

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

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

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

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

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

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

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

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

(G) Evaluating program results against stated objectives; and

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

(ii) Travel costs incurred for monitoring of subrecipients;

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

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

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

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

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

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

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

§ 576.109 Indirect costs.

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

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

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

Subpart C—Award and Use of Funds

§ 576.200 Submission requirements and grant approval.

(a) *Application submission and approval.* In addition to meeting the application submission requirements in 24 CFR part 5, subpart K, each State, urban county, or metropolitan city must submit and obtain HUD approval of a consolidated plan in accordance with the requirements in 24 CFR part 91, and each territory must submit and obtain HUD approval of a consolidated plan in accordance with the requirements that apply to local governments under 24 CFR part 91. As provided under 24 CFR 85.12, HUD may impose special conditions or restrictions on a grant, if the recipient is determined to be high risk.

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

§ 576.201 Matching requirement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Some noncash contributions are real property, equipment, goods, or services that, if the recipient or subrecipient had to pay for them with grant funds, the payments would have been indirect costs. Matching credit for these contributions must be given only if the recipient or subrecipient has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of those contributions.

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

§ 576.202 Means of carrying out grant activities.

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

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

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

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

§ 576.203 Obligation, expenditure, and payment requirements.

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

(ii) Within 120 days after the date that the State obligates its funds to a unit of general purpose local government, the subrecipient must obligate all of those funds by a subgrant agreement with, or a letter of award requiring payment to, a private nonprofit organization; a procurement contract; or the written designation of a department within the government of the subrecipient to directly carry out an eligible activity.

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

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

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

Subpart D—Reallocations

§ 576.300 In general.

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

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

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

§ 576.301 Metropolitan cities and urban counties.

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

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

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

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

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

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

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

§ 576.302 States.

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

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

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

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

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

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

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

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

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

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

§ 576.303 Territories.

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

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

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

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

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

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

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

Subpart E—Program Requirements

§ 576.400 Area-wide systems coordination requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) *Written standards for providing ESG assistance.* (1) If the recipient is a metropolitan city, urban county, or territory, the recipient must have written standards for providing Emergency Solutions Grant (ESG) assistance and must consistently apply those standards for all program participants. The recipient must describe these standards in its consolidated plan.

(2) If the recipient is a state:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 576.401 Evaluation of program participant eligibility and needs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 576.402 Terminating assistance.

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

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

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

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

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

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

§ 576.403 Shelter and housing standards.

(a) *Lead-based paint remediation and disclosure.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations in 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to all shelters assisted under ESG program and all housing occupied by program participants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) *Space and security.* Each resident must be provided adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.

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

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

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

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

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

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

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

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

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

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

§ 576.404 Conflicts of interest.

(a) *Organizational conflicts of interest.* The provision of any type or amount of ESG assistance may not be conditioned on an individual's or family's acceptance or occupancy of emergency shelter or housing owned by the recipient, the subrecipient, or a parent or subsidiary of the subrecipient. No subrecipient may, with respect to individuals or families occupying housing owned by the subrecipient, or any parent or subsidiary of the subrecipient, carry out the initial evaluation required under § 576.401 or administer homelessness prevention assistance under § 576.103.

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

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

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

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

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

(A) If the recipient or subrecipient is a government, disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

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

exception is sought would not violate state or local law.

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

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

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

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

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

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

(F) Any other relevant considerations.

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

§ 576.405 Homeless participation.

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

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

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

§ 576.406 Faith-based activities.

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

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

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

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

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

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

§ 576.407 Other Federal requirements.

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

(b) *Affirmative outreach.* The recipient or subrecipient must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. If it is unlikely that the procedures that the recipient or subrecipient intends to use to make known the availability of the facilities, assistance, and services will to 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,